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STATE OF CONNECTICUT *v.* CHAZANTINE M. GRIFFIN (AC 45349)

Bright, C. J., and Elgo and Lavine, Js.

Syllabus

Convicted of the crimes of robbery in the first degree and assault in the second degree, the defendant appealed to this court. The victim, a rideshare driver, picked up the defendant in his vehicle from a residence in Bristol, and, after the defendant entered the vehicle, the defendant yelled at the victim, grabbed his neck, punched him in the face, breaking his nose, took the victim's cell phone and ran back inside the residence. Audio recordings of the incident were captured by a dashboard camera in the victim's vehicle. The police responded to the scene and summoned B, the owner of the residence, to return home and contact the defendant. B exchanged several text messages with the defendant, which she showed to the police. After the defendant exited the residence, his arrest and transportation to the police department were recorded by a police officer's body camera. On or about June 23, 2020, approximately eleven months after his arrest, the defendant, who was then represented by counsel, sent a document, in a self-represented capacity, to the Office of the State's Attorney in New Britain titled "Motion for a Speedy Trial." On October 12, 2021, after the conclusion of jury selection in his criminal trial, the defendant filed a motion to dismiss, arguing that it was a renewal of his motion for a speedy trial. The trial court denied the defendant's motion. During trial, the state called B as a witness, but she refused to testify, invoking her fifth amendment privilege. The court noted that it did not see a fifth amendment issue and ordered B to testify. When she continued to refuse, the court held her in contempt, and she was taken into custody and was detained overnight in a state correctional facility. The following day, B agreed to testify. Following the verdict, the defendant filed a motion for a new trial on the basis that B's testimony was coerced, which the court denied. *Held*:

1. The trial court properly denied the defendant's motion to dismiss:

   a. The trial court did not violate the defendant's right to a speedy trial pursuant to the applicable statute (§ 54-82m) and rule of practice (§ 43-41): the court's finding that the defendant never filed his 2020 motion for a speedy trial was not clearly erroneous, as the copy of the motion in the record was date stamped only by the Office of the State's Attorney in New Britain but was not date stamped by a courthouse clerk as having been filed, and there was no indication in the record that the defendant or any of his counsel sought to be heard on the purported 2020 motion in the fifteen months that elapsed from that alleged filing to the commencement of his trial; moreover, the defendant filed his motion to dismiss after his trial had commenced and, thus, pursuant to Practice Book § 43-41, the defendant waived any right to dismissal based on his speedy trial claim; furthermore, the defendant's claim that the motion to dismiss was not untimely because it "related back" to the motion for a speedy trial was unavailing, as the court found that the motion for a speedy trial had never been filed with the court, and, thus, there was no motion to which it could have related back.

   b. The trial court did not violate the defendant's constitutional right to a speedy trial; this court applied the four factors of the balancing test set forth in *Barker* v. *Wingo* (407 U.S. 514) and determined that, although there was a delay of more than two years in the defendant's trial, the reasons for the delay, including the time period during which jury trials were suspended due to the COVID-19 pandemic and the defendant's requests for continuances, were excludable time and were not the result of the state's actions, the defendant failed to assert his right to a speedy trial, as his self-represented motion for a speedy trial was not filed with the court and was otherwise presumptively invalid as he was represented by counsel, he did not file his motion to dismiss based on his speedy trial claim until after the commencement of trial, and the defendant's ability to adequately prepare his case was not impaired because, although

the defendant had been incarcerated, he did not remain incarcerated and was not incarcerated at the time of the hearing on his motion, his trial was one of the first to be held following the resumption of jury trials in the wake of the COVID-19 pandemic, and he did not make a specific argument as to how his defense was prejudiced by the passage of time.

2. This court declined to review the defendant's unpreserved evidentiary claim that the trial court erred in denying his motion for a new trial because B's testimony was coerced: at trial, the defendant objected to B's testimony on the ground that an inspector for the state improperly spoke to B while she was a sworn witness during a recess, but he did not object to her testimony as violative of his right to due process or argue that it should be excluded as coerced until after the verdict was returned; moreover, the defendant acknowledged that the court detained B to encourage her to testify, and he neither challenged the court's ruling that B had no valid fifth amendment privilege nor argued that her detention was for the purpose of forcing her to testify in a particular or dishonest manner; furthermore, even if the admission of the testimony had been improper, any error would have been harmless, B's testimony was only of marginal benefit to the state, if at all, as her answers to the state's most pertinent questions indicated a lack of recall, and the other evidence of the defendant's guilt was strong.

