STATE OF CONNECTICUT *v.* JEFFREY AVILES
(AC 35165)

Beach, Sheldon and Flynn, Js.

Argued October 14—officially released December 30, 2014

(Appeal from Superior Court, judicial district of Hartford, Cronan, J.)

Laila Haswell, assistant public defender, for the appellant (defendant).

Nancy L. Chupak, senior assistant state's attorney, with whom, on the brief, were *Gail P. Hardy*, state's attorney, and *Robin Krawczyk*, senior assistant state's attorney, for the appellee (state).

Opinion

FLYNN, J. The defendant, Jeffrey Aviles, appeals from the judgment of conviction, rendered after a jury trial, of robbery in the first degree in violation of General Statutes § 53a-134 (a) (4), robbery in the first degree in violation of § 53a-134 (a) (2), and burglary in the first degree in violation of General Statutes § 53a-101 (a) (1). On appeal, the defendant claims that (1) the trial court erred in denying his motion to suppress the victim's pretrial and trial identifications of the defendant and (2) the state committed prosecutorial impropriety during closing argument that violated his due process right to a fair trial.[1] We affirm the judgment of the trial court.

The jury reasonably could have found the following facts. On August 27, 2010, Edwin Valentin closed his secondhand store, the Tag Sale Store, located at 129 Zion Street in Hartford, at approximately 8 p.m. He locked the fence around the entrance to the store and left the front door propped open. Sometime later, a man entered the store through the front door with a duffle bag. He placed the duffle bag on the store counter and took a shotgun out of it. He pointed the shotgun at Valentin and said: "I'm here to rob you." The perpetrator demanded money from Valentin and repeatedly asked about the location of the store's safe. Valentin gave the perpetrator money from his pocket and from the store's register but denied that the store had a safe. In order to distract the perpetrator from asking about the store's safe, Valentin offered him laptops. At gunpoint, he sorted through a pile of laptops containing both working and nonworking models. He gave the perpetrator two computer bags, each containing two laptops that needed repair.

After handing over the money and the four laptops, Valentin left the store with the perpetrator, who had returned the shotgun to the duffle bag. The perpetrator kept the duffle bag open enough to keep his hand on the shotgun inside. Valentin unlocked the fence around the entrance to the store and he and the perpetrator exited the fenced area onto the sidewalk. The perpetrator then began walking south on Zion Street toward Curtiss Street. Valentin testified that the lights were on in the store during the robbery and that he was able to see the perpetrator's face. He estimated that the perpetrator was in the store for approximately fifteen to twenty minutes.

As the perpetrator began walking south on Zion Street, Valentin ran across the street to where Officer Nicholas Trigila of the Hartford Police Department was parked in his marked police cruiser. Valentin informed Trigila that he had just been robbed "by a man with a gun" and pointed in the direction of the perpetrator, who was running down Zion Street toward Curtiss

Street. Trigila observed that the perpetrator was wearing a dark shirt and dark pants. He could not see if the perpetrator was carrying anything due to the line of cars parked on the street, which blocked the lower part of the perpetrator's body.

Trigila then began to pursue the perpetrator down Zion Street in his cruiser. At the same time, he radioed for police assistance and aired a general description of the perpetrator based on his own observations. Responding police units began to set up a perimeter around the area. Trigila lost sight of the perpetrator around the intersection of Zion and Curtiss Streets, where he then parked his cruiser as part of the police perimeter.

After exiting his vehicle, Trigila walked back down Zion Street toward Valentin's store. On his way down Zion Street, Trigila found a duffle bag with a sawed-off shotgun, a camera, and laptops. He remained with the evidence until another member of the police department arrived to take over for him. He then went to speak with Valentin to get a further description of the perpetrator, which he aired to the other responding officers. Shortly thereafter, Officer Christopher Hunyadi announced over the police radio that a possible suspect had been located in the area of Zion and Curtiss Streets. The suspect had been found in some bushes near the intersection. The time between the end of the robbery and the detention of the suspect was approximately ten minutes.

There was conflicting testimony at trial as to the subsequent identification procedure. Trigila testified that he escorted Valentin to the corner of Zion and Curtiss Streets, where the suspect was detained. Prior to Valentin viewing the suspect, Sergeant Burke verbally gave him the five standard witness showup instructions, known as *Ledbetter* instructions. See *State* v. *Ledbetter*, supra, 275 Conn. 571–74; id., 575 (holding that "the trial court, as part of its analysis [of whether an identification procedure was unnecessarily suggestive], should consider whether the identification procedure administrator instructed the witness that the perpetrator may or may not be present in the procedure"). Trigila then gave Valentin a form with the same instructions on it.[2] Valentin initialed each instruction. He then viewed the suspect and immediately identified him as the perpetrator of the robbery.

