****

The "officially released" date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the "officially released" date appearing in the opinion.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the advance release version of an opinion and the latest version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest version is to be considered authoritative.

****

STATE OF CONNECTICUT *v.* JAMES S.*
(AC 45243)

Alvord, Cradle and Clark, Js.

Syllabus

Convicted, after a jury trial, of the crime of risk of injury to a child, the defendant appealed to this court. The three year old victim's mother, L, agreed to let the defendant, her half brother, sleep at her apartment after a family birthday party. The following day, L asked the defendant to watch the victim while L dropped off her son at his workplace. When L returned home, the victim told L that the defendant had hurt her and pointed to her vagina. *Held*:

1. The defendant's claim that the evidence was insufficient to convict him of risk of injury to a child was unavailing: the cumulative force of the evidence was sufficient for the jury to find that the defendant touched the victim's intimate parts in a sexual and indecent manner that was likely to impair her health or morals, as the victim testified that the defendant touched her vagina and buttocks with his finger in a way that hurt her and made her cry, L testified that, after she arrived home, the victim appeared afraid, L asked the victim what happened and the victim pointed to her private parts, which she had never done before, L examined the victim and observed that the victim's vagina was shiny, and she later found a jar of Vaseline that previously contained some Vaseline and was now empty, the defendant and the victim were the only people in the apartment after L left, and L had told the defendant he did not have to do anything to care for the victim; in the present case, given these facts, the jury reasonably could have inferred that the defendant put Vaseline on his finger before making contact with the victim's intimate parts and that he was not given any instructions for the victim's care that would have necessitated such contact.

2. The defendant's claim that he had a due process right to a pretrial taint hearing to evaluate whether the victim's statements and testimony were reliable or whether they were coerced and a product of suggestive questioning was unavailing: the defendant did not cite any authority suggesting that a court is obligated to hold such a hearing sua sponte, the cases on which the defendant relied made clear that a due process claim predicated on the purported entitlement to an evidentiary hearing fails in the absence of a request for such a hearing, and, although the defendant relied extensively on the New Jersey Supreme Court's decision in *State* v. *Michaels* (136 N.J. 299), the defendant failed to comply with the very procedure he asked this court to adopt because, in order to show an entitlement to such a hearing in New Jersey, a defendant must request a pretrial hearing before trial and make a showing of "some evidence" that the victim's statements were the product of suggestive or coercive interview techniques; moreover, although the defendant argued that our Supreme Court in *State* v. *Michael H.* (291 Conn. 754) did not foreclose the possibility that due process might require a pretrial taint hearing on a showing of some evidence of suggestiveness or coercion, nothing in *Michael H.* suggested that a defendant's due process rights are violated when a trial court fails to sua sponte hold a pretrial taint hearing, on the contrary, the fact that the defendant in that case asked for such a hearing and our Supreme Court left open the possibility that one might be required on a proper showing by a defendant underscores the fact that the defendant in the present case had sufficient notice and opportunity, as well as the obligation, to request such a hearing; accordingly, the defendant's claim failed the second and third prongs of *State* v. *Golding* (213 Conn. 233) because he did not establish that the court's failure to hold a hearing sua sponte was constitutional in nature or violated his constitutional rights.

(*One judge concurring*)

3. This court declined the defendant's invitation to use its supervisory authority to require pretrial taint hearings to assess the reliability of complainants in child sexual abuse cases; this court was not persuaded that the present case was a proper occasion to exercise its supervisory authority

because it was not convinced that the traditional protections already in place were inadequate to protect the rights of the defendant or the integrity of the judicial system, as the defendant, who never requested a pretrial taint hearing before the trial court, had every opportunity to explore the issue of suggestive or coercive questioning at trial and it was then for the jury, on the basis of its firsthand observation of the witnesses' conduct, demeanor and attitude, to determine the credibility of the witnesses' testimony and the weight to be given such testimony.

Argued April 11—officially released October 10, 2023

Procedural History

Substitute information charging the defendant with the crimes of sexual assault in the first degree, sexual assault in the fourth degree, and risk of injury to a child, brought to the Superior Court in the judicial district of Fairfield and tried to the jury before *Hernandez*, *J.*; verdict and judgment of guilty of risk of injury to a child, from which the defendant appealed to this court. *Affirmed.*

Jennifer B. Smith, assistant public defender, for the appellant (defendant).

Denise B. Smoker, senior assistant state's attorney, with whom, on the brief, were *Joseph T. Corradino*, state's attorney, and *Tatiana A. Messina*, senior assistant state's attorney, for the appellee (state).

Opinion

CLARK, J. The defendant, James S., appeals from the judgment of conviction, rendered after a jury trial, of risk of injury to a child in violation of General Statutes § 53-21 (a) (2). The defendant claims that (1) the evidence was insufficient to convict him of risk of injury to a child, (2) he "has a due process right to a pretrial taint hearing to evaluate whether the complainant's statements and testimony were reliable or whether they were coerced and a product of suggestive questioning," and (3) if he did not have a right to a pretrial taint hearing, that this court should exercise its supervisory authority to require pretrial taint hearings to assess the reliability of complainants in child sexual abuse cases. We affirm the judgment of the trial court.

