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STATE OF CONNECTICUT *v.* KERLYN M. TAVERAS
(AC 38602)

Cradle, Seeley and Eveleigh, Js.

Syllabus

The defendant appealed from the judgments of the trial court revoking his probation. The defendant previously had pleaded guilty to various crimes under three informations and received a total effective sentence of three years of imprisonment, execution suspended after twelve months, followed by a term of probation. The conditions of the defendant's probation prohibited him from violating any state or federal criminal law. While the defendant was serving his term of probation, he precipitated an incident at his son's preschool. On the day of the incident, B, the preschool's director, received a phone call from C, one of her staff members, informing her that, after a staff member had called the defendant because he was late to pick up his son, the defendant arrived at the preschool in an escalated emotional state and argued with the staff members. As he was leaving with his son, the defendant warned C that she should "watch [her]self" and "be careful . . . ." The defendant then tried to reenter the preschool but left after his attempt was unsuccessful. Thereafter, B arrived, discussed the incident with her staff, and contacted the police. Following the incident, the state sought revocation of the defendant's probation, claiming that he had violated its terms by committing breach of the peace in the second degree. At the defendant's violation of probation hearing, the trial court overruled the defendant's hearsay objection and permitted B to testify regarding the statements that C had made to her during their phone call, finding that such statements were reliable. C was not called as a witness at the hearing. Thereafter, the trial court found that the state had met its burden of proving that the defendant violated the terms of his probation. Accordingly, the trial court rendered judgments revoking the defendant's probation, and the defendant appealed to this court. During the pendency of the appeal, the defendant filed a motion for articulation with the trial court requesting, inter alia, that it specify the evidence underlying its conclusion that C's statements were reliable, indicate whether it had applied the balancing test set forth in *State* v. *Shakir* (130 Conn. App. 458), and specify any good cause that it had for excusing the state from calling C as a witness. The trial court granted the motion in part, articulating its conclusion regarding the reliability of the hearsay statements. It denied the defendant's request related to *Shakir*, stating that the defendant did not raise any related due process claims, and, as such, the court had no opportunity to consider the merits of *Shakir* in connection with the defendant's violation of probation hearing. This court granted the defendant's motion for review of the trial court's order but denied the relief requested therein. On the defendant's appeal of the revocation of his probation, this court reversed the judgments of the trial court, finding that the defendant's remarks at the preschool were protected under the first amendment to the United States constitution because the state had failed to present sufficient evidence to establish that they constituted fighting words or a true threat. This court remanded the case with direction to render judgments for the defendant and did not address the other claims raised by the defendant in his appeal. On the granting of certification, the state appealed to our Supreme Court, which disagreed with this court's conclusion that the defendant's remarks warranted first amendment protection. It reversed the judgment of this court and remanded the case to this court with direction to consider the defendant's remaining claims on appeal, namely, the admission of B's testimony as to C's hearsay statements on both constitutional and evidentiary grounds. *Held*:

1. The defendant's claim that B's testimony as to C's hearsay statements was admitted in violation of his due process rights was not preserved and was not reviewable pursuant to *State* v. *Golding* (213 Conn. 233), and the claimed error did not require reversal under the plain error doctrine: the defendant failed to raise an objection that provided oppos-

ing counsel and the court with fair notice of his claim, as he never argued to the trial court that, pursuant to *Shakir*, it was required to balance his interest in cross-examining C against the state's good cause for not calling C as a witness; moreover, the record was inadequate for review pursuant to *Golding* because, as a result of the defendant's failures, the state did not present evidence regarding its reasons for not producing C as a witness at the hearing and the trial court had no occasion to consider whether there was good cause not to allow confrontation; furthermore, the defendant did not demonstrate an error so obvious that it required reversal under the plain error doctrine.

2. The trial court did not abuse its discretion in admitting B's testimony as to C's hearsay statements because such statements contained some minimal indicia of reliability and were not wholly unsupported by corroborative evidence: although B did not witness the incident at the preschool, she arrived shortly thereafter, observed the demeanor of her staff members, and was present when they gave statements to the police, which were consistent with what she had been told by C over the phone; moreover, in an affidavit that was prepared in support of the violation of probation arrest warrant and was made on the basis of a review of the police reports, the defendant's probation officer set forth an account of the incident that was similar to that described by C in her statements to B; furthermore, contrary to the defendant's claim, the situation was distinguishable from that in *State* v. *Carey* (30 Conn. App. 346) because B's personal observations and familiarity with C provided her with a basis on which she could judge the reliability or accuracy of C's statements.

Argued September 20, 2022—officially released May 16, 2023

Procedural History

Three substitute informations charging the defendant with violation of probation, brought to the Superior Court in the judicial district of Danbury, geographical area number three, where the cases were consolidated and tried to the court, *Russo*, *J.*; judgments revoking the defendant's probation, from which the defendant appealed to this court, *Sheldon* and *Eveleigh*, *Js.*, with *Elgo*, *J.*, dissenting, which reversed the trial court's judgments and remanded the cases with direction to render judgments for the defendant, from which the state, on the granting of certification, appealed to the Supreme Court, *Mullins*, *Kahn*, *Ecker* and *Keller*, *Js.*, with *Robinson*, *C. J.*, and *D'Auria* and *McDonald*, *Js.*, concurring, which reversed this court's judgment and remanded the cases to this court with direction to consider the defendant's remaining claims on appeal. *Affirmed.*

James B. Streeto, senior assistant public defender, for the appellant (defendant).