Valentin testified that he noticed the police activity on the corner of Zion and Curtiss Streets and began walking that way without a police escort. When he reached the corner, he saw that the police had someone in custody. There were police officers and cruisers around the suspect and the suspect was handcuffed. Valentin told the police: "That's the guy." Valentin testified that he identified the suspect without hesitation as the man who had robbed him and that he was able to

recognize the suspect by his face. He also testified that the form with the *Ledbetter* instructions was given to him, and he initialed it at police headquarters later that evening when he gave the police his formal statement about the incident.

The suspect identified by Valentin as the perpetrator of the robbery was the defendant. The defendant matched both the description Trigila initially had aired based on his own observations and the description later given by Valentin. Valentin also identified the defendant at trial as the man who had robbed him. Additionally, the defendant had cash on his person that closely matched the amount and the denominations of the bills that were taken from Valentin's pocket and the store's cash register.

The defendant was arrested and charged with two counts of robbery in the first degree and one count of burglary in the first degree. He pleaded not guilty and elected a trial by jury. Before trial, he filed a motion to suppress Valentin's pretrial and trial identifications, arguing that the identification procedure was unnecessarily suggestive and that the identifications were unreliable. The trial court, *Cronan*, *J.*, denied the motion. The jury found the defendant guilty on all counts. The court merged the two robbery convictions into one and sentenced the defendant to a total effective sentence of ten years, execution suspended after five years, with a four year period of probation. This appeal followed.

I

The defendant first claims that the trial court erred in denying his motion to suppress Valentin's pretrial and trial identifications. He argues that the one-on-one showup procedure leading to the identifications was unnecessarily suggestive and that there were no exigencies justifying its use. He further argues that the identifications were unreliable under the totality of the circumstances. The defendant claims that the improper admission of the identification evidence violated his due process rights. We are not persuaded.

We now turn to the applicable standard of review. "The legal principles guiding our review of a defendant's constitutional challenge to an eyewitness identification procedure are well established. In determining whether identification procedures violate a defendant's due process rights, the required inquiry is made on an ad hoc basis and is two-pronged: first, it must be determined whether the identification procedure was unnecessarily suggestive; and second, *if it is found to have been so*, it must be determined whether the identification was nevertheless reliable based on examination of the totality of the circumstances. . . . [T]he critical question . . . is what makes a particular identification procedure suggestive enough to require the court to proceed to the second prong and to consider the overall reliabil-

ity of the identification. . . . In deciding that question . . . the *entire* procedure, viewed in light of the factual circumstances of the individual case . . . must be examined to determine if a particular identification is tainted by unnecessary suggestiveness. The individual components of a procedure cannot be examined piecemeal but must be placed in their broader context to ascertain whether the procedure is so suggestive that it requires the court to consider the reliability of the identification itself in order to determine whether it ultimately should be suppressed.

"Because, [g]enerally, [t]he exclusion of evidence from the jury is . . . a drastic sanction, one that is limited to identification testimony which is manifestly suspect . . . [a]n identification procedure is unnecessarily suggestive only if it gives rise to a very substantial likelihood of irreparable misidentification. . . . We have recognized that generally a one-to-one confrontation between a [witness] and the suspect presented to him for identification is inherently and significantly suggestive because it conveys the message to the [witness] that the police believe the suspect is guilty. . . . We also have recognized, however, that the existence of exigencies may preclude such a procedure from being *unnecessarily* suggestive.

"In the past, when we have been faced with the question of whether an exigency existed, we have considered such factors as whether the defendant was in custody, the availability of the victim, the practicality of alternate procedures and the need of police to determine quickly if they are on the wrong trail. . . . We have also considered whether the identification procedure provided the victim with an opportunity to identify his assailant while his memory of the incident was still fresh." (Citations omitted; emphasis in original; internal quotation marks omitted.) *State* v. *Revels*, 313 Conn. 762, 771–73, A.3d (2014).[3]

If the admission of eyewitness identification testimony is deemed to be improper, it is then subject to harmless error review. *State* v. *Artis*, 314 Conn. 131, 156–57, A.3d (2014). "[B]ecause of the constitutional magnitude of the error, the burden falls on the state to prove that the admission of the tainted identification was harmless beyond a reasonable doubt." Id., 154. "[W]hether an error is harmful depends on its impact on the trier of fact and the result of the case. . . . This court has held in a number of cases that when there is independent overwhelming evidence of guilt, a constitutional error would be rendered harmless beyond a reasonable doubt. . . . If the evidence may have had a tendency to influence the judgment of the jury, it cannot be considered harmless. . . . That determination must be made in light of the entire record [including the strength of the state's case without the evidence admitted in error]." Id., 159.

