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STATE OF CONNECTICUT *v.* RUSSELL PEELER
(SC 16380)

Borden, Norcott, Katz, Palmer and Zarella, Js.

Argued May 21—officially released August 19, 2003

Glenn W. Falk, special public defender, with whom, on the brief, was *Pintip Hompluem*, law student intern, for the appellant (defendant).

Harry Weller, senior assistant state's attorney, with whom, on the brief, were *Jonathan C. Benedict*, state's attorney, and *Joseph Corradino*, assistant state's attorney, for the appellee (state).

Opinion

KATZ, J. The defendant, Russell Peeler, appeals, pursuant to General Statutes § 51-199 (b) (3),[1] from the judgment of conviction, following a jury trial, of attempted murder in violation of General Statutes §§ 53a-49 (a)[2] and 53a-54a (a),[3] two counts of risk of injury to a child in violation of General Statutes (Rev. to 1997) § 53-21 (1),[4] and murder in violation of § 53a-54a (a).[5] In this appeal, the defendant claims that the trial court improperly: (1) granted the state's motion to disqualify the defendant's attorney from representing him in violation of his right to secure counsel of his choice under article first, § 8, of the Connecticut constitution, and the sixth amendment to the United States constitution; (2) nullified the defendant's cross-examination of the state's three main witnesses in violation of his sixth amendment right to confrontation and his due process right to a fair trial under the fourteenth amendment to the United States constitution by questioning the witnesses regarding their cooperation with the federal government on federal drug charges and making comments regarding those witnesses and their federal drug proceedings; and (3) violated the defendant's due process right to a fair trial under the fourteenth amendment to the United States constitution by improperly questioning the state's expert witness in connection with the admission of a statement by the victim and by improperly instructing the jury regarding that statement. We agree with the defendant's first claim of trial court impropriety and therefore do not address his remaining claims. Accordingly, we reverse the judgment of the trial court and remand the case for a new trial.

The record discloses the following undisputed facts and procedural history regarding the two cases underlying this appeal. See footnote 5 of this opinion. In the first case, the state alleged that, on September 2, 1997, in the vicinity of 500 Lindley Street in Bridgeport, the defendant had attempted to murder Rudolph Snead, Jr.,

his partner in a crack cocaine operation, by shooting at Snead while in his car and that the defendant thereby had committed risk of injury to the two minor children, Leroy Brown, Jr., and Tyree Snead, both seven years of age, who were in the backseat of Snead's car during the shooting. All three of the victims were identified by name in the police arrest warrant affidavit dated September 11, 1997, and in the second substitute information filed January 20, 1998. In the second case, the state alleged that on May 29, 1998, while he was free on bond following his arrest for the drive-by shooting in the first case, the defendant, who had covered his face to conceal his identity, murdered Snead at the Boston Avenue Barbershop in Bridgeport. The defendant was represented initially by Frank Riccio in connection with the first case and, thereafter, by Gary Mastronardi, who filed his appearance on July 23, 1998, in connection with both cases.

Following the consolidation of the two cases, on August 11, 1998, the state filed a motion for a protective order to preclude disclosure to the defense of the identity of certain witnesses, including the two minor victims, Brown and Tyree Snead. At the hearing on that motion, held on October 6, 1998, the trial court, *Ronan, J.*, provided Mastronardi with two alternatives: (1) the court would order disclosure of the names and addresses of the state's witnesses to Mastronardi, but would prohibit him from disclosing that information to the defendant; or (2) the court would grant the defendant's discovery motion with the names and addresses redacted. The court assured Mastronardi that, prior to trial, he would be able to share the information with the defendant to prepare his defense. Mastronardi advised the court that he knew that there were two minors involved in the drive-by shooting and that he and the defendant already knew their names. On December 9, 1998, the court nevertheless issued an order precluding Mastronardi from disclosing to the defendant the names and addresses of any witnesses who had given statements to the police. Pursuant to that court order, on or about December 23, 1998, senior assistant state's attorney C. Robert Satti, Jr., provided Mastronardi with the statement by Brown regarding the drive-by shooting and filed with the clerk of the court notice of service of disclosure with an attached supplemental disclosure listing, inter alia, the statement given by Brown.