Linda F. Rubertone, senior assistant state's attorney, with whom, on the brief, were *Sharmese L. Walcott* and *Stephen J. Sedensky III*, state's attorneys, and *Bruce R. Lockwood*, senior assistant state's attorney, for the appellee (state).

Opinion

EVELEIGH, J. This appeal returns to us on remand from our Supreme Court. In *State* v. *Taveras*, 183 Conn. App. 354, 356, 193 A.3d 561 (2018), rev'd, 342 Conn. 563, 271 A.3d 123 (2022), the defendant, Kerlyn M. Taveras, appealed from the judgments of the trial court finding him in violation of his probation and revoking his probation pursuant to General Statutes § 53a-32, following his arrest on a charge of breach of the peace in the second degree in violation of General Statutes § 53a-181 (a). In a divided opinion, this court concluded that the state had failed to present sufficient evidence to establish that the defendant's remarks during an incident at his son's preschool, which formed the basis for the breach of the peace charge and his violation of probation, constituted either " 'fighting words' " or a " 'true threat,' " and, therefore, the remarks were protected under the first amendment to the United States constitution. Id., 358, 381. Accordingly, this court reversed the judgments of the trial court and remanded the cases with direction to render judgments in favor of the defendant. Id., 381. As a result of that conclusion, this court did not address the other claims raised by the defendant in his appeal. Id., 358 n.4.

After granting the state's petition for certification to appeal, our Supreme Court disagreed with this court's conclusion that the defendant's remarks warranted first amendment protection. *State* v. *Taveras*, 342 Conn. 563, 580, 271 A.3d 123 (2022). Our Supreme Court thus reversed the judgment of this court and remanded the case to us with direction to consider the defendant's remaining claims on appeal. Id.

In accordance with that order, we now consider whether the trial court improperly admitted into evidence at the probation revocation hearing the testimony of Monica Bevilaqua, the director of the preschool where the incident took place, as to statements made to her by Sondra Cherney, the preschool's assistant education manager. The defendant claims that (1) the admission of Bevilaqua's testimony violated his due process right to cross-examine Cherney, and (2) Bevilaqua's testimony concerning Cherney's hearsay statements should have been excluded because the statements were unreliable and uncorroborated.[1] We affirm the judgments of the trial court.

In its decision, our Supreme Court set forth the following relevant procedural history. "The record establishes that the defendant had been previously charged with, and pleaded guilty to, the following offenses in three separate criminal cases: (1) threatening in the second degree in violation of General Statutes [Rev. to 2009] § 53a-62 (a) (3) in connection with an incident that occurred on or about September 17, 2009; (2) assault in the third degree in violation of General Statutes § 53a-

61 (a) (1) in connection with an incident that occurred on or about June 30, 2011; and (3) threatening in the second degree in violation of [General Statutes (Rev. to 2011)] § 53a-62 (a) (3) in connection with an incident that occurred on or about July 28, 2011. The trial court accepted those pleas and, on August 22, 2012, imposed a total effective sentence on those charges of three years of incarceration, execution suspended after twelve months, followed by three years of probation. The defendant's term of probation on these charges began on July 1, 2013. On August 28, 2012, and then again on April 25, 2013, the defendant agreed to the standard conditions of probation set forth on Judicial Branch Form JD-AP-110. Those conditions expressly prohibited the defendant from, among other things, 'violat[ing] any criminal law of the United States, this state or any other state or territory.'

"On March 11, 2014, approximately eight months into his term of probation, the defendant precipitated an incident at his son's preschool in Danbury. The evidence contained in the record about that event comes almost exclusively from two distinct sources: (1) testimony from the preschool's director, [Bevilaqua]; and (2) an affidavit from the defendant's probation officer, Christopher Kelly, dated April 17, 2014, requesting the issuance of a warrant for a violation of the defendant's probation.[2] . . .

"First, Bevilaqua testified that the defendant's son was one of about four hundred students enrolled at the preschool and that his child's scheduled hours were 8:30 a.m. to 4 p.m. Shortly after 4 p.m. on March 11, 2014, Bevilaqua, who was not then physically present at the preschool, received a call from her staff informing her that the defendant was late for pickup. Pursuant to standard policy, preschool staff had reached out to the defendant by phone to ask where he was. Bevilaqua testified that the defendant was 'not happy' about this call but that he had, nonetheless, told staff that he was on his way.

"According to reports from Bevilaqua's staff, the defendant eventually arrived at the preschool at approximately 4:40 p.m. in an 'already escalated' emotional state, went down to his child's classroom, and then began arguing with staff on his way out. [Cherney], the preschool's assistant education manager, then said something to the defendant as he was exiting the preschool through a set of locked doors. Bevilaqua testified that, in response to Cherney's comment, the defendant turned around and said, 'you better watch yourself, you better be careful . . . .' Bevilaqua indicated that the defendant then 'tried to get back in the door and couldn't, and then he left.'