"Our standard of review of a trial court's findings and conclusions in connection with a motion to suppress is well defined. A finding of fact will not be disturbed unless it is clearly erroneous in view of the evidence and pleadings in the whole record . . . . [W]here the legal conclusions of the court are challenged, we must determine whether they are legally and logically correct and whether they find support in the facts set out in the memorandum of decision . . . . We undertake a more probing factual review when a constitutional question hangs in the balance. See *State* v. *Damon*, 214 Conn. 146, 154, 570 A.2d 700 ([w]here a constitutional issue turns [on] a factual finding . . . our usual deference . . . is qualified by the necessity for a scrupulous examination of the record to ascertain whether such a finding is supported by substantial evidence [internal quotation marks omitted]), cert. denied, 498 U.S. 819, 111 S. Ct. 65, 112 L. Ed. 2d 40 (1990)." (Citation omitted; internal quotation marks omitted.) *State* v. *Burroughs*, 288 Conn. 836, 843, 955 A.2d 43 (2008).

The defendant moved to suppress Valentin's one-on-one identification at trial, arguing that it was both unnecessarily suggestive and unreliable. The court denied the motion after an evidentiary hearing. The court found that the apprehension of the defendant occurred within a few minutes of the robbery. The court also found that, while one-on-one showups can be "very suggestive," the identification of the defendant in the present case was sufficiently reliable to be weighed by the jury. On appeal, the defendant argues that this denial was erroneous for the same reasons raised before the trial court. We conclude, as did our Supreme Court in *State* v. *Revels*, supra, 313 Conn. 769, that the procedure employed was justified by the exigent need for an immediate investigation.

In *Revels*, our Supreme Court reviewed a claim that the trial court improperly denied the defendant's motion to suppress the pretrial and in-court identifications of him as the perpetrator. Id., 765. We review *Revels*' facts in some detail because of their similarity to the present case. In *Revels*, the defendant appealed his murder conviction for the killing of Bryan Davila. Id., 765–66. Davila was shot while he was walking along State Pier Road in New London shortly before 11 p.m. Id., 766. One of two men who were near Davila ran toward him, fired numerous shots, causing Davila to fall to the ground, and then fled from the scene. Id. Davila was able to call 911 from his cell phone, but was unable to speak. Id. The dispatcher was nevertheless able to determine Davila's probable location, and police arrived at the scene of the shooting. Id. Davila was taken to the hospital where he was pronounced dead at 11:37 p.m. Id., 766–67. Some police remained at the scene of the shooting and canvassed the area. Id., 766.

A witness who lived on the fifth floor of a nearby

apartment building told Officer Justin Clachrie that she had seen the shooting. Id., 767. She told Clachrie in Spanish, translated by her sister, that the shooter was a black male with braided hair, wearing a green camouflage jacket, a red baseball cap, and dark pants. Id. Clachrie drove the defendant and her sister to Home Street, where other officers had apprehended the defendant, who was standing in their custody, handcuffed, in the middle of the road. Id. The witness immediately exclaimed in Spanish: " 'That's him!' " Id. The trial court denied the defendant's motion to suppress the identifications because it determined that the one-on-one showup procedure used by the police was not unnecessarily suggestive, and that, even if it were, the identification was nonetheless reliable. Id., 765. Our Supreme Court affirmed the trial court's decision. Id., 769. Assuming, without deciding, that the procedure was suggestive, our Supreme Court held that it was not unnecessarily so because the procedure was justified by the need for an immediate identification, as "[t]he police had reason to believe that an armed and dangerous person . . . was at large in the community." Id., 769, 775.