3. Assuming, without deciding, that the trial court improperly limited defense counsel's cross-examination of B concerning the conditions of her confinement in the correctional facility, such error was harmless: the defendant did not claim that B was coerced into giving false testimony, and the testimony she did give was not beneficial to the state's case, as she primarily testified to a lack of recollection; moreover, the state presented ample evidence to support a finding of guilt beyond a reasonable doubt, including the victim's testimony, audio recordings from the victim's dashboard camera, testimony from the police sergeant to whom B showed her cell phone containing text messages with the defendant, and a photograph of a text message the defendant sent to B that clearly indicated the defendant was the perpetrator.

4. The defendant could not prevail on his claim that the prosecutor conducted an improper in-court voice identification of him that was unreliable and unnecessarily suggestive; footage from both the victim's dashboard camera and the police officer's body camera had been admitted into evidence as two full exhibits, and the prosecutor's comment urging the jury, as the finder of fact, to compare the voices on the two recordings did not constitute an identification of the defendant.

Argued March 20—officially released July 4, 2023

Procedural History

Substitute information charging the defendant with the crimes of robbery in the first degree and assault in the second degree, brought to the Superior Court in the judicial district of New Britain, geographical area number fifteen, where the court, *Baldini*, *J.*, denied the defendant's motion to dismiss; thereafter, the case was tried to the jury before *Aurigemma*, *J.*; verdict and judgment of guilty, from which the defendant appealed to this court. *Affirmed*.

Alexander T. Taubes, for the appellant (defendant).

Nathan J. Buchok, deputy assistant state's attorney, with whom, on the brief, were *Christian M. Watson*, state's attorney, and *Robert F. Mullins*, senior assistant state's attorney, for the appellee (state).

Opinion

LAVINE, J. The defendant, Chazantine M. Griffin, appeals from the judgment of conviction, rendered following a jury trial, of robbery in the first degree in violation of General Statutes § 53a-134 (a) (1) and assault in the second degree in violation of General Statutes § 53a-60 (a) (1). On appeal, the defendant claims that (1) the trial court improperly denied his motion to dismiss, in which he alleged a violation of his statutory and constitutional rights to a speedy trial, (2) the detention of a witness for the state who initially refused to testify was so coercive as to render her testimony unreliable and its use a violation of the defendant's right to due process, (3) the trial court violated his federal constitutional rights to confrontation and due process when it prevented him from cross-examining that witness concerning the circumstances of her detention, and (4) the prosecutor conducted an unreliable and unnecessarily suggestive first-time, in-court voice identification of the defendant. We disagree and, accordingly, affirm the judgment of the trial court.

The following facts, which the jury reasonably could have found, and procedural history are relevant. On July 23, 2019, Sung Chon, a rideshare driver, received a notification to pick up a customer at 268 Cameron Drive in Bristol. Chon, whose vehicle was equipped with a dashboard camera, arrived at 268 Cameron Drive, and the defendant emerged from the residence at 272 Cameron Drive signaling to Chon to come to that location. After placing some of his belongings in the vehicle, the defendant returned back inside the residence. While waiting for the defendant, Chon moved the vehicle forward in the driveway in an effort to prevent the defendant from having to walk again through a swarm of flies. The defendant, who thereafter entered Chon's vehicle, expressed his anger at Chon for having moved the vehicle and for initially having arrived at the wrong address. Chon explained what had occurred while gesticulating with his hands and fingers, but the defendant became angrier. Chon stopped the vehicle and wanted to cancel the ride, but the defendant demanded Chon continue driving because he was late. As Chon resumed driving, he dropped his Bluetooth device and stopped the vehicle to locate it. The defendant yelled at Chon, asking him, "Do you wanna get smoked today? Do you wanna get killed today? You like life?" He grabbed Chon's neck with his left hand and punched Chon with his right hand, breaking Chon's nose. When Chon tried to call 911, the defendant took Chon's cell phone and ran inside the residence at 272 Cameron Drive. Using a neighbor's phone, Chon called the police, who arrived within minutes. The police set up a perimeter around 272 Cameron Drive for eight hours to ensure that no one went inside or exited the residence. During that time, then Sergeant Lang Mussen of the Bristol Police Department

contacted Deborah Bernier, the owner of 272 Cameron Drive, who, after arriving on the scene, informed Mussen that the defendant resided in the house with her. At Mussen's request, Bernier contacted the defendant via text message, but she was unable to convince the defendant to exit the house. Bernier showed those text messages to Mussen. One of the texts sent by the defendant to Bernier stated: "You know I didn't robbed nobody Asian try to do sum Kong fu shit and hit me with his phone and got hit." After obtaining a search warrant, the police breached the front door to 272 Cameron Drive and called inside, and the defendant exited the house.

Following a jury trial, the defendant was convicted of robbery in the first degree in violation of § 53a-134 (a) (1) and assault in the second degree in violation of § 53a-60 (a) (1) and was sentenced to a total effective sentence of seven years of incarceration followed by five years of special parole. This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

The defendant first claims that the trial court improperly denied his motion to dismiss, in which he alleged a violation of his statutory and constitutional rights to a speedy trial. We are not persuaded.