"Other portions of Bevilaqua's testimony provide the following additional factual context. Bevilaqua indicated that this situation was not the staff's first 'esca-

lated interaction' with the defendant. Although the details of these previous interactions were not expressly drawn out at the hearing, Bevilaqua clearly testified that she herself had previously witnessed the defendant acting in a threatening manner. Indeed, Bevilaqua stated that she made the decision to return to the preschool as soon as she heard that the defendant was going to be late because she 'knew it would get escalated.' When she got to the preschool, she found that members of her staff were 'shaken up' and 'concerned' by what had transpired. Bevilaqua also stated that, in order to protect those at the preschool, she immediately contacted the police, formally prohibited the defendant from reentering the preschool, began pursuing a restraining order, and hired a police officer for additional security the following day.

"Kelly's affidavit provides the following similar account of events: '[On March 11, 2014, police officers were] dispatched to [a preschool for] a dispute involving [the defendant]. [The defendant] was forty minutes late picking up his child . . . and [was] . . . reminded . . . that he needed to pick his child up on time. [The defendant] became extremely agitated and began to argue with staff. Staff told [the defendant] that he had to leave because he was arguing with staff in the front lobby in front of other children and their parents. [The defendant] then yelled to the staff "you better watch your back." Staff reported . . . that [the defendant] was so enraged and intimidating that the school hired a police officer for security the next morning in the event [the defendant] came back. [The defendant] agreed to meet [police officers] the next morning and was arrested for breach of [the] peace. [The defendant] was advised not to return to the school again, otherwise he would be arrested for criminal [t]respass.'

"The state subsequently sought revocation of the defendant's probation as a result of the defendant's conduct on March 11, 2014. During the hearing that followed, the state proceeded on the theory that the foregoing testimony and evidence were sufficient to prove that the defendant had violated the terms of his probation by committing breach of the peace in the second degree, in violation of . . . § 53a-181 (a).[3]

"On the basis of this testimony, the trial court found that the state had met its burden of proving, by a preponderance of the evidence, that the defendant had violated the standard terms of his probation by violating § 53a-181 (a). In ruling in favor of the state on the adjudicatory phase of the proceeding, the trial court explicitly found that the defendant had exhibited a 'threatening nature and demeanor' and that his conduct had caused Bevilaqua to contact the police. . . . After the dispositional phase of the hearing, the trial court rendered judgments revoking the defendant's various terms of probation and sentenced him to a total effective term of eighteen

months of incarceration." (Footnotes altered; footnotes omitted.) Id., 566–70.

The following additional procedural history is relevant to our resolution of the defendant's claims. At the defendant's violation of probation hearing, Bevilaqua testified that she learned about the incident involving the defendant when she received a phone call from Cherney. When the state asked Bevilaqua about what Cherney had told her on the phone and Bevilaqua began to respond, the defendant's counsel objected on the ground that such testimony would constitute inadmissible hearsay.[4] Specifically, the defendant's counsel argued that "that would be for [Cherney] to come in and testify to" and "this is identical to what happened in [*State* v. *Carey*, 30 Conn. App. 346, 354, 620 A.2d 201 (1993), rev'd on other grounds, 228 Conn. 487, 636 A.2d 840 (1994)], where a probation officer's reading [of] a statement from a police report . . . was deemed to be improper hearsay [that was] let in."

In response, the prosecutor argued that *Carey* was distinguishable because, in that case, "[t]here was no showing of reliability," whereas, in the present case, "Bevilaqua has testified that she's the director of the preschool. That she's had prior dealings with . . . [the defendant]. That this is her staff. That they're calling her to report this incident to her, and that when the police department came and took statements . . . and did an investigation she was present . . . for that piece as well so that she's actually heard these items two times, and that both times the statements from . . . the staff that was present were consistent. . . . I would argue that it does make the reliability prong that's demonstrated in [*State* v. *Giovanni P.*, 155 Conn. App. 322, 338 n.14, 110 A.3d 442, cert. denied, 316 Conn. 909, 111 A.3d 883 (2015)]." The defendant countered that, because the court "knows absolutely nothing" about Cherney, it could not find her to be more reliable than the police reports improperly admitted in *Carey*.

The court overruled the defendant's hearsay objection. The court first concluded that "the reliability threshold has been passed . . . for the statement." The court asked the state about the probative value of the evidence and the prosecutor explained that it was relevant to demonstrate "the particulars of . . . the threat that was made or . . . the exact nature of it would lend more towards the weight that . . . the court may give it." The court responded: "We'll allow the question. I think it is certainly reliable. We'll see what relevance it does have upon [Bevilaqua's] answer."

The prosecutor then asked Bevilaqua: "[W]hat was the nature of the incident reported to you on that telephone call?" Bevilaqua responded: "[T]hat [the defendant's son] had not been picked up on time. That they called [the defendant]. He was coming down. He was not happy. When he had gotten to the school, he entered

the doorway, already escalated. That he walked down to the classroom to get [his son]. When he came back down the hallway and got to the doors he had words with staff members. . . . [H]e got out the front door, door shut behind him, and [Cherney] had said something back to him, and he turned and said, 'you better watch yourself, you better be careful,' tried to get back in the door and couldn't, and then he left."