The jury reasonably could have found the following facts. On September 21, 2019, the defendant arrived at the apartment of his half sister, L, to attend a birthday party for L's grandfather. At the behest of T, the mother of L and the defendant, L agreed to let the defendant sleep at her apartment that night. The following day, September 22, 2019, L asked the defendant to watch her three year old daughter, R, the complainant in this case, while L left the apartment to drop her youngest son off at his workplace. Before leaving, L told the defendant that he did not have to do anything to take care of R, other than remind her to finish eating her food. L left to bring her son to work and stopped at a Family Dollar store on her way home. She was away from the apartment for approximately twenty to twenty-five minutes, during which time the defendant and R were the only individuals in the apartment. When L returned home, she noticed that R "looked frightened . . . it was a look [L had] never seen [R] have . . . before . . . ." L gave the defendant some money and told him to buy cigarettes at a nearby convenience store, which gave L an opportunity to speak with R alone. The defendant then left the apartment, at which point L asked R what was wrong. R told L that the defendant had hurt her and pointed to her vagina (incident).

When the defendant returned from the store, L struck him, "[trying her] best to hurt him" before throwing him out of the apartment. L then called T and told her to "come get [the defendant]. [L] said [to T that she] think[s] [the defendant] touched [R]." After L got off the phone with T, she inspected R and discovered that "[R's vagina] was shiny. It was red, and it was open a little bit more than [she had] ever seen it." At some point after the incident, L discovered that a jar of Vaseline that she kept in a drawer in her kitchen, which previously contained some Vaseline, was now empty.[1]

When T arrived at the apartment, the defendant was sitting on the stoop in front of L's apartment building. T asked L if she could go inside the apartment to see

R. L then accompanied T to R's room, where T asked R what had happened. R said that the defendant hurt her "here and . . . here," gesturing to her vagina and buttocks. Afterward, T left the apartment and took the defendant home with her.

On September 24, 2019, two days after the incident, L called the police.[2] Thereafter, Officer Davon Polite arrived at L's apartment, where he spoke with L to gather information about the incident. L identified the defendant as the individual who touched R, but Polite never spoke with R directly.[3] After his conversation with L, Polite called dispatch to request an ambulance and informed his sergeant of the incident, after which time the investigation was referred to the domestic violence unit of the police department.

An ambulance transported L and R to Bridgeport Hospital, where they met with Adam Paquin, a clinical social worker. Before meeting with R, Paquin spoke with L in the hallway outside of R's treatment room. L disclosed to Paquin that R had told L "that [the defendant] hurt her," and then repeated the gesture R had shown L.

Paquin spoke with the attending physician and assigned nurse and then met with R in the treatment room.[4] Paquin found that R's verbal skills were limited, and that she "responded yes and no to contradicting questions." When Paquin began asking R questions about the defendant, R "reported that she likes [the defendant] and has fun playing with him. [Paquin then] explored if [the defendant] ever hurt her, and she replied no. During the conversation, [R] . . . [pointed] to her vagina and said 'finger.' [When Paquin] explored this, [R] stated that [the defendant] touched her." The attending physician noted "[v]aginal pain" as a physical indicator of sexual abuse but identified no other signs of injury. Upon discharge, Paquin referred R to the Center for Family Justice for a forensic interview.

On October 4, 2019, R presented at the Center for Family Justice for a forensic interview.[5] During the interview, which was approximately thirteen minutes long, R stated that she was touched in a way that hurt her, but did not specify where, nor did she specifically accuse the defendant. Later in the interview, R stated that "Justice hurt [her]."[6] The forensic interviewer, having trouble understanding R, did not ask any further clarifying questions.[7]

On October 21, 2019, R was evaluated by Beth A. Moller, an advanced practice registered nurse, at the Family Advocacy Center at Yale New Haven Hospital. Before Moller began evaluating R, she spoke with L, who reported that R had been waking up with nightmares since the incident. During Moller's discussion with R, Moller "asked [R] if she had any worries about her body and she said her belly. [Moller] asked why

she had a worry about her belly and [R] said 'because [the defendant] hurts [her].' Then she said 'I cry.' [Moller] asked [R] why she cried and she said '[because the defendant] hurt [her].' Then [R] pointed to her vagina and to her buttocks and said '[r]ight there . . . and right there . . . [the defendant] put one finger (pointing with one finger) in there (again pointing to the vagina) and in there' (pointing to her buttocks). [Moller] asked if [the defendant] did that one time or more than one time. [R] said 'more than one time.' "[8] Next, Moller conducted a physical exam of R and found that R's external genitalia and anus were normal, without any signs of vaginal discharge, lesions, blood, trauma, injury, or redness.[9]

The defendant thereafter was charged with sexual assault in the first degree in violation of General Statutes § 53a-70 (a) (2),[10] sexual assault in the fourth degree in violation of General Statutes § 53a-73a (a) (1) (A),[11] and risk of injury to a child in violation of § 53-21 (a) (2).[12] A jury trial was held over four days in September, 2021. On September 30, 2021, the jury returned its verdict of not guilty of sexual assault in the first degree, not guilty of the lesser included offense of attempt to commit sexual assault in the first degree, not guilty of sexual assault in the fourth degree, and guilty of risk of injury to a child. On November 30, 2021, the court, *Hernandez*, *J.*, sentenced the defendant to a term of imprisonment of fifteen years, execution suspended after five years, and ten years of probation. This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

The defendant first claims that the evidence at trial was insufficient to convict him of risk of injury to a child. Specifically, he argues that the state failed to prove that the defendant touched R's intimate parts in a sexual and indecent manner that was likely to impair her health or morals. We disagree.