In the present case, the facts are similar in many respects. The police needed to act quickly. They knew that an armed robbery had been committed almost immediately after the crime had occurred because the defendant chose to rob a store across the street from where a marked police cruiser was parked. Valentin reported the robbery to Trigila as the defendant was walking away from the store. The police knew that the perpetrator was on the run with a gun. Trigila followed the perpetrator, but lost sight of him near the corner of Zion and Curtiss Streets. The police had a duty to protect the public from an armed and dangerous fugitive, and the need to do so was immediate. Trigila found a duffle bag with a sawed-off shotgun in it on Zion Street, along the path the perpetrator had taken from the store. However, there was a need to know that the sawed-off shotgun was the one used in the robbery, so that the police could exclude the possibility that the perpetrator was still at large carrying a similar dangerous weapon.

Additionally, Valentin spent fifteen to twenty minutes with the perpetrator while he was in the store with the lights on and had a good opportunity to view him. Nothing in the record suggests that Valentin might be unavailable in the future to view an alternative identification procedure, such as a photographic array. However, it was important to have Valentin, with a fresh memory, view the person who had been hiding in the bushes near his store and who was apprehended within a few minutes of the crime, so that if he were not the perpetrator, he might be released and the search continued for the person responsible.

The identification of the defendant on the street was necessary to exclude a continued search for another suspect and to protect the public from an armed fugitive. The identification was made by a witness who had seen the defendant during the robbery for fifteen or twenty minutes and who readily identified the defendant as the person who had robbed him only a few minutes after the robbery. Assuming, without deciding, that the identification procedure was suggestive, we conclude that it was not unnecessarily so because the procedure was justified by the need for an immediate identification. See *State* v. *Revels*, supra, 313 Conn. 769. Accordingly, the trial court did not err in denying the defendant's motion to suppress Valentin's pretrial and trial identifications.

We further conclude from a review of the entire factual record that the admission of the eyewitness identification evidence, even if improper, was harmless beyond a reasonable doubt. Even without Valentin's pretrial and trial identifications, the state had a strong case against the defendant. Trigila chased the defendant down Zion Street and, within minutes of the robbery, Hunyadi found him hiding in the bushes about a block away from the store. The shotgun used in the robbery and the items stolen during the robbery were found along the path from the store to the defendant's hiding place. The defendant had cash on his person and the amount and the denominations of the bills closely matched those that Valentin testified were stolen in the robbery. The defendant also matched the descriptions given by both Trigila and Valentin. Furthermore, the defendant had a fair opportunity to cross-examine Valentin at trial and challenge his identification of the defendant as the perpetrator. See *State* v. *Artis*, supra, 314 Conn. 161 (defendant's opportunity to cross-examine eyewitness was factor in harmlessness analysis). Accordingly, we conclude that, even if the admission of the eyewitness identification testimony were improper, it was harmless beyond a reasonable doubt.

II

The defendant next claims that the state committed prosecutorial impropriety during closing argument that violated his right to a fair trial. Specifically, he argues that the prosecutor made two improper comments. First, the prosecutor's suggestion to the jury that it consider whether the trial would have gone forward if the defendant's fingerprints and DNA[4] had been found on the shotgun improperly injected extraneous matters into the trial, encouraged the jury to speculate about the defendant's motives for going to trial, and introduced the prosecutor's opinion of the defendant's guilt. Second, the defendant claims that the prosecutor violated his right against self-incrimination by improperly commenting on his failure to testify and present evidence on his own behalf.

We note that the defendant did not preserve his claims of prosecutorial impropriety. However, unpreserved claims of prosecutorial impropriety are reviewable and do not require the defendant to invoke appellate review under *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989). *State* v. *Payne*, 303 Conn. 538, 560, 34 A.3d 370 (2012).

The following additional facts are relevant to our resolution of this claim. At trial, Detective Gregory Gorr of the Hartford Police Department's crime scene division testified that he was unable to locate any fingerprints on the sawed-off shotgun used in the robbery. Additionally, Cheryl Civitello, a DNA analyst at the state forensic science laboratory, testified that she compared the defendant's DNA to a DNA sample found on the shotgun used in the robbery. According to the results of the comparison, the defendant's DNA was either not present on the shotgun or not present to a detectable level. Both Gorr and Civitello were witnesses for the state. The defendant did not testify or present any evidence on his own behalf.

During closing argument, the prosecutor referred to the fact that the defendant's fingerprints and DNA had not been found on the shotgun. The prosecutor stated: "You know, let's face it, the fingerprints and—if the fingerprints and the DNA of the defendant were found, do you really think that we would be here today having this trial? That's why these cases are so hard. That's why I asked you during voir dire if you thought it was possible to prove a case just using witness testimony without any physical or forensic evidence. That's why I asked you if you could follow an instruction that even [a] witness' testimony can be enough to prove a criminal case as long as you believed that testimony, but that's an instruction that you will receive, that even one witness' testimony can be enough."

