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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. In no event will any such motions be accepted before the ''officially released'' date.

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SCHALLER, J., dissenting. The majority determines that the defendant, Robert Jenkins, is entitled to a new trial because the trial court improperly allowed the state access to and use of his privileged mental health records. In particular, the majority focuses on the document entitled ''In-Patient Mental Health Nursing Assessment,'' which the state used in the course of cross-examining the defendant. The state argues that the nursing assessment contains nothing to suggest that the defendant was seeking diagnosis or treatment for any mental health condition. Assuming that the document constitutes a mental health record and is, therefore, privileged, I respectfully dissent.

Although I recognize the gravity of this situation, in which fundamental rights and interests are in contention, I believe that this case is controlled by our decision in *State* v. *Brelsford*, 24 Conn. App. 287, 587 A.2d 1062 (1991), and that there are compelling reasons to determine that the defendant in this case waived his privilege, just as the defendant in *Brelsford* impliedly waived his privilege. Id., 294. In essence, I cannot read *Brelsford* as authorizing the narrow reading of its holding suggested by the majority. As in *Brelsford*, I believe that the raising of the defense here indicated the defendant's plain intention to abandon the privilege. Under these circumstances, I conclude that it would be unfair and inconsistent to permit the retention of the privilege. I would affirm the judgment of the trial court on this issue.

The defendant also argues that the court improperly permitted the state to have access to the remainder of the record in question. As the state points out, the trial record clearly establishes that the only mental health document used by the state at trial was the nursing assessment form. Nothing suggests that any other portion of the document was used in any way. Under these circumstances, I believe our case law compels a conclusion that the access was harmless. I find support in *State* v. *Boscarino*, 204 Conn. 714, 737, 529 A.2d 1260 (1987), for the proposition that a harmless error inquiry is appropriate. Although the majority states that the *Boscarino* court did not undertake a harmless error analysis, I cannot agree with that conclusion.

In *Boscarino*, the court noted that ''Section 760 [now § 40-19] of our Practice Book effects a compromise between the defendant's right to avoid self-incrimination and the state's right to procure and present evidence of the defendant's mental state when such evidence is relevant to an issue at trial. . . . [T]o safeguard the rights of criminal defendants to due process of law, § 760 [now § 40-19] must be 'strictly construed to protect the fundamental constitutional right to lib-

erty.' " (Citation omitted.) *State* v. *Boscarino*, supra, 204 Conn. 736.

The court in *Boscarino* concluded that "the state's use of the statement made by the defendant in the court-ordered psychiatric examination violated § 760 [now § 40-19], and that the trial court erred in permitting the statement to be used on cross-examination." *State* v. *Boscarino*, supra, 204 Conn. 736–37. Significantly, the court went on to address the state's argument that "any error precipitated by its use of the defendant's statement" was "irrelevant" or "academic." Id., 737. Therefore, the court, at least implicitly, engaged in a final evaluation of the harm to the defendant under the circumstances of that case, notwithstanding the violation of § 760, now § 40-19, of the rules of practice. Under the circumstances of this case, I believe our case law compels a conclusion that the access was harmless.

For those reasons, I respectfully dissent.