"We begin our analysis by setting forth the well established legal principles for assessing an insufficiency of the evidence claim. In reviewing the sufficiency of the evidence to support a criminal conviction we apply a [two part] test. First, we construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the [finder of fact] reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt. . . . In particular, before this court may overturn a jury verdict for insufficient evidence, it must conclude that no reasonable jury could arrive at the conclusion the jury did." (Citation omitted; internal quotation marks omitted.) *State* v. *Charles L.*, 217 Conn. App. 380, 386, 288 A.3d 664, cert. denied, 346 Conn. 920, 291 A.3d 607 (2023). "While the jury must find every

element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense, each of the basic and inferred facts underlying those conclusions need not be proved beyond a reasonable doubt. . . . If it is reasonable and logical for the jury to conclude that a basic fact or an inferred fact is true, the 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.) *State* v. *Stephen J. R.*, 309 Conn. 586, 593–94, 72 A.3d 379 (2013). "On appeal, we do not ask whether there is a reasonable view of the evidence that would support a reasonable hypothesis of innocence. We ask, instead, whether there is a reasonable view of the evidence that supports the [fact finder's] verdict of guilty." (Internal quotation marks omitted.) *State* v. *Michael R.*, 346 Conn. 432, 480, 291 A.3d 567 (2023), petition for cert. filed (U.S. July 12, 2023) (No. 23-5087).

Section 53-21 (a) (2) provides in relevant part that any person who "has contact with the intimate parts[13] . . . of a child under the age of sixteen years . . . in a sexual and indecent manner likely to impair the health or morals of such child . . . shall be guilty of . . . a class B felony . . . except that, if the violation is of subdivision (2) of this subsection and the victim of the offense is under thirteen years of age, such person shall be sentenced to a term of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court." (Footnote added.) The defendant concedes that the jury reasonably could have found that he had contact with R's intimate parts. He claims, however, that the state failed to introduce evidence that demonstrates that the contact was made in a sexual and indecent manner that was likely to impair R's health or morals.

"[A] defendant may not be convicted under § 53-21 (a) (2) unless the state proves that the contact was made in a sexual and indecent manner likely to impair the health or morals of such child . . . ." (Internal quotation marks omitted.) *State* v. *Alvaro F.*, 291 Conn. 1, 10–11, 966 A.2d 712, cert. denied, 558 U.S. 882, 130 S. Ct. 200, 175 L. Ed. 2d 140 (2009); see *State* v. *Abreu*, 141 Conn. App. 1, 8–9, 60 A.3d 312 (affirming conviction where trial court instructed jury that "[s]exual means having to do with sex, and indecent means offensive to good taste or public morals" (internal quotation marks omitted)), cert. denied, 308 Conn. 935, 66 A.3d 498 (2013); see also *State* v. *Zwirn*, 210 Conn. 582, 588, 556 A.2d 588 (1989) ("[w]ithout the requirement that the act be done in a sexual and indecent manner, there would be no legal distinction between touching a child's private parts in an innocent manner, e.g., for necessary medicinal or hygienic purposes, and touching a child's

private parts in a manner that violates the statute").

The defendant argues that, unlike cases in which "the contact with the victims' intimate parts was indisputably sexual and indecent based on details about what was done, how it was done, and the surrounding circumstances," the state did not present any physical evidence of sexual abuse or eyewitness accounts other than R's testimony. Further, the defendant argues that R's testimony is insufficient because it "did not contain any context or details that would allow the jury to infer that the touching was done in a sexual and indecent manner . . . ."

Although a child victim's testimony can be sufficient to sustain a conviction; see, e.g., *State* v. *Stephen J. R.*, supra, 309 Conn. 598–600; our review does not begin and end with the sufficiency of the complainant's testimony but, rather, extends to the " 'cumulative force of the evidence . . . .' " *State* v. *Charles L.*, supra, 217 Conn. App. 386. On the basis of our review of the record in this case, we conclude that the cumulative force of the evidence was sufficient for the jury to find that the defendant's contact with R's intimate parts was done in a sexual and indecent manner that was likely to impair her health or morals. R testified that, in the kitchen of L's apartment, the defendant touched her vagina and buttocks[14] with his finger in a way that hurt and made her cry. In addition to R's testimony, L testified that, after arriving home on the day in question and seeing "fear all over [R]," L asked R what had happened, and, in response, R pointed to her private parts, which she had never done before. L further testified that, after throwing the defendant out of her apartment, she proceeded to examine her daughter. She observed that R's vagina "was shiny. It was red, and it was open a little bit more than [she had] ever seen it." L further testified that she later found the jar of Vaseline that she kept in a drawer in her kitchen, which previously contained some Vaseline, was now empty. She testified that when she discovered the jar of Vaseline, that is when she "tried to put two and two together" as to why R's vagina was shiny.[15] The testimony at trial also showed that the defendant and R were the only people in the apartment after L left, and that L had told the defendant that he did not have to do anything to take care of R. She told him that the "most you might have to do is just tell her to eat her food, because when she's watching TV or watching her show on the phone, she's distracted, so she'll stop eating or forget . . . ." Given these facts, the jury reasonably could have drawn the inference that the defendant put Vaseline on his finger before making contact with R's intimate parts, and that he was not given any instructions for R's care that would necessitate such contact. This evidence is sufficient to support a finding that the defendant had contact with R's intimate parts in a sexual and indecent manner that was likely to impair her health or morals.

Although the defendant advances several arguments about the inconsistencies in R's testimony and the unreliability of L's testimony, it is not for this court to reweigh the evidence. See *State* v. *DeMarco*, 311 Conn. 510, 519–20, 88 A.3d 491 (2014) ("Notwithstanding our responsibility to examine the record scrupulously, it is well established that we may not substitute our judgment for that of the [jury] when it comes to evaluating the credibility of a witness. . . . It is the exclusive province of the trier of fact to weigh conflicting testimony and make determinations of credibility, crediting some, all or none of any given witness' testimony. . . . Questions of whether to believe or to disbelieve a competent witness are beyond our review." (Internal quotation marks omitted.)) Instead, our standard of review requires us to "construe the evidence in the light most favorable to sustaining the verdict." (Internal quotation marks omitted.) *State* v. *Charles L.*, supra, 217 Conn. App. 386.