Bevilaqua also explained that when she received Cherney's phone call, she was already on her way back to the school "because knowing what we knew about the family and the situation I knew it would get escalated. . . . So, when I got back moments later, we called the police department." The defendant's counsel did not ask Bevilaqua any questions when provided with the opportunity to cross-examine her, and the state did not call Cherney to testify as a witness at the hearing.

During the pendency of his initial appeal to this court, the defendant filed a motion for articulation with the trial court requesting, among other things, that the court "specify the evidence underlying the conclusion that the statements of Cherney were reliable . . . ." The defendant also requested that the court "[s]pecify whether the balancing test set forth by the Appellate Court in *State* v. *Shakir*, 130 Conn. App. 458, 467, [22 A.3d 1285, cert. denied, 302 Conn. 931, 28 A.3d 345 (2011)], was applied in admitting the hearsay statements of Cherney through the testimony of Bevilaqua" and, "[i]f the *Shakir* test was applied, specify the good cause, if any, [that] justif[ied] excusing the state from calling Cherney as a witness, and allowing Bevilaqua to testify as to her statements."

The trial court granted the motion in part and issued an articulation elaborating on the factual basis for its conclusion that Bevilaqua's testimony as to Cherney's statements "contained reliable hearsay." In its articulation, the court first summarized the testimony at issue: "Up until the juncture where [Cherney's] statements to [Bevilaqua] were challenged as inadmissible, there was evidence in the record, from [the defendant's] probation officer, that [the defendant] engaged in certain abhorrent behavior at his child's preschool. [Bevilaqua], the director of the preschool, was then called as a witness and further testified that she had a level of familiarity with [the defendant] from past behavior. [Bevilaqua's] interest in the [defendant's] matter on March 11, 2014, was triggered by a telephone call received by her assistant education manager, [Cherney], who contacted [Bevilaqua] as she—Bevilaqua—was en route to the preschool. The sum and substance of the colloquy between the two certainly was the overall behavior of [the defendant]. Within that behavior, however, were concerns that members of [Bevilaqua's] staff may be in harm's way. As a result, when [Bevilaqua] arrived at her work station, the evidence revealed that she

debriefed with her coworkers regarding safety issues and was concerned enough that she called the police. This summary was testified to by [Bevilaqua]."

After setting forth the relevance and probative value of Cherney's hearsay statements, the court articulated its conclusion as to the reliability of that evidence: "The few statements made by [Cherney] to [Bevilaqua] were reliable in that the behavior reported was not normal behavior that would normally be exhibited by a parent of a young child and, moreover, was the type of behavior that triggered the responsibilities of a director, who properly acted as one would where the safety of children or staff was in possible jeopardy. The trial court further notes that there was no evidence of any animus from [Bevilaqua] toward [the defendant], nor was there any indication that [Bevilaqua] had any ulterior motivations to testify other than truthfully, given the gravity, urgency and reliability of the statements provided to her by [Cherney]. Additionally, the defendant was given every opportunity to cross-examine [Bevilaqua] on the content and quality of her testimony. Given the totality of the circumstances, the trial court found that the statements satisfied the standard, namely, that the hearsay statements be relevant, reliable, and probative."

The court denied the motion for articulation in all other respects. As to its denial of the defendant's requests for articulation related to the *Shakir* balancing test, the court explained that "the defendant did not raise any due process claims with regard to *State* v. *Shakir*, [supra, 130 Conn. App. 467]. As a result, the court had no opportunity to hear argument and then consider the merits of . . . *Shakir* in connection with [the defendant's] violation of probation hearings." The defendant subsequently filed with this court a motion for review of the trial court's order denying, in part, the motion for articulation. This court granted the motion for review but denied the relief requested therein.

On appeal, the defendant challenges the admission of Bevilaqua's testimony as to Cherney's hearsay statements on both constitutional and evidentiary grounds.[5] We address each claim in turn.

I

We first consider the defendant's claim that Bevilaqua's testimony as to Cherney's hearsay statements was admitted in violation of his due process rights. The defendant contends that the court improperly failed to conduct the balancing test pursuant to *State* v. *Shakir*, supra, 130 Conn. App. 467–68, and to determine whether good cause existed for his inability to confront and cross-examine Cherney at the probation revocation hearing concerning the hearsay statements that were admitted through Bevilaqua's testimony. He acknowledges that he did not distinctly raise a due process

argument in his objection to the admission of Bevilaqua's testimony, and, in the event that we should find the issue inadequately preserved, he requests review of this claim pursuant to *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015), or, alternatively, reversal under the plain error doctrine, codified at Practice Book § 60-5. We conclude that the defendant's claim was not preserved, that it is not reviewable pursuant to *Golding*, and that the claimed error is not so obvious that it requires reversal under the plain error doctrine.