Tragically, on January 7, 1999, Brown and his mother, Karen Clarke, were brutally murdered in their apartment on Earl Avenue in Bridgeport, where they recently had moved. The state thereafter charged the defendant and his brother, Adrian Peeler, in a third case with those murders, and John Walkley filed an appearance as a special public defender for the defendant in connection with the Brown and Clarke murders.[6]

On June 9, 1999, the state moved to disqualify Mastronardi from representing the defendant in the two cases involving Snead on the ground that the state intended to call Mastronardi as a witness in the defendant's capital felony case for the murder of Brown and Clarke. Specifically, the motion provided that ''[i]t is expected that Attorney Mastronardi will be called as a witness in the [capital felony case] regarding any knowledge on his part regarding the address and location of Karen Clarke and Leroy Brown, Jr. Attorney Mastronardi has spoken to the press and to Judge Ronan regarding a [s]tate's [o]bjection to disclosure of the above [witnesses'] address and statements claiming that he or his client had knowledge of their address before the [s]tate's [m]otion [for a protective order].''

On June 30, 1999, the trial court, *Thim, J.*, held a hearing regarding the state's motion to disqualify Mastronardi. Responding to the motion, Mastronardi contended that the state lacked any ground on which to disqualify him. He advised the court that ''Mr. Satti, who is the prosecutor who's handling [the capital felony] case, knows full well that I never had the Earl Avenue address. And I assume that he's told this to [state's attorney Jonathan Benedict]. I've said it ad nauseam since the day this happened. I never had the Earl Avenue address. I never knew where these two people lived. And Mr. Satti's words to me in court one day were: In light of all this, aren't you glad that the state never gave you the Earl Avenue address? Now I don't understand why Mr. Benedict would get up and even suggest something like that in open court on the record when he knows that that's not true. His office never gave the Earl Avenue address to me and I never had it. I never knew that these people lived on Earl Avenue until I read it in the newspaper and that is an established fact. That's not—Mr. Satti could be called as a witness to establish that. Do we disqualify the state's attorney's office in this case?''

Rather than pursue the claim in its motion that Mastronardi had given the defendant the victims' Earl Avenue address, at the hearing the state contended: ''So it's not so much evidence that the state would seek to offer as to the defendant's knowing where they live, but rather what is necessary and most relevant in the double homicide trial is the confirmation that Leroy Brown would indeed be a witness. That in fact is the focal point of the state's evidence as to motive in the double homicide. I'd submit that the argument that the December [1998] disclosure triggered the January [1999] murders is most compelling and that therefore Mr. Mastronardi's testimony in the trial of the double homicide will be most necessary and will not be uncontested.''

Mastronardi made several points in response. First, in light of the fact that the state was seeking to deprive

the defendant of his constitutional right to counsel of his choice, Mastronardi contended that the state was required to provide him with specific questions it intended to ask and then to establish that it could not get the information it sought from any other source. Second, Mastronardi disputed the claim that the state needed his testimony to establish the fact that Brown's statement had been disclosed to him pursuant to the December 9, 1998 discovery order. Indeed, Mastronardi pointed out that it was undisputed and a matter of public record that a copy of Brown's statement had been turned over to him on December 22, 1998, pursuant to the discovery order. Finally, Mastronardi cautioned that when and how the defendant had gained certain information would, in all likelihood, be privileged and therefore outside the reach of the state's questions in any event.