On the basis of the foregoing, we conclude that the evidence introduced at trial was sufficient such that the jury reasonably could have found that the defendant had contact with R's intimate parts in a sexual and indecent manner that was likely to impair her health or morals. Accordingly, the evidence was sufficient to convict the defendant of risk of injury to a child in violation of § 53-21 (a) (2).

II

The defendant next claims that he "has a federal and state constitutional due process right to a pretrial taint hearing to determine whether three year old R's out-of-court statements and subsequent testimony were reliable or whether they were corrupted by coercive and suggestive questioning by her mother and health-care providers." Although the defendant acknowledges that Connecticut has not heretofore recognized a state or federal constitutional due process right to a pretrial taint hearing, he nonetheless urges this court to adopt the procedure set forth by the New Jersey Supreme Court in *State* v. *Michaels*, 136 N.J. 299, 642 A.2d 1372 (1994), which held that a defendant in a sexual abuse case involving a child has a federal due process right to a pretrial taint hearing if he or she makes a showing of " 'some evidence' " that the victim's statements were the product of suggestive or coercive interview techniques. Id., 320.

The defendant concedes that he did not request a pretrial taint hearing before the trial court or otherwise raise the due process arguments he now advances on appeal. Consequently, he is, in effect, asking this court to conclude that (1) the trial court in this case had a duty to hold a pretrial taint hearing sua sponte before his trial began despite the court not knowing what testimony the state would actually introduce, and (2)

because the court failed to hold such a hearing, his due process rights were violated. Recognizing that his claim is unpreserved, the defendant contends that he has satisfied all four prongs of *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), which warrants reversal of his conviction and a remand to the trial court for a pretrial taint hearing before a new trial is held. 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." (Emphasis in original; footnote omitted.) *State* v. *Golding*, supra, 239–40; see also *In re Yasiel R.*, supra, 781 (modifying third prong of *Golding*). The defendant argues, in the alternative, that this court should "exercise its supervisory authority and require taint hearings to assess the reliability of child sexual abuse complaints modeling New Jersey's procedure in *Michaels*." We are not persuaded by the defendant's arguments.

We begin with an examination of the principal authorities on which the defendant relies. In *State* v. *Michaels*, supra, 136 N.J. 316, the New Jersey Supreme Court affirmed the Appellate Division's reversal of the defendant's convictions of thirty-eight counts of aggravated sexual assault, thirty-one counts of sexual assault, forty-four counts of endangering the welfare of children, and two counts of terroristic threats, on the grounds that the interviews of the child victims in that case "were highly improper and employed coercive and unduly suggestive methods" and that there was "a substantial likelihood . . . that the children's recollection of past events was both stimulated and materially influenced by that course of questioning." Id., 306, 315. The court explained that the record was "replete with instances in which children were asked blatantly leading questions that furnished information the children themselves had not mentioned" and subjected them to "repeated, almost incessant, interrogation." Id., 314–15. The record also disclosed the "use of mild threats, cajoling, and bribing"; vilification of the defendant; encouragement that the children "keep [the defendant] in jail"; and provided the cooperative children with replica police badges. Id., 315. Indeed, the court observed that "[p]ositive reinforcement was given when children made inculpatory statements, whereas negative reinforcement was expressed when children denied being abused or made exculpatory statements." Id.

In reversing the defendant's conviction on the basis

that the pretrial interviews of the children were highly improper and employed coercive and unduly suggestive methods, the court in *Michaels* ordered that, in the event the state retried the case, a pretrial taint hearing was required to determine whether those clearly improper interrogations so infected the ability of the children to recall the alleged abusive events that their pretrial statements and in-court testimony based on their recollection were unreliable and should not be admitted into evidence. Id., 315–16. The court acknowledged that requiring a pretrial taint hearing was a "somewhat extraordinary step," but nevertheless concluded that due process required such a procedure in order to cleanse a potential prosecution from the corrupting effects of tainted evidence. Id., 316.

The court then went on to provide parameters for when a pretrial taint hearing would be necessary in future cases. Id., 320. The court made clear that "the initial burden to trigger a pretrial taint hearing is on the defendant" by making a showing of " 'some evidence' " that the victim's statements had been the product of suggestive or coercive interview techniques. Id. The court explained that "the absence of spontaneous recall, interviewer bias, repeated leading questions, multiple interviews, incessant questioning, vilification of defendant, ongoing contact with peers and references to their statements, and the use of threats, bribes and cajoling, as well as the failure to videotape or otherwise document the initial interview sessions," may serve as grounds to trigger a taint hearing. Id., 321. Under the framework adopted by the court, once a defendant establishes that sufficient evidence of unreliability exists, the burden then shifts to the state to prove the reliability of the proffered statements and testimony by clear and convincing evidence. Id. "[T]he ultimate determination to be made is whether, despite the presence of some suggestive or coercive interview techniques, when considering the totality of the circumstances surrounding the interviews, the statements or testimony retain a degree of reliability sufficient to outweigh the effects of the improper interview techniques." Id. The court reiterated that "the focus of the pretrial hearing is on the coercive and suggesting propensity of the investigative questioning of each child and whether that questioning, examined in light of all relevant circumstances, gives rise to the substantial likelihood that the child's recollection of actual events has been irremediably distorted and the statements and the testimony concerning those events are unreliable." Id., 322. Under the approach adopted in *Michaels*, if the trial court finds at the conclusion of the taint hearing that the testimony is reliable, the parties may address the issue of suggestibility at trial by utilizing the same evidence that was presented at the hearing. Id., 323–24.