"[O]ur review of the trial court's ultimate legal conclusion and resulting [denial] of the motion to dismiss will be de novo. . . . Factual findings underlying the court's decision, however, will not be disturbed unless they are clearly erroneous." (Citation omitted; internal quotation marks omitted.) *State* v. *Bonner*, 290 Conn. 468, 478, 964 A.2d 73 (2009). "The determination of whether a defendant has been denied his right to a speedy trial is a finding of fact, which will be reversed on appeal only if it is clearly erroneous. . . . The trial court's conclusions must stand unless they are legally and logically inconsistent with the facts." (Internal quotation marks omitted.) *State* v. *Cote*, 101 Conn. App. 527, 532, 922 A.2d 322, cert. denied, 284 Conn. 901, 931 A.2d 266 (2007).

The following additional facts and procedural history are relevant to the defendant's claim. On or about June 23, 2020, the defendant, although represented by counsel at the time, sent a handwritten document titled "Motion For A Speedy Trial" to the Office of the State's Attorney in New Britain, which was received there on June 29, 2020. Jury selection began on the defendant's criminal trial on September 21, 2021. The defendant was represented by counsel at that time. On October 12, 2021, after the conclusion of jury selection, but before the presentation of evidence, the defendant filed a motion to dismiss in which he sought dismissal of the charges against him and argued that his constitutional

right, as guaranteed by article first, § 8, of our state constitution and the sixth and fourteenth amendments to the federal constitution, and his statutory right, pursuant to General Statutes § 54-82m, to a speedy trial had been denied. The defendant argued that the October 12 motion to dismiss was a renewal of his June 23, 2020 motion for a speedy trial. The state filed an opposition titled "Motion Opposing Defendant's Motion to Dismiss."

At the October 14, 2021 hearing on the defendant's October 12, 2021 motion to dismiss, defense counsel argued, among other things, that the defendant himself, while incarcerated, had filed with the court a motion for a speedy trial. After noting that a copy was received and date stamped by the Office of the State's Attorney, defense counsel argued that it was "implausible that the defendant would have filed it with the state's attorney and not with the court," and that he believed that the court "may have unintentionally misplaced" the motion. In denying the motion, the court noted that it had not seen the motion for a speedy trial that purportedly was filed by the defendant, that it was not aware that such a motion was in the file, and that, even if the motion had been filed, it was not a proper motion because it was not adopted by any of the defendant's attorneys.[1] Furthermore, the court concluded that the October 12, 2021 motion to dismiss was untimely under Practice Book §§ 43-41 and 43-42 because it was filed after "trial had commenced . . . [j]ury selection had begun," and "an entire jury panel had already been selected . . . ."

A

We first address the defendant's argument that the court violated his statutory right to a speedy trial pursuant to § 54-82m. "[Section] 54-82m codifies a defendant's . . . right to a speedy trial and confers on the judges of the Superior Court the authority to make such rules as they deem necessary to establish a procedure for implementing that right. Pursuant to that authority, the judges adopted Practice Book §§ 43-39 through 43-41." (Footnote omitted.) *State* v. *Hampton*, 66 Conn. App. 357, 366–67, 784 A.2d 444, cert. denied, 259 Conn. 901, 789 A.2d 992 (2001). Pursuant to § 54-82m and Practice Book § 43-41, "if the defendant's trial does not begin within twelve months from the filing of the information or from the date of his arrest, whichever is later, he may file a motion for a speedy trial. If, in the absence of good cause shown, a trial is not commenced within thirty days of the filing of a motion for speedy trial by the defendant at any time after such time limit has passed, the information shall be dismissed with prejudice, on motion of the defendant filed after the expiration of such thirty day period. . . . Commencement of a trial is defined as the commencement of the voir dire examination in jury cases . . . ." (Citation

omitted; internal quotation marks omitted.) *State* v. *Hargett*, 343 Conn. 604, 636–37, 275 A.3d 601 (2022). Practice Book § 43-41, however, further provides: "Failure of the defendant to file a motion to dismiss prior to the commencement of trial *shall constitute a waiver of the right to dismissal under these rules*." (Emphasis added.)

The defendant first challenges the court's factual finding that he never filed a motion for a speedy trial as required by § 54-82m and Practice Book § 43-41. Our review of the court file, which does not contain a copy of the defendant's 2020 speedy trial motion, supports the court's finding that the defendant's 2020 motion for a speedy trial was not filed with the court. The only copy of the motion that was presented to the court, which the defendant purportedly filed himself despite being represented by counsel at the time,[2] shows that it was date stamped by the Office of the State's Attorney in New Britain but was not date stamped by a courthouse clerk as having been filed. Moreover, the record is bereft of any indication that the defendant or any of his counsel sought to be heard on the purported 2020 speedy trial motion in the fifteen months that elapsed from the alleged filing to the date at which trial was commenced. Accordingly, the court's finding that the June, 2020 motion was never filed was not clearly erroneous.