We begin our analysis by setting forth the limited due process rights afforded to a defendant in a violation of probation hearing. "Probation revocation proceedings fall within the protections guaranteed by the due process clause of the fourteenth amendment to the federal constitution . . . . Probation itself is a conditional liberty and a privilege that, once granted, is a constitutionally protected interest . . . . The revocation proceeding must comport with the basic requirements of due process because termination of that privilege results in a loss of liberty. . . . [T]he minimum due process requirements for revocation of [probation] include written notice of the claimed [probation] violation, disclosure to the [probationer] of the evidence against him, the opportunity to be heard in person and to present witnesses and documentary evidence, the right to confront and cross-examine adverse witnesses in most instances, a neutral hearing body, and a written statement as to the evidence for and reasons for [a probation] violation. . . . Despite that panoply of requirements, a probation revocation hearing does not require all of the procedural components associated with an adverse criminal proceeding." (Citation omitted; internal quotation marks omitted.) *State* v. *Dunbar*, 188 Conn. App. 635, 650, 205 A.3d 747, cert. denied, 331 Conn. 926, 207 A.3d 27 (2019).

"In *State* v. *Shakir*, [supra, 130 Conn. App. 467], we noted that the due process safeguards are codified in Federal Rule of Criminal Procedure 32.1 and include an opportunity to . . . question any adverse witness unless the court determines that the interest of justice does not require the witness to appear . . . . We further explained that the court must balance the defendant's interest in cross-examination against the state's good cause for denying the right to cross-examine. . . . Specifically, we cited to case law from the United States Court of Appeals for the Second Circuit and stated: In considering whether the court had good cause for not allowing confrontation or that the interest of justice [did] not require the witness to appear . . . the court should balance, on the one hand, the defendant's interest in confronting the declarant, against, on the other hand, the government's reasons for not producing the witness and the reliability of the proffered hearsay."

(Citation omitted; internal quotation marks omitted.) *State* v. *Polanco*, 165 Conn. App. 563, 570–71, 140 A.3d 230, cert. denied, 322 Conn. 906, 139 A.3d 708 (2016).

"To properly preserve for appellate review a confrontation claim in this context, our precedent instructs that a defendant must distinctly raise the balancing issue with the court at the probation revocation proceeding. If the defendant fails to do so, the claim is deemed unpreserved." *State* v. *Crespo*, 190 Conn. App. 639, 647, 211 A.3d 1027 (2019); see also *State* v. *Esquilin*, 179 Conn. App. 461, 474, 179 A.3d 238 (2018) (concluding that defendant's claim was unpreserved because he failed to argue that trial court was required to conduct balancing test to determine whether admission of certain evidence denied him right to due process); *State* v. *Tucker*, 179 Conn. App. 270, 278–79 n.4, 178 A.3d 1103 ("a defendant's due process claim is unpreserved where the defendant never argued to the trial court that it was required to balance his interest in cross-examining the victim against the state's good cause for not calling the victim as a witness"), cert. denied, 328 Conn. 917, 180 A.3d 963 (2018); *State* v. *Polanco*, supra, 165 Conn. App. 567, 571 (concluding that defendant's due process claim that author of report had to be present in court and subject to cross-examination for report to be admitted into evidence was unpreserved because defendant never argued to trial court that it was required to conduct balancing test to determine whether his right to due process had been violated).

In the present case, the defendant never argued to the court that it was required to balance his interest in cross-examining Cherney against the state's good cause for not calling Cherney as a witness. Accordingly, the defendant did not preserve this constitutional claim because he failed to raise an objection that provided opposing counsel and the court with fair notice of that claim. See, e.g., *State* v. *Crespo*, supra, 190 Conn. App. 647; see also *State* v. *Randy G.*, 195 Conn. App. 467, 475 n.3, 225 A.3d 702, cert. denied, 335 Conn. 911, 229 A.3d 472 (2020).

It is also on this basis that the record is inadequate to afford the defendant review pursuant to *Golding*.[6] See *State* v. *Randy G.*, supra, 195 Conn. App. 475 n.3; *State* v. *Crespo*, supra, 190 Conn. App. 648. "This court has determined . . . that where the defendant does not request that the court conduct the *Shakir* balancing test, or make a good cause finding, the record is inadequate for review of a due process claim under the first prong of *Golding*." (Internal quotation marks omitted.) *State* v. *Jackson*, 198 Conn. App. 489, 506, 233 A.3d 1154, cert. denied, 335 Conn. 957, 239 A.3d 318 (2020); see also *State* v. *Dunbar*, supra, 188 Conn. App. 650–52; *State* v. *Esquilin*, supra, 179 Conn. App. 475–78; *State* v. *Tucker*, supra, 179 Conn. App. 281–82; *State* v. *Shakir*, supra, 130 Conn. App. 468.

Because the defendant did not object to the admission of Bevilaqua's testimony as a violation of his due process right to cross-examine an adverse witness, and he did not request that the court conduct the *Shakir* balancing test, the court had no occasion to consider whether there was good cause not to allow confrontation. See *State* v. *Giovanni P.*, supra, 155 Conn. App. 338 n.14. Moreover, because the state had no notice of the defendant's due process claim, it did not present evidence regarding its reasons for not producing Cherney as a witness at the hearing. "Under these circumstances, the state was not responsible for the gap in the evidence, and it would be patently unfair to address the defendant's due process claim on the basis of this record." *State* v. *Tucker*, supra, 179 Conn. App. 281–82; see also *State* v. *Polanco*, supra, 165 Conn. App. 575. Accordingly, we decline to review the defendant's unpreserved due process claim on the basis of an inadequate record.[7]

The defendant similarly cannot prevail under the plain error doctrine. "[The plain error] doctrine, codified at Practice Book § 60-5, is an extraordinary remedy used by appellate courts to rectify errors committed at trial that, although unpreserved, are of such monumental proportion that they threaten to erode our system of justice and work a serious and manifest injustice on the aggrieved party. . . . [T]he plain error doctrine is reserved for truly extraordinary situations [in which] the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings. . . . Plain error is a doctrine that should be invoked sparingly." (Internal quotation marks omitted.) *State* v. *Tucker*, supra, 179 Conn. App. 282. On the basis of our review of the record, we conclude that the defendant has not demonstrated an error so obvious that it requires reversal under the plain error doctrine.