The prosecutor also noted the lack of an explanation as to why the defendant was found in the bushes at the intersection of Zion and Curtiss Streets. The prosecutor commented: "I also would like to remind you to be careful not to speculate. If the answer to the question that you have is not in the evidence, then you don't know the answer. You have been provided with no innocent explanation as to why the defendant was found at 10 p.m., thereabouts, in a dark corner of someone's house in the bushes as the police were all surrounding the area establishing a perimeter to find someone who matched the defendant's description and who had just robbed a secondhand store ten minutes earlier. You're allowed to consider each person's testimony, and from what you believe, make reasonable inferences from it, but you can't make up things. You can't speculate unless you have a basis in the evidence to speculate about it. So from those facts, it's reasonable to infer that he was trying to avoid detection from the

police, but there's no other reasonable inference."

In response to this remark by the prosecutor, defense counsel, in her closing argument, told the jury: "Remember I told you at voir dire, I don't have to prove anything. [The prosecutor] mentioned in her closing about not hearing an explanation as to why he's in that bushes. That's shifting the burden, ladies and gentlemen. That's what that is. That's shifting the burden to defense that we have to prove innocence, and that is not our job. That is not my job. It's their job to prove this case beyond a reasonable doubt, and that was not done."

During her rebuttal, the prosecutor clarified her earlier comment and responded to defense counsel's argument, stating: "As far as shifting the burden. They have no duty to produce any witnesses. He has no duty at all to testify. But the only reasonable inference you can make from the facts that were presented was that the defendant was hiding in the bushes because he just robbed the secondhand store on the other corner, less than [ten] minutes ago. He disappeared because he was hiding in the bushes."

On appeal, the defendant claims that the prosecutor's comments on the fingerprint and DNA evidence and on the lack of an innocent explanation as to his presence in the bushes amounted to prosecutorial impropriety. He argues that the improprieties "so infected the trial that they deprived [him] of his due process rights," including his fifth amendment right to remain silent. The state, on the other hand, argues that the prosecutor's comments were not improper and that, even if they were, any impropriety was harmless and did not affect the verdict.

We now turn to the applicable standard of review. "In analyzing claims of prosecutorial impropriety, we engage in a two step analytical process. . . . The two steps are separate and distinct. . . . We first examine whether prosecutorial impropriety occurred. . . . Second, if an impropriety exists, we then examine whether it deprived the defendant of his due process right to a fair trial. . . . In other words, an impropriety is an impropriety, regardless of its ultimate effect on the fairness of the trial. Whether that impropriety was harmful and thus caused or contributed to a due process violation involves a separate and distinct inquiry." *State* v. *Payne*, supra, 303 Conn. 560–61. Because we assume, without deciding, that the challenged comments were improper, we move directly to the second step of the analysis and address whether the prosecutor's remarks were harmful.

"[W]hen a defendant raises on appeal a claim that improper remarks by the prosecutor deprived the defendant of his constitutional right to a fair trial, the burden is on the defendant to show, not only that the remarks were improper, but also that, considered in light of the

whole trial, the improprieties were so egregious that they amounted to a denial of due process. On the other hand . . . if the defendant raises a claim that the prosecutorial improprieties infringed a specifically enumerated right, such as the fifth amendment right to remain silent or the sixth amendment right to confront one's accusers, and the defendant meets his burden of establishing the constitutional violation, the burden is then on the state to prove that the impropriety was harmless beyond a reasonable doubt." (Citations omitted; internal quotation marks omitted.) Id., 562–63.

"In determining whether prosecutorial [impropriety] was so serious as to amount to a denial of due process, this court, in conformity with courts in other jurisdictions, has focused on several factors. Among them are the extent to which the [impropriety] was invited by defense conduct or argument . . . the severity of the [impropriety] . . . the frequency of the [impropriety] . . . the centrality of the [impropriety] to the critical issues in the case . . . the strength of the curative measures adopted . . . and the strength of the state's case." (Citations omitted.) *State* v. *Williams*, 204 Conn. 523, 540, 529 A.2d 653 (1987).

Assuming, without deciding, that the challenged remarks were improper, we agree with the state that they were not harmful. We note that the remarks were not invited by defense counsel. As defense counsel made no objections to the remarks, there were also no curative measures adopted by the court.[5] The improprieties occurred twice throughout the prosecutor's closing argument. The comments on the forensic evidence and the reason why the defendant was hiding in the bushes were central to the critical issue of the case—whether the defendant was the man who had committed the robbery.