The defendant also argues that the court's conclusion that the October 12, 2021 motion to dismiss was untimely was in error because that motion related back to the June, 2020 motion for speedy trial, which was filed before voir dire commenced. There are two problems with the defendant's argument. First, as previously noted, the court's finding that the June, 2020 motion for a speedy trial was never filed was not clearly erroneous. Consequently, there was no motion to which the October 12, 2021 motion could have related back. Second, Practice Book § 43-41 explicitly provides in relevant part that the "[f]ailure of the defendant to file a motion to dismiss prior to the commencement of trial shall constitute a waiver of the right to dismissal under these rules." Even if the defendant had filed his June, 2020 motion for a speedy trial, that motion was not a motion to dismiss. The record is clear that the first and only motion to dismiss was filed by the defendant on October 12, 2021, after his trial had commenced on September 21, 2021. Because the October 12, 2021 motion was filed after the commencement of trial, the defendant waived any right to the dismissal based on his statutory speedy trial claim. See *State* v. *Hampton*, supra, 66 Conn. App. 368 ("[t]he defendant failed to file a motion to dismiss prior to the commencement of trial and consequently is deemed to have waived his right to a dismissal"); see also Practice Book § 43-41.

The defendant also argues that the court violated his constitutional right to a speedy trial.[3] Resolution of the defendant's claim requires us to apply the balancing test set forth in *Barker* v. *Wingo*, 407 U.S. 514, 530, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972), which involves a consideration of the following four factors to determine whether a defendant's constitutional right to a speedy trial has been violated: the length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. See, e.g., *State* v. *Gaston*, 86 Conn. App. 218, 226, 860 A.2d 1253 (2004), cert. denied, 273 Conn. 901, 867 A.2d 840 (2005). This "balancing test is to be applied on a case by case basis. . . . The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance." (Citations omitted; internal quotation marks omitted.) Id., 226–27.

"The Connecticut rules of practice set out specific time limitations within which a criminal trial must commence. Practice Book §§ 43-39 and 43-40. Our courts have not held that any particular length of delay is presumptively prejudicial, but have stated that an extensive delay warrants an inquiry into the other factors of *Barker*." (Internal quotation marks omitted.) *State* v. *Lacks*, 58 Conn. App. 412, 417–18, 755 A.2d 254, cert. denied, 254 Conn. 919, 759 A.2d 1026 (2000). The defendant argues that the delay was more than two years. The state acknowledges in its appellate brief that courts have considered delays of a similar length to the present case as sufficient to warrant consideration of the other *Barker* factors. See *State* v. *Wall*, 40 Conn. App. 643, 652, 673 A.2d 530 ("[a]lthough no exact length of time has been established to be sufficient to presume prejudice, a delay of over two years is sufficient to cause investigation into the other factors of *Barker*"), cert. denied, 237 Conn. 924, 677 A.2d 950 (1996).

According to Practice Book § 43-39 (c), the defendant's criminal trial should have commenced within twelve months from the filing of the information or his arrest, whichever was later. The court noted that the time period during which jury trials were suspended due to the COVID-19 pandemic and the defendant's request for continuances were excludable time. See Practice Book § 43-40 (excludable time in speedy trial calculations includes period of delay resulting from granting of continuance requested by defendant and "[o]ther periods of delay occasioned by exceptional circumstances"). Although the court did not make a specific determination that the delay was presumptively prejudicial, the court nevertheless reviewed the remaining factors, and, thus, the record is adequate for us to consider the question of prejudice.

The second factor concerns the reasons for the delay of trial. "In examining the reason for the delay, we focus

on whether the state was making a deliberate attempt to delay the trial in order to hamper the defense or whether there existed a valid reason . . . [that] should serve to justify appropriate delay." (Internal quotation marks omitted.) *State* v. *Rosario*, 118 Conn. App. 389, 398, 984 A.2d 98 (2009), cert. denied, 295 Conn. 903, 988 A.2d 879 (2010). The court noted that the delay is attributable to a variety of factors including that the defendant "demonstrated a dissatisfaction with three prior attorneys and has chosen to engage new counsel throughout the progression of his case," each of whom would want to seek continuances in order to obtain and review discovery, investigate the charges brought against the defendant, conduct interviews with relevant persons, and have meetings with the defendant to discuss the strength and weaknesses of the case. The court also noted that, due to the COVID-19 pandemic, directives were implemented that limited the ability to conduct jury trials. Neither reason for the delay was a result of the state's actions.