II

We next consider the defendant's claim that the court improperly admitted Bevilaqua's testimony as to Cherney's hearsay statements because those statements were unreliable and uncorroborated. We conclude that the court did not abuse its discretion in admitting the hearsay evidence.

"[T]he rules of evidence do not apply to probation revocation hearings and, thus, relevant hearsay evidence is admissible at the discretion of the trial court." *State* v. *Maietta*, 320 Conn. 678, 691, 134 A.3d 572 (2016); see Conn. Code Evid. § 1-1 (d) (4). "At the same time, [t]he process . . . is not so flexible as to be completely unrestrained; there must be some indication that the information presented to the court is responsible and has *some minimal indicia of reliability*." (Emphasis added; internal quotation marks omitted.) *State* v. *Jack-*

son, supra, 198 Conn. App. 508. Thus, "[h]earsay evidence may be admitted in a probation revocation hearing if it is relevant, reliable and probative." *State* v. *Verdolini*, 76 Conn. App. 466, 471, 819 A.2d 901 (2003).

"Hearsay evidence cannot be the basis of probation revocation if it is wholly unsupported by corroborative evidence . . . ." *State* v. *Carey*, supra, 30 Conn. App. 354; see also *State* v. *Maietta*, supra, 320 Conn. 691 (hearsay supported by corroborating evidence was sufficiently reliable for admission at probation revocation hearing).[8] "It is readily apparent from the commentary by the commission appointed to revise the criminal statutes and to adopt the penal code that § 53a-32 was carefully drafted so as to forestall the possibility of basing probation violations on unsupported hearsay. The commentators noted that '[b]ecause the defendant's continued freedom is likely to be at stake, and because the decision as to the violation may turn on conflicting sets of facts, the right to counsel, to cross-examine witnesses and to present evidence (which rights were often granted in practice anyway) are made clear. The language limiting revocation orders to those supported by "the whole record" and "by reliable and probative evidence" is an attempt to reach a middle ground between the requirement of a full trial-type hearing and allowing revocation simply upon what may be unsupported hearsay information in the probation officer's report.' " (Emphasis omitted.) *State* v. *Carey*, supra, 354–55, quoting Commission to Revise the Criminal Statutes, Penal Code Comments, Connecticut General Statutes (1969), pp. 16–17; see also *State* v. *White*, 169 Conn. 223, 239–40, 363 A.2d 143 ("§ 53a-32 apparently contemplates use of hearsay testimony . . . so long as it is not unsupported and is reliable"), cert. denied, 423 U.S. 1025, 96 S. Ct. 469, 46 L. Ed. 2d 399 (1975).

"Regarding challenges to the trial court's evidentiary rulings, our standard of review is that these rulings will be overturned on appeal only where there was an abuse of discretion and a showing by the defendant of substantial prejudice or injustice. . . . In reviewing claims that the trial court abused its discretion, great weight is given to the trial court's decision and every reasonable presumption is given in favor of its correctness. . . . We will reverse the trial court's ruling only if it could not reasonably conclude as it did." (Internal quotation marks omitted.) *State* v. *Jackson*, supra, 198 Conn. App. 508.

On appeal, the defendant contends that no corroborating evidence was offered to support Cherney's statements to Bevilaqua and that the statements were therefore unreliable. We disagree.

The following facts are relevant to our resolution of this claim. Although Bevilaqua did not actually witness the defendant's conduct at the preschool on that partic-

ular day, Cherney called her immediately after the incident had occurred. Bevilaqua arrived at the preschool shortly thereafter, and, accordingly, she personally was able to observe staff members' demeanor close in time to the incident. Bevilaqua observed that staff members were "shaken up" and "concerned" by what had transpired. After Bevilaqua "debriefed with her coworkers" as the trial court noted in its articulation, saw these reactions and "heard from everyone what had happened," Bevilaqua's personal assessment of the situation was such that she took immediate preventative measures to ensure the safety of the staff and the children at the preschool. She contacted the police, formally prohibited the defendant from reentering the preschool, began pursuing a restraining order, and hired a police officer for additional security the following day.

In addition, Bevilaqua testified that she was present as staff members gave statements to the police. Bevilaqua explained that the statements she overheard were consistent with what she had been told on the phone by Cherney as she was on her way back to the preschool. Notably, Kelly, the defendant's probation officer, set forth an account of the incident similar to that described by Cherney in her statements to Bevilaqua in the affidavit he prepared in support of the violation of probation arrest warrant, which was admitted as a full exhibit without objection. This affidavit was based on Kelly's review of the police reports. Accordingly, on the basis of our thorough review of the record, we are persuaded that there is "some minimal indicia of reliability." (Internal quotation marks omitted.) *State* v. *Jackson*, supra, 198 Conn. App. 508.