Finally, in response the state contended that Mastronardi ''suggests that . . . perhaps the state can develop the information it wants to develop through some other avenue. That may well be. I don't know that it is in fact true at this time. But that does not mean the state would then be restricted and deprived of giving Mr. Mastronardi's evidence as well. I think [what] the state seeks to produce with Mr. Mastronardi is already fairly clear from my opening remarks and they all relate, essentially, to what happened in December [of 1998] with notification that . . . Brown was in fact to be a witness.'' The trial court then granted the state's motion to disqualify Mastronardi, concluding that ''one of the core issues in the case is . . . [what] knowledge [the defendant] had about Brown's potential testimony and when and how he obtained that knowledge.''

Shortly thereafter, the defendant, through his newly appointed special public defender, Robert Sullivan, filed an opposition to the state's request for a protective order to contest the state's further attempts to withhold witness identities and statements. In support of his motion, the defendant referenced statements made by Mastronardi at the hearing on the protective order held on October 6, 1998, specifically, that Mastronardi had informed the court that the defense already was aware of the identities of the minors and that at least one, if not both, had given the state sworn statements. The defendant also cited an article from the Hartford Courant's Sunday Northeast magazine, dated June 13, 1999, in which Benedict conceded that the court order of December 9, 1998, allowing the defendant's attorney to share with the defendant the contents of the statements, did not result in the identity of the witnesses being revealed to the defense. Specifically, Benedict was quoted in that interview as stating: ''One thing you've got to understand . . . everybody knew everybody. . . . [T]he defense knew their identities even before coming to court.'' The state presented no evidence at the hearing to contradict that statement.

On August 6, 1999, the trial court granted the state's motion to continue the protective orders and ordered that the state did not have to disclose the subject material until after jury selection had commenced. Additionally, the court, pursuant to a motion by the state, consolidated all of the cases against the defendant with the case against his brother, Adrian Peeler, in connection with the Brown and Clarke homicides. Later, the trial court, *Ford, J.*, granted the defendant's motion to sever the cases against him involving Snead from the capital felony cases against the defendant and his brother involving Brown and Clarke.

Following a jury trial, the defendant was convicted of all four charges in connection with the Snead cases and sentenced to a total effective sentence of 105 years incarceration after the sentence enhancement pursuant to General Statutes § 53-202k was imposed. Thereafter, the defendant was tried for the Brown and Clarke homicides. See footnote 6 of this opinion. During that capital felony trial, the state presented Satti as a witness to testify as to the specifics of the December 9, 1998 discovery order.[7] Satti testified that, pursuant to that order, he was to turn over witness statements to Mastronardi, who then was permitted to discuss with the defendant the contents of those statements but not to disclose the names of the witnesses who had provided the statements. Mastronardi also related the terms of the trial court's discovery order, confirming that he was permitted to discuss the contents of the statements with the defendant, but not to disclose the identity of the authors of two of the statements. The state never questioned Mastronardi about what, if anything, he in fact had done in connection with the statements pursuant to the court order. Rather, the state questioned Mastronardi about whether, in his career of practicing law, he ever had violated a court order, to which he responded in the negative.

On appeal, the defendant claims that, in the absence of a compelling need for Mastronardi's testimony at the trial involving the Brown and Clarke homicides, the trial court improperly granted the state's motion to disqualify Mastronardi in the Snead cases. The defendant contends that he was denied his constitutional right to counsel of choice under the state and federal constitutions because the state did not demonstrate a compelling need for Mastronardi's testimony.

The state contends in response that Mastronardi's testimony was necessary to help prove the identity of the defendant and the intent needed to establish the defendant's role in the murders, specifically, ''that the December 22, 1998 disclosure was a catalyst in the double homicide [of Brown and Clarke].'' The state reasons that the defendant did not consider Brown to be a witness until he learned that Brown had given a statement against him. Therefore, the state contends

that Mastronardi ''was prohibited from revealing to the defendant the names of any witnesses . . . [and that] [o]nly Mastronardi could testify that he scrupulously complied with that [discovery] order.''