Approximately fifteen years after *Michaels* was decided, our Supreme Court was presented with a

Michaels type claim in *State* v. *Michael H.*, 291 Conn. 754, 755–56, 970 A.2d 113 (2009). The defendant in *Michael H.* claimed that the trial court improperly deprived him of his right to a fair trial when it denied his motion for a pretrial taint hearing. Id., 763. Like the defendant in the present case, the defendant in *Michael H.* acknowledged that Connecticut had not recognized a due process right to a pretrial taint hearing, but he nevertheless urged our Supreme Court to adopt the procedural requirements set forth in *Michaels*. Id. He claimed that a taint hearing was required to evaluate whether the testimony of the four year old victim in that case was reliable or whether the victim's testimony had been corrupted as a result of suggestive and coercive questioning of the child by his mother and a social worker with the Department of Children and Families. Id., 756–57, 763.

Our Supreme Court observed that "[c]hild abuse is one of the most difficult crimes to detect and prosecute, in large part because there often are no witnesses except the victim. . . . In order to discover child abuse, investigators often rely on forensic interviews because children's free recall memory tends to be sparse and often omits important details. . . . This is particularly true for young children in which case fear, embarrassment or loyalty may inhibit them from disclosing instances of abuse. . . . Some research, therefore, has shown that interviews employing directed and leading questions can be useful in securing information regarding abuse. . . . At the same time, [the court] recognize[d] that [b]ecause [y]oung children are sensitive to the status and power of their interviewers and as a result are especially likely to comply with the implicit and explicit agenda of such interviewers . . . [c]hildren . . . are more willing to go along with the wishes of adults and to incorporate adults' beliefs into their reports. . . . A critical finding of psychological research is that young children, particularly preschool age children, appear to be more suggestible as a basic psychological characteristic than older children and adults." (Citations omitted; internal quotation marks omitted.) Id., 764.

The court also observed that other jurisdictions have received the New Jersey Supreme Court's decision in "*Michaels* with mixed results." Id., 765. According to the court, the "majority of jurisdictions have rejected the *Michaels* approach on the ground that existing procedures that address the competency and credibility of witnesses are adequate to deal with concerns regarding child testimony." Id. Even the minority of jurisdictions that have responded more favorably to the *Michaels* rationale have still "rejected the idea of a separate pretrial taint hearing and, instead, have permitted an inquiry into suggestiveness through the use of competency hearings." Id., 766.

The court further observed that, "[i]n Connecticut, strong policies exist to encourage and protect child testimony." Id.; see also General Statutes § 54-86h. At the same time, the court also acknowledged that the trial court plays an important gatekeeping function with respect to the exclusion or admission of potentially unreliable evidence. *State* v. *Michael H.*, supra, 767. In the end, however, our Supreme Court ultimately determined that it did not need to decide whether some form of pretrial hearing was required in that case to determine the reliability of the child's testimony "because the defendant [had] failed to make any showing that such testimony was the product of unduly coercive or suggestive questioning." Id., 767–68. As a result, it "[left] for another day the question of whether a pretrial hearing is required to ensure a defendant his right to a fair trial in the event of a showing that a child witness' testimony was the product of coercive or suggestive questioning, and if so, in what context such a hearing would be appropriate, keeping in mind [its] concerns over the well-being of the child and the potential for abuse with such a procedure." Id., 768 n.10.

On appeal, the defendant claims that a pretrial taint hearing was required in his case under the due process clauses of the state and federal constitutions to evaluate whether R's out-of-court statements and testimony were reliable or the product of coercion and suggestion. The state counters that, because the defendant failed to ask the trial court for a pretrial taint hearing, his *Golding* claim fails. Specifically, the state argues that "nothing in the jurisprudence cited by the defendant requires a trial court to hold a pretrial taint hearing *sua sponte*, and despite putting a constitutional tag on his claim, he has failed to meet the 'crucial, critical [and] highly significant' test that would elevate his evidentiary claim challenging the admission of R's testimony and out-of-court statements into a constitutional one." (Emphasis in original.) We agree with the state.

Our Supreme Court's decision in *State* v. *Turner*, 334 Conn. 660, 224 A.3d 129 (2020), is instructive. In *Turner*, the defendant claimed that his conviction should have been overturned under *Golding* because his due process rights were violated when the trial court improperly failed to sua sponte conduct a hearing pursuant to *State* v. *Porter*, 241 Conn. 57, 698 A.2d 739 (1997), cert. denied, 523 U.S. 1058, 118 S. Ct. 1384, 140 L. Ed. 2d 645 (1998),[16] before admitting expert testimony regarding cell phone data and corresponding cell tower coverage maps. *State* v. *Turner*, supra, 662. The defendant argued, inter alia, that the trial court's improper admission of the cell tower coverage maps without first holding a *Porter* hearing violated his due process right to a fair trial because the maps were crucial to the state's case. Id., 675. The state argued that a defendant has no due process right to a *Porter* hearing in the absence of a

request for one and the trial court, therefore, was not required to have conducted such a hearing sua sponte. Id., 676. Accordingly, the state contended that the defendant's claim failed under the second and third prongs of *Golding*. Id.

