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MCDONALD, J., dissenting. This case concerns two counts of interfering with a Bridgeport police officer, Jason Ferri, when Ferri attempted to issue an infraction ticket to the defendant, Madalena Silva, for minor motor vehicle offenses.<sup>1</sup> The defendant was convicted on the first count of interfering with Ferri for telling him that she would not do so when he requested that she produce her driver's license, automobile registration and insurance documents, and on the second count for running from Ferri, and fleeing across a street and entering a motor vehicle that left the area after Ferri had told her not to leave the scene. As to the first count, the state's evidence was that the defendant answered Ferri's document request by unmanneredly stating that she would not do so, that she was taking her brother to a hospital and that the officers were not stopping her. As to the second count, the state's evidence was that despite Ferri's order to stay, the defendant immediately left in a car other than her own when her mother began arguing with Ferri that the defendant had done nothing wrong.

The court charged the jury in part: "In any criminal trial, it is permissible for the state to show that conduct or statements made by a defendant otherwise *after the time of the alleged offense* may fairly have been influenced by the criminal act. That is, the conduct or statements show a consciousness of guilt." (Emphasis added.)

The state argued in its brief before us that the defendant's conduct in fleeing the scene supported the court's instruction. Our Supreme Court has stated: "The probative value of flight as evidence of a defendant's guilt depends on the degree of confidence with which four inferences can be drawn: (1) from behavior to flight; (2) from flight to consciousness of guilt; (3) from consciousness of guilt to consciousness of guilt concerning the crime charged; and (4) from consciousness of guilt concerning the crime charged to actual guilt of the crime charged." (Internal quotation marks omitted.) *State v. Scott*, 270 Conn. 92, 105, 851 A.2d 291 (2004), cert. denied, 544 U.S. 987, 125 S. Ct. 1861, 161 L. Ed. 2d 746 (2005). In oral argument before us, the state conceded that consciousness of guilt from flight would not apply to the second count because interfering with Ferri by leaving was in the process of being committed. Because the jury was instructed that it was free to use evidence of the defendant's conduct, here, flight, to find consciousness of guilt of that flight, the instruction was, I would conclude, improper as to count two.

As to count one, the state argued before us at oral argument that the instruction as to the conduct, in this case, flight, was proper because the offense specified

in count one was completed before the defendant left the scene. I reject that argument because there was no evidence of flight to support an inference of consciousness of guilt of the crime charged in count one.

There was no evidence that a sense of guilt over her refusal to produce documents influenced the defendant to leave the scene. To the contrary, the state's evidence was that the defendant had already begun to leave when she refused to produce the documents. Thus, the state's evidence established that the defendant's previous determination to take her brother immediately to the hospital caused her to refuse the officer's request and to leave immediately.

Also, there was no evidence that the defendant left because Ferri intended to charge her with breach of the peace and interfering with an officer, the charges for which she was on trial. There was no evidence that the officers told the defendant that she was to be arrested for breach of the peace and interfering an officer, and there was no evidence that she was arrested at the scene. The only evidence was that Ferri told the defendant that an infraction ticket was to be issued for unsafe backing and for having no front license plate on her vehicle, charges for which she was not on trial.

Moreover, flight giving rise to a finding of a guilty conscience means running away or an escape from justice. American Heritage Dictionary. Black's Law Dictionary defines such flight as leaving a jurisdiction or concealing one's whereabouts within a jurisdiction to avoid being brought to justice. The defendant's conduct did not approach flight to conceal her identity or to hide her whereabouts. The undisputed evidence was that the defendant told Ferri that she was leaving to take her brother to the hospital and that Ferri had her car and her mother at the scene, that the defendant did take her brother to the hospital and that Ferri went to the nearest hospital emergency room and there arrested the defendant.

I also would reject the state's argument because in this case the state's evidence concerned (1) interference with one officer, Ferri; (2) one transaction made up of continuous acts of refusing to supply information as she was leaving to take her brother to the hospital and would not be stopped by the officers, and contrary to Ferri's instructions, leaving; and (3) the same offense, a violation of General Statutes § 53a-167a. See *State v. D'Antonio*, 274 Conn. 658, 715–17, 877 A.2d 696 (2005) citing *State v. Chicano*, 216 Conn. 699, 706, 584 A.2d 425 (1990), cert. denied, 501 U.S. 1254, 111 S. Ct. 2898, 115 L. Ed. 1062 (1991). I would conclude that the offense set forth in count one was not distinct from the offense in count two and was not completed before the defendant left the scene, but rather that the conduct charged in the two counts was but one distinct act. See *State v. D'Antonio*, supra, 717. Addressing the state's argu-

ment, I would hold under the double jeopardy clause of the United States constitution that the state may not charge the defendant in multiple counts of interfering with one officer for the words spoken as she was leaving the scene and for leaving. See *State v. Nixon*, 92 Conn. App. 586, 886 A.2d 475 (2005).

Accordingly, I would order a new trial as to both counts.<sup>2</sup> The undisputed evidence was that the defendant's brother's vehicle had to be towed from the scene, the defendant's brother complained of injuries and the defendant's mother gave the defendant the mother's car keys to take the brother to the hospital. The application of consciousness of guilt unfairly characterized conduct of the defendant, who was acting as a dutiful daughter and a concerned sister, and as part of a closely knit family. These family values once made our Connecticut cities, such as Bridgeport, places of freedom from crime and of opportunity. Today, many trace the cities' fall to the loss of these values. Accordingly, in this case, I would conclude that the instruction deprived the defendant of a fair trial.

Accordingly, respectful of the majority, I dissent.

<sup>1</sup> The prosecutor stated in summation at trial that the ticket for improper backing and no front license plate "might seem frivolous to some people."

<sup>2</sup> On remand, I do not reach the merging the multiple convictions and sentences on the two counts.

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