We agree with the defendant that the record did not demonstrate that the state had met its burden of proving that Mastronardi's testimony was necessary.[8] Accordingly, we conclude that the trial court improperly disqualified Mastronardi in violation of the defendant's constitutional right to counsel of his choice.[9]

We begin with a discussion of the pertinent legal principles that guide our resolution of this issue. It is well settled that the guarantee of assistance of counsel under the sixth amendment to the United States constitution encompasses the right to select one's own attorney. ''It is hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice.'' *Powell* v. *Alabama*, 287 U.S. 45, 53, 53 S. Ct. 55, 77 L. Ed. 158 (1932). Statements on this subject stem largely from an appreciation that a primary purpose of the sixth amendment is to grant a criminal defendant effective control over the conduct of his defense. See *United States* v. *Nichols*, 841 F.2d 1485, 1502 (10th Cir. 1988); *Wilson* v. *Mintzes*, 761 F.2d 275, 279 n.5 (6th Cir. 1985). As the United States Supreme Court has stated, the sixth amendment ''grants to the accused personally the right to make his defense . . . [because] it is he who suffers the consequences if the defense fails.'' *Faretta* v. *California*, 422 U.S. 806, 819–20, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975).

A critical aspect of making a defense is choosing the person who serves as one's assistant and representative. ''The right to retain private counsel serves to foster the trust between attorney and client that is necessary for the attorney to be a truly effective advocate. . . . Not only are decisions crucial to the defendant's liberty placed in counsel's hands . . . but the defendant's perception of the fairness of the process, and his willingness to acquiesce in its results, depend upon his confidence in his counsel's dedication, loyalty, and ability. . . .

''The right to retain private counsel also serves to assure some modicum of equality between the Government and those it chooses to prosecute. . . . The right to privately chosen and compensated counsel also serves broader institutional interests. The virtual socialization of criminal defense work in this country that would be the result of a widespread abandonment of the right to retain chosen counsel . . . too readily would standardize the provision of criminal-defense services and diminish defense counsel's independence. There is a place in our system of criminal justice for the maverick and the risk taker and for approaches that might not fit into the structured environment of a public defender's

office, or that might displease a judge whose preference for nonconfrontational styles of advocacy might influence the judge's appointment decisions. . . . There is also a place for the employment of specialized defense counsel for technical and complex cases . . . . The choice of counsel is the primary means for the defendant to establish the kind of defense he will put forward. . . . Only a healthy, independent defense bar can be expected to meet the demands of the varied circumstances faced by criminal defendants, and assure that the interests of the individual defendant are not unduly subordinat[ed] . . . to the needs of the system. . . .

"In sum, our chosen system of criminal justice is built upon a truly equal and adversarial presentation of the case, and upon the trust that can exist only when counsel is independent of the Government. Without the right, reasonably exercised, to counsel of choice, the effectiveness of that system is imperiled." (Citations omitted; internal quotation marks omitted.) *Caplin & Drysdale, Chartered* v. *United States*, 491 U.S. 617, 645–48, 109 S. Ct. 2646, 105 L. Ed. 2d 528 (1989) (Blackmun, J., dissenting).

"Indeed, it has been said that the most important decision a defendant makes in shaping his defense is his selection of an attorney. . . . A defendant learns about the charges against him, the weaknesses of the government's case, and possible strategies through an attorney. . . . A defendant also allocates authority to make important decisions, some affecting constitutional rights, to an attorney. . . .

"A defendant, then, must have confidence in the attorney who will represent him or her. For the basic trust between counsel and client . . . is a cornerstone of the adversary system. . . . If all attorneys were the same, the choice of an attorney would be of no moment. However, [a]ttorneys are not fungible. . . . Attorneys are different, and their differences can influence the defense presented by a defendant. Therefore, a defendant is afforded an opportunity to select an attorney." (Citations omitted; internal quotation marks omitted.) *United States* v. *Nichols*, supra, 841 F.2d 1502.