Our Supreme Court explained that, "[u]nder the second prong of *Golding*, an unpreserved evidentiary error generally is not reviewable. . . . Because the admissibility of expert testimony is a matter of state evidentiary law . . . in the absence of timely objection, [it] does not warrant appellate review under [*Golding*] . . . because it does not, per se, raise a question of constitutional significance. . . . Thus, an unpreserved claim that the trial court improperly failed to conduct a *Porter* hearing, which involves the admissibility of expert testimony, generally is not reviewable." (Citations omitted; internal quotation marks omitted.) Id. 673–74.

The court nevertheless recognized "that an unpreserved evidentiary claim may be constitutional in nature if there is a resultant denial of fundamental fairness or the denial of a specific constitutional right . . . . [T]he standard . . . [is] whether the erroneously admitted evidence, viewed objectively in light of the entire record before the jury, was sufficiently material to provide the basis for conviction or to remove a reasonable doubt that would have existed on the record without it. In short it must have been crucial, critical, [and] highly significant . . . ." (Citations omitted; internal quotation marks omitted.) Id., 674.

With those guiding principles in mind, our Supreme Court ultimately agreed with the state. Id., 676. It made clear that nothing in *State* v. *Edwards*, 325 Conn. 97, 156 A.3d 506 (2017), which it recently had decided and upon which the defendant in *Turner* had relied, required a trial court to conduct a *Porter* hearing sua sponte in the absence of a request for one. *State* v. *Turner*, supra, 334 Conn. 676–78. On the contrary, our Supreme Court explained that "a court is obligated to conduct a *Porter* hearing only when a party requests one." Id., 678. It observed that " '[it] never [has] held that a trial court has an independent obligation to order, sua sponte, a hearing on an evidentiary matter, in the absence of both a request for a hearing and an adequate offer of proof . . . .' " Id., quoting *State* v. *Sullivan*, 244 Conn. 640, 651 n.14, 712 A.2d 919 (1998).

We discern no material difference between the circumstances presented in *Turner* and the one before us. Here, like in *Turner*, the defendant claims that, despite his failure to request a pretrial taint hearing, the trial court's failure to hold such a hearing sua sponte violated his due process rights. Regardless of whether or not the state or federal constitutions require a pretrial taint hearing upon a defendant's request and some showing that a child's testimony may have been the product of improper questioning or interview tech-

niques, a question we need not decide today, the defendant has not pointed us to any authority suggesting that a court is obligated to hold such a hearing sua sponte.[17] The absence of any such authority should come as no surprise, as a contrary view would require trial courts to be clairvoyant. A court would need to know the substance of the testimony the state planned to introduce as well as the pretrial interview techniques that the state employed before the state even introduced a child victim's testimony at trial.

Moreover, the defendant's claim cannot be reconciled with *Turner* or the other cases to which the defendant has directed us. The cases on which the defendant primarily relies make clear that a due process claim predicated on the purported entitlement to an evidentiary hearing fails in the absence of a request for such a hearing. Although he relies extensively on the New Jersey Supreme Court's decision in *Michaels*, the defendant fails to recognize that he has not complied with the very procedure he asks us to adopt. The court in *Michaels* held that "the initial burden to trigger a pretrial taint hearing is on *the defendant*." (Emphasis added.) *State* v. *Michaels*, supra, 136 N.J. 320. In order to show an entitlement to such a hearing in New Jersey, a defendant must request a pretrial hearing *before the trial begins* and "make a showing of 'some evidence' that the victim's statements were the product of suggestive or coercive interview techniques." Id., 320–21; see also, e.g., *State* v. *T.R.K.*, Docket No. A-1650-20, 2023 WL 4480572, *7 (N.J. Super. App. Div. July 12, 2023) ("[i]n support of his *Michaels motion*, [the] defendant requested to introduce expert testimony" (emphasis added)); *State* v. *J.M.S.*, Docket No. A-2106-10T4, 2017 WL 84249, *2 (N.J. Super. App. Div. January 3, 2017) ("the court heard argument on [the] defendant's *Michaels motion* to exclude the two out-of-court recordings" (emphasis added)); *State* v. *Krivacska*, 341 N.J. Super. 1, 24, 775 A.2d 6 (App. Div.) ("[t]he trial judge issued a letter opinion denying [the] *defendant's motion* to bar [children] from testifying based upon the interview techniques employed" (emphasis added)), cert. denied, 170 N.J. 206, 785 A.2d 435 (2001), cert. denied, 535 U.S. 1012, 122 S. Ct. 1594, 152 L. Ed. 2d 510 (2002).

Furthermore, although the defendant notes that our Supreme Court in *Michael H.* did not foreclose the possibility that due process might require a pretrial taint hearing upon a showing of some evidence of suggestiveness or coercion, the defendant in *Michael H.* actually moved for a pretrial taint hearing for the purpose of precluding the testimony of two young children on the ground that their testimony was unreliable due to improper pretrial questioning. *State* v. *Michael H.*, supra, 291 Conn. 757. Nothing in *Michael H.* suggests that a defendant's due process rights are violated when a trial court fails to sua sponte hold a pretrial taint

hearing. On the contrary, the fact that the defendant in that case asked for such a hearing and our Supreme Court left open the possibility that one might be required upon a proper showing by a defendant; see id., 767–68; underscores the fact that the defendant in the present case had sufficient notice and opportunity, as well as the obligation, to request such a hearing. Accordingly, we conclude that the defendant's claim fails *Golding*'s second and third prongs because he has not established that the trial court's failure to hold a hearing sua sponte was constitutional in nature or violated his constitutional rights.[18]

III

The defendant next invites this court to exercise its supervisory authority to require pretrial taint hearings to assess the reliability of complainants in child sexual abuse cases.[19] We decline his invitation.