The third *Barker* factor is the defendant's assertion of his right to a speedy trial. The defendant never filed his self-represented motion for a speedy trial, and it was otherwise invalid as he was represented by counsel at the time. See, e.g., *State* v. *Gibbs*, 254 Conn. 578, 610, 758 A.2d 327 (2000). He did not assert his right to a speedy trial by way of a motion to dismiss until after the trial had commenced. This factor militates against the defendant's claim. The defendant's assertion of his right to a speedy trial after the commencement of trial, although not constituting a waiver of a constitutional claim, is afforded little weight in the *Barker* balancing test. See *State* v. *Rosario*, supra, 118 Conn. App. 400.

"The final *Barker* factor, prejudice to the defendant, is the linchpin of the speedy trial claim. . . . [U]nlike the right to counsel or the right to be free from compelled self-incrimination, deprivation of the right to speedy trial does not per se prejudice the accused's ability to defend himself. . . . The right to a speedy trial is designed (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. . . . In *Barker* . . . the court noted that of the three interests served by the right to speedy trial, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." (Citation omitted; internal quotation marks omitted.) *State* v. *Lacks*, supra, 58 Conn. App. 419–20. The court in the present case noted that, although the defendant had been incarcerated for a period of time, he did not remain incarcerated and was not currently incarcerated at the time of the hearing. The court also stated that the defendant's case was "one of the first cases in the New Britain Judicial District to be called in for trial" following the resumption of jury trials in the wake of the COVID-19 pandemic.

The defendant argues that his "ability to confront the evidence against him was severely compromised by more than two years passing between the alleged incident in his case and the trial" because the state's evidence against him was weak and circumstantial, no evidence of identification existed, and some witnesses had their recollections refreshed. The defendant's general reliance on the passage of time, in the absence of a specific argument as to how his defense was prejudiced by the delay, is not persuasive. A claim "relying on the simple passage of time, cannot, without a more specific showing, be said to prejudice the defendant any more than the state. As the time between the commission of the crime and trial lengthens, witnesses may become unavailable or their memories may fade. If the witnesses support the prosecution, its case will be weakened, sometimes seriously so. And it is the prosecution which carries the burden of proof." (Internal quotation marks omitted.) *State* v. *Morrill*, 197 Conn. 507, 527–28, 498 A.2d 76 (1985). On the basis of our consideration of the four *Barker* factors, we conclude that the defendant was not denied his constitutional right to a speedy trial and that the court properly denied his motion to dismiss.

II

The defendant next claims that the detention of Bernier, a witness for the state, "was so coercive as to render her testimony unreliable and its use a violation of the defendant's due process rights." We decline to review that claim, as it was not preserved in the trial court.

The following additional facts and procedural history are relevant. When, at trial, the state questioned Bernier regarding whether she and the defendant had a close relationship, she invoked her right to remain silent under the fifth amendment. Following a colloquy outside the presence of the jury between Bernier and the court, and a recess for Bernier to consult with an attorney, Bernier continued to invoke her fifth amendment privilege. The court noted that it did not see any fifth amendment issue and ordered Bernier to answer the state's questions. Bernier refused to comply, and the court held her in contempt, noting that she could change her mind at any time and decide to testify, but, until then, she would remain in custody. She was then transported to the state correctional facility in Niantic to be held there overnight. The next morning, upon returning to court, Bernier initially refused to testify but thereafter agreed to do so following a recess to permit her to consult an attorney, a proffer by the state of the questions it intended to ask on direct examination, a second recess to permit consultation with an attorney and her parents, and a reminder by the court that it would sentence her to one month incarceration for contempt if she continued to refuse to testify. She then

testified in the presence of the jury that the defendant was not living with her on July 23, 2019, but that he had access to 272 Cameron Drive and that she did not recall showing officers any text messages between her and the defendant. Following the verdict, the defendant filed a motion for a new trial in which he argued that Bernier's testimony was obtained through coercion, and he attached an affidavit from Bernier describing the circumstances of her detention. Bernier stated in her affidavit that she was "shocked and scared" and placed in a "filthy" holding cell, and she suffered elevated blood pressure and an irregular heartbeat. The court denied the motion, reasoning that it has the power to incarcerate witnesses who do not have a valid reason for not testifying and that Bernier did not have a valid basis to assert her fifth amendment privilege.

On appeal, the defendant claims that the court erred in denying his motion for a new trial. In response, the state argues that any objection to Bernier's testimony as being coerced was not properly preserved because the defendant failed to raise such an objection during trial. We agree with the state.