We recognize, however, that the right to counsel of choice is not absolute. *United States* v. *Richardson*, 894 F.2d 492, 496 (1st Cir. 1990); *United States* v. *Friedman*, 849 F.2d 1488, 1490 (D.C. Cir. 1988); *Burger & Burger, Inc.* v. *Murren*, 202 Conn. 660, 668, 522 A.2d 812 (1987). When a defendant's selection of counsel seriously endangers the prospect of a fair trial, a trial court justifiably may refuse to agree to the choice. Thus, a trial court may, in certain situations, reject a defendant's choice of counsel on the ground of a potential conflict of interest, because a serious conflict may indeed destroy the integrity of the trial process. *United States* v. *Nichols*, supra, 841 F.2d 1503. Although not absolute, the constitutional right to counsel of one's

choice does nevertheless mandate a presumption in favor of accepting a criminal defendant's choice of counsel. *Wheat* v. *United States*, 486 U.S. 153, 164, 108 S. Ct. 1692, 100 L. Ed. 2d 140 (1988); *United States* v. *Baker*, 10 F.3d 1374, 1399 (9th Cir. 1993), cert. denied, 513 U.S. 934, 115 S. Ct. 330, 130 L. Ed. 2d 289 (1994), overruled in part on other grounds, *United States* v. *Nordby*, 225 F.3d 1053, 1059 (9th Cir. 2000). This presumption means that a trial court may not reject a defendant's chosen counsel on the ground of a potential conflict of interest without a showing that both the likelihood and the dimensions of the feared conflict are substantial. *State* v. *Crespo*, 246 Conn. 665, 696–97, 718 A.2d 925 (1998), cert. denied, 525 U.S. 1125, 119 S. Ct. 911, 142 L. Ed. 2d 909 (1999).

Moreover, mere speculation as to a conflict will not suffice. The trial court must examine whether the concern is substantiated and whether that concern outweighs the defendant's right to counsel of his choosing. *Wheat* v. *United States*, supra, 486 U.S. 164 (actual conflict or showing of serious potential for conflict required). Indeed, ''[i]f by merely announcing his intention to call opposing counsel as a witness an adversary could thereby orchestrate that counsel's disqualification under the Disciplinary Rules, such a device might often be employed as a purely tactical maneuver. Clearly, however, these Rules were not designed to be used as tools of litigation strategy. Therefore, whenever an adversary declares his intent to call opposing counsel as a witness, prior to ordering disqualification of counsel, the court should determine whether counsel's testimony is, in fact, genuinely needed. *Connell* v. *Clairol, Inc.*, 440 F. Sup. 17, 18 n.1 (N.D. Ga. 1977).'' (Internal quotation marks omitted.) *Atlantic Richfield Co.* v. *Canaan Oil Co.*, 202 Conn. 234, 248–49, 520 A.2d 1008 (1987), overruled on other grounds, *Santopietro* v. *New Haven*, 239 Conn. 207, 213, 682 A.2d 106 (1996).

When either side in a criminal case seeks to call as a witness either a prosecutor or a defense attorney who is or has been professionally involved in the case, that party must demonstrate that the testimony is ''necessary and not merely relevant, and that all other available sources of comparably probative evidence have been exhausted.'' *Ullmann* v. *State*, 230 Conn. 698, 717, 647 A.2d 324 (1994). This ''compelling need'' test strikes the appropriate balance between, on the one hand, the need for information and, on the other hand, the potential adverse effects on the attorney-client relationship and the judicial process in general. Id., 717–20.