"Supervisory authority is an extraordinary remedy that should be used sparingly . . . . Although [a]ppellate courts possess an inherent supervisory authority over the administration of justice . . . [that] authority . . . is not a form of free-floating justice, untethered to legal principle . . . . Our supervisory powers are not a last bastion of hope for every untenable appeal. They are an extraordinary remedy to be invoked only when circumstances are such that the issue at hand, while not rising to the level of a constitutional violation, is nonetheless of utmost seriousness, not only for the integrity of a particular trial but also for the perceived fairness of the judicial system as a whole . . . . Constitutional, statutory and procedural limitations are generally adequate to protect the rights of the [litigant] and the integrity of the judicial system. Our supervisory powers are invoked only in the rare circumstance [in which] these traditional protections are inadequate to ensure the fair and just administration of the courts. . . . Overall, the integrity of the judicial system serves as a unifying principle behind the seemingly disparate use of our supervisory powers. . . . Thus, we are more likely to invoke our supervisory powers when there is a pervasive and significant problem . . . or when the conduct or violation at issue is offensive to the sound administration of justice . . . ." (Internal quotation marks omitted.) *In re D'Andre T.*, 201 Conn. App. 396, 407–408, 242 A.3d 766, cert. denied, 336 Conn. 902, 242 A.3d 480 (2020).

We are not persuaded that this is a proper occasion to exercise our supervisory authority to adopt a pretrial taint procedure like the one in *Michaels* because we are not convinced that the traditional protections already in place are inadequate to protect the rights of the defendant or the integrity of the judicial system. Indeed, our Supreme Court has cautioned that "[t]he majority of jurisdictions have rejected the *Michaels* approach on the ground that existing procedures that address the

competency and credibility of witnesses are adequate to deal with concerns regarding child testimony." *State* v. *Michael H.*, supra, 291 Conn. 765. It similarly observed that, "[e]ven in the minority of jurisdictions that have responded favorably to the *Michaels* rationale, courts have rejected the idea of a separate pretrial taint hearing and, instead, have permitted an inquiry into suggestiveness through the use of competency hearings." Id., 766.

In this case, the defendant, who never requested a pretrial taint hearing before the trial court, had every opportunity to explore the issue of suggestive and coercive questioning at trial. It was then for the jury, on the basis of its firsthand observation of the witnesses' conduct, demeanor and attitude, to determine the credibility of the witnesses' testimony and the weight to give to it. See *State* v. *Russell*, 101 Conn. App. 298, 316, 922 A.2d 191 ("it is well established that the jury is the sole arbiter of witness credibility and may accept or reject, in whole or in part, the truth of any witness' testimony"), cert. denied, 284 Conn. 910, 931 A.2d 934 (2007). Accordingly, we decline the defendant's invitation at this juncture to exercise our supervisory authority to require pretrial taint hearings in child sexual abuse cases.

The judgment is affirmed.

In this opinion ALVORD, J., concurred.

* In accordance with our policy of protecting the privacy interests of the victims of sexual abuse and the crime of risk of injury to a child, we decline to identify the victim or others through whom the victim's identity may be ascertained. See General Statutes § 54-86e.

Moreover, in accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018), as amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 106, 136 Stat. 49, 851; we decline to identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that party's identity may be ascertained.

[1] It is unclear exactly how soon after the incident L discovered the empty Vaseline jar, but L testified that it was not on the day of the incident and that "[i]t had to be like three days [later] . . . ."

[2] L testified that she did not call the police right away because she "was in shock." In the two days following the alleged incident, L "was going back and forth with [the defendant]. [They] were going back and forth on the phone, on text messages, and calls" about the alleged incident.

[3] At trial, Polite testified that it was the protocol for an investigating officer to refrain from speaking with a child complainant in a sexual assault case.

[4] Paquin noted that, in child sexual abuse cases, members of the multidisciplinary team—in this case consisting of a social worker, a physician, and a nurse—typically meet with the patient at the same time "so that the child does not have to keep giving the story multiple times."

[5] A video recording of the forensic interview was admitted as an exhibit at trial.

[6] Justice, R's eldest brother, was approximately nineteen years old around the time of the incident and would regularly babysit R while L was at work. We further note that R referred to the defendant as "Jimmy" or "Uncle Jimmy."

[7] It is undisputed between the parties that the forensic interviewer had difficulty understanding R. Defense counsel conceded as much during closing argument.

[8] At trial, R did not testify about any additional incidents other than the one already described as taking place on September 22, 2019, and the state has made clear that it only alleges one instance of sexual contact.

[9] Moller testified that the examination of R revealed "normal genitalia and

anus. A normal exam neither confirms nor refutes the possibility of sexual abuse. Most children or teens who have experienced sexual abuse, including those who have experienced penetration, will have a normal exam."

[10] General Statutes § 53a-70 (a) provides in relevant part: "A person is guilty of sexual assault in the first degree when such person . . . (2) engages in sexual intercourse with another person and such other person is under thirteen years of age and the actor is more than two years older than such person . . . ."

[11] General Statutes § 53a-73a (a) provides in relevant part: "A person is guilty of sexual assault in the fourth degree when: (1) Such person subjects another person to sexual contact who is (A) under thirteen years of age and the actor is more than two years older than such other person . . . ."

[12] The state filed a long form information on June 15, 2020, which amended the charges against the defendant to sexual assault in the first degree and risk of injury to a child, omitting the charge of sexual assault in the fourth degree. The operative charging document at trial, however, a substitute long form information filed on September 10, 2021, charged the defendant with the same offenses as the original information.