In support of his claim that Cherney's statements were not corroborated sufficiently, the defendant relies on *State* v. *Carey*, supra, 30 Conn. App. 346. In *Carey*, this court reversed the decision of the trial court revoking the probation of the defendant because the only evidence presented at the hearing, two hearsay police reports, was insufficient to establish a probation violation. Id., 355–56. In that case, the defendant's probation officer, through whom the two hearsay police reports were admitted, "had not personally observed the defendant's conduct . . . ." Id., 348–49. "She had never met the victim, would not have been able to recognize her, had never seen the defendant in the presence of the victim and had no basis whatsoever upon which to judge the reliability or accuracy of the police reports. She conceded that she had no knowledge of the events and her testimony was limited to her having read the police reports." Id., 354. This court explained that, "[i]f . . . the probation officer had been competent to testify from personal knowledge, it would have been a question of the trial court's discretion as to whether there was sufficient support to allow the hearsay evidence," but, because the two hearsay police reports at issue were "wholly unsupported by corroborative evidence," they

should not have been admitted into evidence. Id.

We conclude that *Carey* is distinguishable from the present case. Although Bevilaqua, like the probation officer in *Carey*, did not personally observe the defendant's conduct, Bevilaqua was able to provide some testimony from her personal knowledge, as already described. In addition, unlike the probation officer in *Carey*, who had never met the victim, Bevilaqua was familiar with Cherney, whom she worked with at the preschool. Accordingly, unlike the probation officer in *Carey* who had "no basis whatsoever" on which to judge the reliability or accuracy of the police reports at issue in that case; id.; Bevilaqua's personal observations and familiarity with Cherney provided her a basis on which she could judge the reliability or accuracy of Cherney's statements. See *State* v. *Verdolini*, supra, 76 Conn. App. 470–71 (hearsay statements made by victim during phone call were properly admitted where testifying witness, who had been victim's probation officer, had interacted with victim sufficiently to determine that she was reliable and credible).[9]

We acknowledge, as our Supreme Court noted, that "the state's decision to present its case against the defendant through Bevilaqua and Kelly, neither of whom actually witnessed the defendant's conduct at the preschool on that particular day, makes this case a harder one." *State* v. *Taveras*, supra, 342 Conn. 579; see also id. ("[i]n the absence of any direct evidence of the defendant's conduct, the trial court was left with only secondhand accounts to decide whether the defendant had crossed [the] line" between "incidents that reflect the normal agitations of life [and] those that are truly injurious to our society").

Nevertheless, making every reasonable presumption in favor of the correctness of the trial court's ruling, Cherney's statements contained "some minimal indicia of reliability"; (internal quotation marks omitted) *State* v. *Jackson*, supra, 198 Conn. App. 508;[10] and, thus, on the basis of this record, we cannot conclude that the statements were "wholly unsupported by corroborative evidence . . . ." *State* v. *Carey*, supra, 30 Conn. App. 354.[11] Accordingly, considering our deferential standard of review and the low bar for admitting hearsay evidence during violation of probation hearings, we conclude that the court did not abuse its discretion in admitting Bevilaqua's testimony as to Cherney's hearsay statements.

The judgments are affirmed.

In this opinion the other judges concurred.

[1] The defendant also claims that the trial court's finding that he violated his probation was "clearly erroneous" because "Cherney's statements were improperly admitted [and] [s]ince this was the only evidence against the defendant, he should not have been convicted." Because we conclude that the court did not abuse its discretion in admitting Bevilaqua's testimony as to Cherney's statements; see part II of this opinion; the defendant cannot prevail on this claim.

[2] "Kelly's affidavit was admitted as a full exhibit without objection." *State* v. *Taveras*, supra, 342 Conn. 567 n.2. As we explain subsequently in this opinion, "[a]lthough defense counsel objected to portions of Bevilaqua's testimony on hearsay grounds, the trial court overruled that objection. In a subsequent articulation, the trial court expressed its view that, although Bevilaqua's testimony constituted hearsay, it was nonetheless admissible for the purpose of proving the defendant's violation of probation because it was 'relevant, reliable, and probative.' " Id.

[3] "General Statutes § 53a-181 (a) provides in relevant part: 'A person is guilty of breach of the peace in the second degree when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person: (1) Engages in fighting or in violent, tumultuous or threatening behavior in a public place; or . . . (3) threatens to commit any crime against another person or such other person's property . . . . For purposes of this section, "public place" means any area that is used or held out for use by the public whether owned or operated by public or private interests.' " *State* v. *Taveras*, supra, 342 Conn. 569 n.4.

[4] Before the state called Bevilaqua to testify, the parties briefly discussed the admissibility of hearsay evidence at a violation of probation hearing. The defendant's counsel provided the court with a copy of this court's decision in *State* v. *Carey*, 30 Conn. App. 346, 620 A.2d 201 (1993), rev'd on other grounds, 228 Conn. 487, 636 A.2d 840 (1994), and argued that, even though the rule for admitting hearsay evidence was more lenient at a probation hearing than at a criminal trial, not all hearsay evidence was admissible. See id., 354. The prosecutor provided the court with a copy of this court's decision in *State* v. *Giovanni P.*, 155 Conn. App. 322, 110 A.3d 442, cert. denied, 316 Conn. 909, 111 A.3d 883 (2015), and argued that hearsay evidence was admissible if the court found it to be reliable and probative. See id., 327.