Furthermore, we note that the trial court's decision as to whether a serious potential conflict justifies the disqualification of a defendant's chosen counsel is entitled to deference on appeal. In *Wheat* v. *United States*, supra, 486 U.S. 163, the United States Supreme Court noted that ''the [trial] court must be allowed substantial

latitude in refusing waivers of conflicts of interest . . . .'' The court also noted that the ''[trial] court must pass on the issue whether or not to allow a waiver of a conflict of interest by a criminal defendant not with the wisdom of hindsight after the trial has taken place, but in the murkier pretrial context when relationships between parties are seen through a glass, darkly.'' Id., 162. In his dissent, in which he reiterated a point made by the *Wheat* majority, Justice Marshall cautioned, however, that ''the trial court must recognize a presumption in favor of a defendant's counsel of choice. This presumption means that a trial court may not reject a defendant's chosen counsel on the ground of a potential conflict of interest absent a showing that both the likelihood and the dimensions of the feared conflict are substantial. Unsupported or dubious speculation as to a conflict will not suffice. The Government must show a substantial potential for the kind of conflict that would undermine the fairness of the trial process. In these respects, I do not believe my position differs significantly, if at all, from that expressed in the opinion of the Court.'' Id., 166 (Marshall, J., dissenting).

To overcome the presumption in favor of a defendant's choice of counsel, a disqualification decision by the trial court must, therefore, be based upon ''a reasoned determination on the basis of a fully prepared record . . . .'' *Fuller* v. *Diesslin*, 868 F.2d 604, 609 n.4 (3d Cir.), cert. denied sub nom. *Perretti* v. *Fuller*, 493 U.S. 873, 110 S. Ct. 203, 107 L. Ed. 2d 156 (1989). Because the interest at stake is nothing less than a criminal defendant's sixth amendment right to counsel of his choice, the trial court cannot vitiate this right without first scrutinizing closely the basis for the claim. Only in this way can a criminal defendant's right to counsel of his choice be appropriately protected.

Finally, it is well settled that if the decision by a trial court deprived a defendant of his constitutional right to counsel of choice, prejudice will be presumed. *Flanagan* v. *United States*, 465 U.S. 259, 268, 104 S. Ct. 1051, 79 L. Ed. 2d 888 (1984) (''[o]btaining reversal for violation of [right to counsel of one's choice] does not require a showing of prejudice to the defense, since the right reflects constitutional protection of the defendant's free choice independent of concern for the objective fairness of the proceeding''); *United States* v. *Washington*, 797 F.2d 1461, 1465 (9th Cir. 1986) (''denial of a criminal defendant's qualified right to retain counsel of his choice is reversible error regardless [of] whether prejudice is shown''); *State* v. *Mebane*, 204 Conn. 585, 595, 529 A.2d 680 (1987), cert. denied, 484 U.S. 1046, 108 S. Ct. 784, 98 L. Ed. 2d 870 (1988) (''a per se rule of automatic reversal . . . properly vindicates the denial of the defendant's fundamental constitutional right to assistance of counsel guaranteed by the sixth amendment''). Therefore, if the trial court in the present case improperly disqualified Mastronardi, the appropriate

remedy is to reverse the judgment of conviction and grant the defendant a new trial with his counsel of choice.

On the basis of the trial court record before us, we conclude that the state failed to demonstrate a compelling need for Mastronardi's testimony. First, because Brown was mentioned by name in both the arrest warrant affidavit and the second substitute information filed in court on January 20, 1998, it is undisputed that his identity as a potential witness and as a victim was known nearly one year before his murder. Second, the notice of service of disclosure of December 23, 1998, filed by the state, constituted a public record that memorialized the release of all of the witnesses' statements to Mastronardi pursuant to the trial court's December 9, 1998 discovery order. Indeed, as Satti's testimony demonstrated, Mastronardi was not the exclusive source of the fact that statements had been disclosed to him. Accordingly, the state never provided the court with specific information that *only* Mastronardi could provide.[10]

To the contrary, the state's attorney acknowledged that, ''perhaps the state can develop the information it wants to develop through some other avenue. That may well be. I don't know that it is in fact true at this time. But that does not mean the state would then be restricted and deprived of giving Mr. Mastronardi's evidence as well.'' Necessity, not mere relevance, however, is the touchstone.