At trial, the defendant did not object to Bernier's testimony on the ground that he now raises on appeal. He objected solely on the ground that the state's inspector spoke to Bernier while she was a sworn witness during a recess in which she was speaking with her attorney and her parents. The defendant never objected to Bernier's testimony as violative of his right to due process or argued that it should have been excluded as coerced. Although the defendant raised such a claim in his motion for a new trial, that is not sufficient to preserve the claim on appeal that Bernier's testimony should have been excluded. As this court reasoned in *State* v. *Paris*, 63 Conn. App. 284, 294–95, 775 A.2d 994, cert. denied, 257 Conn. 909, 782 A.2d 135 (2001), "[w]e are not persuaded that evidentiary claims, not made at trial, can be preserved for appeal by raising them in a motion for a new trial after a guilty verdict. The problems inherent in allowing counsel to wait until after an adverse verdict to raise such objections to evidence are too obvious to warrant discussion." Accordingly, this claim is unpreserved, and we decline to review it. See, e.g., *State* v. *Qayyum*, 201 Conn. App. 864, 872 n.2, 242 A.3d 500 (2020), aff'd, 344 Conn. 302, 279 A.3d 172 (2022).

Furthermore, the defendant cannot obtain review of his unpreserved evidentiary claim by labeling it with a constitutional tag. See id., 872. The defendant acknowledges that the court detained Bernier to encourage her to testify, and he neither challenges the court's ruling that the witness had no valid fifth amendment privilege nor argues that Bernier's detention was for the purpose of forcing her to testify in any particular or dishonest manner. To be sure, being incarcerated is inherently

coercive and Bernier's experience was not pleasant, but the defendant has not cited, nor are we aware of, any case law indicating that a court's lawful detention of a witness who refuses to testify at a defendant's trial implicates the due process rights of a defendant. "It is the duty of all good citizens when legally required to do so to testify to any facts within their knowledge affecting [the] public interest and . . . no one has a natural right to be protected in his refusal to discharge that duty. . . . Because of the importance of this obligation to the proper functioning of our judicial system, courts have the power to incarcerate witnesses who refuse to testify. E.g., General Statutes § 51-35; see also Practice Book § 1-16. Only a witness who can establish that he or she is entitled to invoke a recognized exception to the general obligation to provide testimony, such as the existence of a valid testimonial privilege, will be excused from testifying." (Citation omitted; footnotes omitted; internal quotation marks omitted.) *State* v. *Andrews*, 248 Conn. 1, 12–13, 726 A.2d 104 (1999).

Even if, however, the defendant's challenge to a nonconstitutional evidentiary ruling were preserved, a claim that the admission of Bernier's testimony constituted reversible error as a result of her having been detained in an effort to encourage her to testify is without merit. It bears repeating that the defendant does not claim that Bernier was coerced to testify untruthfully, only that she was detained in an effort to get her to simply testify. If a witness's testimony were to be rendered inadmissible simply because the witness was encouraged to testify through use of lawful detention, that would undermine the purpose of such lawful detention. Our Supreme Court in *Ullmann* v. *State*, 230 Conn. 698, 647 A.2d 324 (1994), stated that "when a witness refuses to testify there is an overwhelming necessity for empowering a court to adjudicate the contempt summarily and to impose punishment sufficiently substantial *to cause the witness to reconsider and deter such conduct by others*." (Emphasis in original; internal quotation marks omitted.) Id., 707. Accordingly, the court acted within its discretion in admitting Bernier's testimony after she had been lawfully detained in an effort to cause her to simply testify, which carries with it the duty to do so truthfully. Finally, even if the admission of the testimony had been improper, the defendant cannot prevail because, as explained in part III of this opinion, the admission of Bernier's testimony was harmless. In sum, Bernier testified to the most pertinent of the state's questions by saying that she lacked recollection, and the other evidence of the defendant's guilt was strong.

III

The defendant next claims that the trial court violated his federal constitutional rights to confrontation and due process when it prevented him from cross-examin-

ing Bernier about the circumstances surrounding her testimony, including her detention. We are not persuaded.

The following additional facts are relevant to our analysis. On cross-examination, defense counsel asked, "Can you tell me where you spent the night last night," to which question Bernier responded, "At Niantic Correctional Institute." When further asked, "And where did you spend the night . . . before that," the state objected on relevancy grounds. After excusing the jury, the court heard arguments and ruled that defense counsel "will not inquire further as to where she spent the night . . . ." Upon resumption of cross-examination, defense counsel asked, "Do you feel under pressure to testify today," and Bernier responded, "To a degree, yes." When defense counsel asked Bernier, "[D]idn't a state inspector just speak to you and essentially threaten you," the state objected. The court stated that it had "already ruled this is not relevant. The statements she has given were truthful and how or what brought us to this point is not relevant. Do not ask any more about it . . . ."