However, in view of the facts and circumstances of this case, we conclude that the evidence against the defendant was overwhelming. In *State* v. *Pereira*, 72 Conn. App. 545, 563–67, 805 A.2d 787 (2002), cert. denied, 262 Conn. 931, 815 A.2d 135 (2003), where evidence of the defendant's guilt was overwhelmingly strong, this court concluded that the defendant's right to a fair trial was not prejudiced, despite the fact that, during cross-examination, he was improperly forced to characterize contrary testimony of other witnesses as lies. In the present case, Trigila and other police officers were in pursuit of the perpetrator almost immediately after the robbery. The defendant closely matched the descriptions given by both Trigila and Valentin. Within a few minutes, the defendant was apprehended behind some bushes less than a block away from the store. Trigila found the duffle bag containing the sawed-off shotgun and some of the stolen items close by the defendant's hiding place. The defendant was in Valentin's store for fifteen to twenty minutes during the rob-

bery. The store's lights were on, giving Valentin an opportunity to see the defendant's face. Valentin was able to identify the defendant at the scene as the perpetrator without any hesitation or equivocation.[6] We conclude from these facts and the entire record that the prosecutor's comments, even if improper, were not so serious as to deprive the defendant of a fair trial or to deny him his right to due process.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] The defendant also raises a claim that the Connecticut constitution mandates a more stringent standard than the *Manson/Biggers* test for determining the reliability of identifications. See *Manson* v. *Brathwaite*, 432 U.S. 98, 114, 97 S. Ct. 2243, 53 L. Ed. 2d 140 (1977); *Neil* v. *Biggers*, 409 U.S. 188, 199–200, 93 S. Ct. 375, 34 L. Ed. 2d 401 (1972). He recognizes in his brief that this court is bound by the *Biggers* test; *State* v. *Ledbetter*, 275 Conn. 534, 569, 881 A.2d 290 (2005) (declining to abandon *Biggers* test), cert. denied, 547 U.S. 1082, 126 S. Ct. 1798, 164 L. Ed. 2d 537 (2006); and raises this issue for review in our Supreme Court. Accordingly, we will not review this claim.

[2] The five *Ledbetter* instructions on the form given to Valentin were as follows: "I will ask you to view an individual/number of individuals. It is as important to clear innocent people as to identify the guilty. Persons may not look exactly as they did at the time of the incident. The person you saw may or may not be present. The police will continue to investigate this incident, whether you identify someone or not."

[3] Pursuant to Practice Book § 67-10, the state notified this court and opposing counsel on October 7 and October 10, 2014, of our Supreme Court's decisions in *State* v. *Revels*, supra, 313 Conn. 762, and *State* v. *Artis*, 314 Conn. 131, A.3d (2014).

[4] DNA stands for deoxyribonucleic acid and comprises a person's inherited genetic material.

[5] In its final charge, the court instructed the jury that the attorney's statements and arguments are not evidence and that the state carries the burden of proving the defendant's guilt beyond a reasonable doubt.

[6] The defendant cites the recent case of *State* v. *Guilbert*, 306 Conn. 218, 252, 49 A.3d 705 (2012), which holds that expert testimony is permissible on the "weapon focus effect" as an aid to the jury in its fact-finding function in weighing the accuracy of an eyewitness identification. The "weapon focus effect" refers to the theory that the "the reliability of an identification can be diminished by a witness' focus on a weapon . . . ." Id., 237. The defendant argues in his brief that both "the weapon focus effect and the high stress [Valentin] was experiencing impacted his ability to observe and his degree of attention to the perpetrator, also impacting the overall reliability of the identification." However, the jury did not hear any evidence on the possible effect of this theory. The defendant did not seek to introduce expert testimony on the weapon focus effect before the jury, nor was the weapon focus effect specifically raised before the trial court. We do not review appellate issues where the appellant has provided an insufficient record for review or when the issue was never distinctly raised before the trial judge. See *State* v. *Brunetti*, 279 Conn. 39, 55, 901 A.2d 1 (2006), cert. denied, 549 U.S. 1212, 127 S. Ct. 1328, 167 L. Ed. 2d 85 (2007). Although the evidence before the jury was that Valentin was in the presence of the armed defendant for fifteen or twenty minutes during the robbery, the jury reasonably could have found from all of the evidence that Valentin's ability to identify the defendant was not overborne by stress and that he had made a reliable identification.