[5] As explained previously in this opinion, neither this court in *State* v. *Taveras*, supra, 183 Conn. App. 354, nor our Supreme Court in *State* v. *Taveras*, supra, 342 Conn. 563, addressed the defendant's claims challenging the admission of Bevilaqua's testimony as to Cherney's hearsay statements.

[6] Under *Golding*, "a defendant can prevail on a claim of constitutional error not preserved at trial only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt. In the absence of any one of these conditions, the defendant's claim will fail." (Emphasis in original; footnote omitted.) *State* v. *Golding*, supra, 213 Conn. 239–40.

[7] The defendant contends that the *Shakir* standard should be modified to allow for review of unpreserved *Shakir* claims. "To the extent that the defendant's argument suggests that our [holding] in *Shakir* . . . should be overruled as conflicting with [federal] and Connecticut Supreme Court precedent, that is not within the province of a three judge panel of the Appellate Court. We note that this court's policy dictates that one panel should not, on its own, [overrule] the ruling of a previous panel. The [overruling] may be accomplished only if the appeal is heard en banc." (Internal quotation marks omitted.) *State* v. *Jackson*, supra, 198 Conn. App. 507 n.12; see also *State* v. *Tucker*, supra, 179 Conn. App. 279 n.4.

[8] The state suggests that the standard set forth in *Carey* "has been superseded by more recent cases." See *State* v. *Carey*, supra, 30 Conn. App. 352 n.5; see also id., 354. We are not persuaded. Our review of the relevant case law establishes that, although our courts have not explicitly recited the standard set forth in *Carey*, the existence of corroborating evidence continues to be used by our courts to determine whether hearsay statements are sufficiently reliable for admission at probation revocation hearings. See *State* v. *Maietta*, supra, 320 Conn. 691 (hearsay statement was corroborated and, therefore, reliable).

[9] The defendant attempts to distinguish *Verdolini* from the present case on the basis that the testifying witness in that case was a probation officer, whom the defendant characterizes as a "neutral party . . . ." The defendant suggests that probation officers conduct an "out-of-court evaluation" during which "the officer will inevitably have brought the information to which he is testifying to the defendant's attention, and asked him for his side of the story." He further contends that "the defendant's position will have been interjected into the evidence already, through the defendant's response to the officer."

We are not persuaded that the distinction drawn by the defendant is a meaningful one. In *Verdolini*, this court did not characterize the testifying probation officer as being "neutral" and did not rely on such a characterization in its analysis. See *State* v. *Verdolini*, supra, 76 Conn. App. 470–71. Moreover, the *Verdolini* decision does not suggest that the probation officer conducted an "out-of-court evaluation" and relayed that information to the court, or that such an evaluation was pertinent to the reliability of the hearsay evidence. Instead, this court mentioned the witness' status as a probation officer to explain how he had interacted with victim sufficiently to determine that she was reliable and credible. See id.

[10] In *Jackson*, this court considered whether the trial court abused its discretion in admitting testimony from a police officer, Joseph Halt, as to statements made by Detective Kiely, another member of his unit, regarding information Kiely received from a confidential informant. *State* v. *Jackson*, supra, 198 Conn. App. 502, 508. The defendant claimed that no corroborating evidence was offered to support Kiely's statement to Halt and that it was unreliable. Id., 508. This court disagreed, reasoning that when the trial court questioned Halt regarding whether the informant was reliable, Halt responded: " 'Correct or we wouldn't have used it.' " Id., 508–509. Considering this testimony, the fact that the trial court was not presented with any evidence casting doubt on the reliability of Kiely's statement to Halt, and counsel's failure to cross-examine Halt regarding why Kiely had deemed the information from the confidential informant reliable, this court determined that the trial court had been "presented with testimony that contained 'some minimal indicia of reliability,' " and concluded that the court did not abuse its discretion in admitting the hearsay evidence. Id., 509.

[11] The state argues that, in addition to the testimony from Bevilaqua as described previously, Cherney's statements also were corroborated by testimony from Kelly regarding a conversation he had with the defendant. Kelly testified: "[The defendant] and I had a conversation after his breach of peace arrest, that he had been arrested, and that he needed to cool it, and maybe not be as confrontational in situations. So, to be careful not to get arrested again, and that we'd give him a break, this time." The prosecutor then asked Kelly, "[I]n your opinion, from having that conversation with him, it was clear to him that there was a condition that he had violated?" Kelly responded: "Yes."

We are not persuaded that Kelly's testimony regarding his conversation with the defendant corroborates Cherney's statements. Immediately preceding the colloquy between the prosecutor and Kelly, the court explained that it was permitting the prosecutor's line of questioning in connection with the issue of whether the defendant understood the conditions of his probation, and it is unclear to us from this record whether the defendant had acknowledged or made any admissions to Kelly about the actual conduct underlying his arrest.