The following legal principles are relevant. "The trial court has wide discretion to determine the relevancy of evidence and the scope of cross-examination. . . . [T]o establish an abuse of discretion, [the defendant] must show that the restrictions imposed upon [the] cross-examination were clearly prejudicial. . . . Although the trial court has broad discretion in determining the admissibility of evidence and the extent of cross-examination, the preclusion of sufficient inquiry into a particular matter tending to show motive, bias and interest may result in a violation of the constitutional requirements of the sixth amendment to the United States constitution. . . . The sixth amendment to the United States constitution guarantees the right of an accused in a criminal prosecution to confront and cross-examine the witnesses against him. . . . We have held that [t]he primary interest secured by confrontation is the right to cross-examination . . . and an important function of cross-examination is the exposure of a witness' motivation in testifying." (Citations omitted; internal quotation marks omitted.) *State* v. *Valentine*, 255 Conn. 61, 69–70, 762 A.2d 1278 (2000).

"Our standard of review of a claim that the court improperly limited the cross-examination of a witness is one of abuse of discretion. . . . The court's discretion, however, comes into play only after the defendant has been permitted cross-examination sufficient to satisfy the sixth amendment [to the United States constitution]." (Citation omitted; internal quotation marks omitted.) *State* v. *Hedge*, 93 Conn. App. 693, 697, 890 A.2d 612, cert. denied, 277 Conn. 930, 896 A.2d 102 (2006). "The sixth amendment to the [United States] constitution guarantees the right of an accused in a criminal

prosecution to confront the witnesses against him. . . . The primary interest secured by confrontation is the right to cross-examination . . . and an important function of cross-examination is the exposure of a witness' motivation in testifying. . . . Cross-examination to elicit facts tending to show motive, interest, bias and prejudice is a matter of right and may not be unduly restricted. . . . The constitutional standard is met when defense counsel is permitted to expose to the jury the facts from which [the] jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness." (Citation omitted; footnote omitted; internal quotation marks omitted.) *State* v. *Gibson*, 340 Conn. 407, 421–22, 264 A.3d 83 (2021). "[I]f we conclude that the court improperly restricted the defendant's opportunity to impeach a witness for motive, interest, bias or prejudice, we then proceed with a harmless error analysis. . . . Whether such error is harmless in a particular case depends upon a number of factors, such as the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case." (Internal quotation marks omitted.) *State* v. *Fernando R.*, 103 Conn. App. 808, 819–20, 930 A.2d 78, cert. denied, 284 Conn. 936, 937 A.2d 695 (2007).

Even if we were to assume, without deciding, that the court improperly limited defense counsel's cross-examination of Bernier concerning the conditions of her confinement, we conclude that the state has established that any error was harmless beyond a reasonable doubt. The defendant does not claim that Bernier was coerced into giving false testimony. The conditions of her confinement, therefore, have no relevance. In any event, Bernier's testimony on the subject of the defendant's involvement in the attack on Chon was only of marginal benefit to the state, if at all. During the state's short direct examination of Bernier, her answers to the state's questions most pertinent to the defendant's involvement indicated a lack of recall, including that she did not remember whether she had shown her cell phone messages containing texts from the defendant to Mussen. We are hard-pressed to see the benefit of her testimony to the state's case.

Putting Bernier's testimony aside, the state presented ample evidence to support a finding of guilt beyond a reasonable doubt. Chon testified as to the events on the day in question. Specifically, he detailed that the customer exited from the residence at 272 Cameron Drive, grabbed his neck, punched his face, broke his nose, stole his phone, and ran back inside the residence and that Chon contacted and informed the police that the rideshare customer who had attacked him was

inside the residence. The audio from the video recorded by Chon's dashboard camera reveals the words spoken by the defendant during the altercation. Mussen testified that he contacted the officers on the scene and told them to monitor the perimeter of 272 Cameron Drive to make sure that no one entered or exited the residence and that he had information that the defendant was inside the residence. He further testified that he contacted Bernier, the owner of 272 Cameron Drive, who informed him that the defendant resided in the house with her, that she was asked to contact the defendant, that she texted the defendant to get him to come out of the house and that she showed Mussen her cell phone. The state submitted a photograph and video from Mussen's body camera, which were admitted as full exhibits. The photograph depicts Mussen holding Bernier's cell phone containing the text messages, and Mussen's body camera footage depicts Bernier showing him her cell phone. Mussen further testified that the perimeter around 272 Cameron Drive was maintained until a search warrant was obtained and that, after the police breached the front door and called inside, the defendant exited. Most significantly, when the defendant texted Bernier that Chon had hit him with his cell phone, that, in effect, was a clear admission that he was the perpetrator.[4] For the foregoing reasons, we conclude that, because the evidence of guilt was overwhelming, any error was harmless.