[13] General Statutes § 53a-65 (8) defines intimate parts as "the genital area or any substance emitted therefrom, groin, anus or any substance emitted therefrom, inner thighs, buttocks or breasts."

[14] Specifically, R identified the defendant in the courtroom and testified that he hurt her "[b]utt" with his finger. When asked to stand up and point to the parts of her body she referred to as her "butt," she pointed to both her vagina and buttocks.

[15] L testified as follows: "When I tell you that Vaseline jar was clean, I mean nothing was in there. But the last time I [saw] it, it [had] stuff . . . in the insides . . . . There was stuff in there. But when I came across that Vaseline jar again, it was totally clean, rubbed all the way out. And, then that's when . . . I tried to put two and two together . . . because I didn't know why . . . [R's] vagina was shiny . . . . I just know that she had been tampered with. I didn't know what was used . . . I just know it was shiny."

[16] "[T]he fundamental purpose of a *Porter* hearing is . . . namely, to ensure, first, that the proffered scientific evidence is predicated on reliable scientific methods and procedures, and, second, that the evidence is relevant to the facts of the case." *State* v. *Griffin*, 273 Conn. 266, 281, 869 A.2d 640 (2005).

[17] Although the defendant undertakes an analysis under *State* v. *Geisler*, 222 Conn. 672, 684–86, 610 A.2d 1225 (1992) in advancing his argument that the Connecticut constitution requires pretrial taint hearings to screen the reliability of child sexual abuse complainants' out-of-court statements and testimony, he includes no analysis or discussion of whether our state constitution requires a court to hold such a hearing sua sponte. See, e.g., *State* v. *Stephen O.*, 106 Conn. App. 717, 727–28, 943 A.2d 477 ("[T]he defendant claims that the court improperly failed to conduct, sua sponte, a hearing to evaluate the victim's competency. The defendant does not cite any relevant authority in support of his novel assertion that such a duty exists. . . . Even if the court had ruled on the issue of the victim's competency to testify at trial, such a ruling is evidentiary in nature and, thus, not amenable to review under *Golding*. . . . [T]here is no support in law for the defendant's assertion that *any* constitution imposed a duty on the court sua sponte to inquire into the victim's competency." (Citations omitted; emphasis added; internal quotation marks omitted.)), cert. denied, 287 Conn. 916, 951 A.2d 568 (2008).

The defendant also fails to address the impact, if any, that § 54-86h has on this case. General Statutes § 54-86h provides: "No witness shall be automatically adjudged incompetent to testify because of age and any child who is a victim of assault, sexual assault or abuse shall be competent to testify without prior qualification. The weight to be given the evidence and the credibility of the witness shall be for the determination of the trier of fact."

[18] In an apparent effort to overcome the fact that he did not request a pretrial taint hearing in the trial court, the defendant shifts his claim in his reply brief, arguing that the state mischaracterized his claim by arguing that he was claiming that the trial court's failure to hold a pretrial hearing sua sponte violated his due process rights. He argues that he is not claiming that the trial court had a sua sponte duty to conduct this hearing but, rather, that the record is adequate to show that R's testimony and statements were unreliable and that reversal is, therefore, warranted. Although the function of an appellant's reply brief is to respond to the arguments and authority presented in the appellee's brief, that function does not include raising an

entirely new (or reformulated) claim of error. See, e.g., *State* v. *Thompson*, 98 Conn. App. 245, 248, 907 A.2d 1257, cert. denied, 280 Conn. 946, 912 A.2d 482 (2006). We interpret the defendant's claim in his principal brief the same way as the state. In making a broad claim that the defendant was entitled to a pretrial taint hearing, the defendant's argument presupposes that he was denied the opportunity to have such a hearing. Moreover, because it is undisputed that he never asked for a pretrial taint hearing, he could only have been denied that purported right if the court failed sua sponte to hold the hearing.

Notwithstanding the foregoing, even if we were to address the defendant's reformulated due process argument, it would require little discussion. It is manifest from the record before us that the identified questioning was not so unduly coercive or extreme as to grievously undermine the reliability of R's statements that their admission into evidence subverted the fairness of the defendant's trial. See, e.g., *State* v. *Michael H.*, supra, 291 Conn. 767. Although the defendant argues that the influences on R's testimony are similar to the techniques that the New Jersey Supreme Court concluded were improper in *Michaels*, most of the defendant's contentions are not supported by the record or simply are not indicative of suggestiveness or coerciveness. In other words, the defendant has not demonstrated that this case is one of the highly unusual cases, like *Michaels*, in which the child's statements were so inherently unreliable that they must be kept from the jury. See, e.g., *State* v. *Carrion*, 313 Conn. 823, 840, 100 A.3d 361, 372 (2014) ("[a]lthough some aspects of [the forensic interviewer's] questioning of [the child victim] may have been unnecessarily or unduly suggestive, we agree with the Appellate Court that the trial court reasonably concluded that any shortcomings in the manner in which the interview was conducted did not render [the child victim's] responses so unreliable that their admission into evidence subverted the fairness of the defendant's trial").

[19] The defendant also requests that we exercise our supervisory authority to direct trial courts to give a cautionary instruction regarding the suggestibility of child witnesses and to require the video recording of interviews with child victims of sexual abuse. The defendant devotes less than one page of his brief to these claims and fails to support his argument with any relevant authorities. As such, these claims are inadequately briefed and, thus, we decline to review them. See, e.g., *Starboard Fairfield Development, LLC* v. *Gremp*, 195 Conn. App. 21, 31, 223 A.3d 75 (2019).