IV

The defendant last claims that the prosecutor, by asking the jury during closing argument to compare the audio contained in two full exhibits, conducted an unreliable and unnecessarily suggestive first-time, in-court voice identification of the defendant. We are not persuaded.

The following additional facts and procedural history are relevant. Video footage from Chon's dashboard camera was admitted as a full exhibit: it captured the street view from the front windshield of Chon's vehicle, and, although it did not capture any images of Chon's assailant, it contained audio of the words spoken inside the vehicle by Chon and the assailant before and during the attack. Video footage captured by the body camera of Officer Daniel Perkins of the Bristol Police Department was also admitted as a full exhibit. Perkins testified that the video depicts the individual who was removed from 272 Cameron Drive, whom Perkins identified as the defendant, being arrested and transported to the police department. During the video, in which the defendant is taken to the transport car, handcuffed, searched, transported and processed, he spontaneously makes several statements. During closing argument, the prosecutor commented, "You can listen to the known voice of the defendant from Officer Perkins' body camera and compare it to the voice on Chon's dash camera

while you are deliberating. . . . Compare those voices while you are in deliberations in the jury room. . . . Listen to the tone of the voices. Listen to the intonation of the voices. Listen to the same phrases that are used on the dash cam in . . . Chon's car when the defendant became agitated. Compare that to the audio—the video you just saw of Officer Perkins' body camera. And when he opened up the door he asked for a glass of water, and Officer Perkins responded, 'I just got out of the car.' He wasn't happy with that response. 'Don't start. Don't start.' The same phrase that he used prior to assaulting and robbing . . . Chon's phone and causing his injuries."

In resolving this claim, it is important to note what the defendant does *not* argue. He does not argue that the court erred in admitting into evidence the footage from Perkins' body camera or Chon's dashboard camera. He does not argue that the prosecutor's comments constituted prosecutorial impropriety, nor does he cite any case law supporting such a contention. Instead, he argues that the prosecutor made an improper in-court voice identification. This argument is unpersuasive. The prosecutor did not engage in an identification of the defendant as the person whose voice can be heard on the video from Chon's dashboard camera. Rather, the prosecutor described the fully admitted evidence presented by way of Chon's dashboard camera and Perkins' body camera, which is permissible, and then invited the jury to compare the audio on those two full exhibits, which comparison is within the province of the finder of fact. See *State* v. *Ciullo*, 314 Conn. 28, 41, 100 A.3d 779 (2014) ("[i]t is not improper for the prosecutor to comment upon the evidence presented at trial and to argue the inferences that the jurors might draw therefrom" (internal quotation marks omitted)); see also *State* v. *Taupier*, 330 Conn. 149, 187, 193 A.3d 1 (2018) ("[t]he jury is permitted to consider the fact proven and may consider it in combination with other proven facts in determining whether the cumulative effect of all the evidence proves the defendant guilty of all the elements of the crime charged beyond a reasonable doubt" (internal quotation marks omitted)), cert. denied, U.S. , 139 S. Ct. 1188, 203 L. Ed. 2d 202 (2019). The defendant has not cited any case law, and our research has not revealed any, supporting his argument that a prosecutor, by inviting the jury to compare two fully admitted exhibits, engaged in an improper in-court identification. For the foregoing reasons, we conclude that the defendant cannot prevail on the argument presented.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] The defendant discharged three different attorneys during the proceedings in the trial court.

[2] We note that, in *State* v. *Gibbs*, 254 Conn. 578, 758 A.2d 327 (2000), our Supreme Court emphasized that, although "a defendant either may exercise

his right to be represented by counsel . . . or his right to represent himself . . . he has no constitutional right to do both at the same time." (Citations omitted; emphasis omitted.) Id., 610.

[3] "The sixth amendment guarantee of a speedy trial is a fundamental right applicable to the states through the fourteenth amendment to the United States constitution. . . . This right also is guaranteed by the constitution of Connecticut, article first, § 8." (Citation omitted.) *State* v. *Rosario*, 118 Conn. App. 389, 397, 984 A.2d 98 (2009), cert. denied, 295 Conn. 903, 988 A.2d 879 (2010). Because the defendant has not set forth a separate analysis of his claim under the Connecticut constitution, we address his claim only under the sixth amendment to the federal constitution. See *Barros* v. *Barros*, 309 Conn. 499, 507 n.9, 72 A.3d 367 (2013) ("we will not entertain a state *constitutional* claim unless the defendant has provided an independent analysis under the particular provisions of the state constitution at issue" (emphasis added; internal quotation marks omitted)).

[4] Although the state admitted as a full exhibit a photograph of the July 23, 2019 text messages between the defendant and Bernier during Bernier's testimony, it could have authenticated them through Mussen, who took the photographs. Footage from Mussen's body camera depicts Bernier handing her cell phone containing the messages to Mussen.