At oral argument before this court, however, the state advanced a new theory in support of the trial court's order disqualifying Mastronardi. In specific, the state contended that, prior to December 23, 1998, the defendant did not know that Brown would be an actual witness against him because he believed that a witness was someone who had given a statement to the police and the defendant did not know that Brown had done so until on or about December 23, 1998. In the warrant for the defendant's arrest, the police officer's affidavit recited that, after the drive-by shooting involving Snead, ''[b]oth children were traumatized and were unwilling to talk about the incident.'' Therefore, according to the state, Mastronardi's testimony was needed to establish that the defendant learned of Brown's statement on or about December 23, 1998, thereby allowing the jury to infer that the defendant was responsible for the deaths of Brown and Clarke on January 7, 1999.

As we previously noted, however, the state never argued to the trial court that Mastronardi's testimony was necessary because only he could testify that he had given the defendant any witness statements or that he had shared their contents with the defendant. Moreover, even when given the opportunity to question Mastronardi, the state never asked him about what, if anything, he did in connection with any of the state-

ments he had been given pursuant to the court order. See footnote 7 of this opinion. As a result, like Satti, Mastronardi merely related the terms of the trial court's discovery order, confirming that he was permitted to discuss the contents of any statements with the defendant, but not to disclose the identity of the authors of two of the statements. In fact, the only questions the state asked Mastronardi pertained to the unusual nature of the court order and whether he ever had violated an order of the court, to which he responded in the negative.[11] Under the particular circumstances of this case, because the state did not demonstrate the compelling need for Mastronardi's testimony; see *Ullmann* v. *State*, supra, 230 Conn. 717; the appropriate remedy for this court is to order a new trial. *State* v. *Mebane*, supra, 204 Conn. 595.

The judgment is reversed and the case is remanded for a new trial.

In this opinion BORDEN, NORCOTT and PALMER, Js., concurred.

[1] General Statutes § 51-199 (b) provides in relevant part: "The following matters shall be taken directly to the Supreme Court . . . (3) an appeal in any criminal action involving a conviction for a capital felony, class A felony, or other felony, including any persistent offender status, for which the maximum sentence which may be imposed exceeds twenty years . . . ."

[2] General Statutes § 53a-49 (a) provides: "A person is guilty of an attempt to commit a crime if, acting with the kind of mental state required for commission of the crime, he: (1) Intentionally engages in conduct which would constitute the crime if attendant circumstances were as he believes them to be; or (2) intentionally does or omits to do anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime."

[3] General Statutes § 53a-54a (a) provides in relevant part: "A person is guilty of murder when, with intent to cause the death of another person, he causes the death of such person or of a third person . . . ."

[4] General Statutes (Rev. to 1997) § 53-21 provides in relevant part: "Any person who (1) wilfully or unlawfully causes or permits any child under the age of sixteen years to be placed in such a situation that the life or limb of such child is endangered, the health of such child is likely to be injured or the morals of such child are likely to be impaired, or does any act likely to impair the health or morals of any such child . . . shall be guilty of a class C felony."

[5] The attempted murder and risk of injury charges arose from one incident in 1997, while the murder charge arose from a separate incident in 1998. Pursuant to a motion by the state, the cases were consolidated for trial.

[6] The defendant was convicted of two counts of capital felony for the murders of Clarke and Brown and, after a penalty hearing, was sentenced to life without the possibility of release. *State* v. *Peeler*, Superior Court, judicial district of Fairfield, Docket No. FBTCR990148396T (June 30, 2000). The defendant's appeal from that judgment and the state's appeal from the sentencing proceeding currently are pending in this court. *State* v. *Peeler*, Docket Nos. SC 16354/SC 16362.

[7] The questions that the state actually asked Satti and Mastronardi relating to the discovery when given the opportunity are relevant to our resolution of the issue because "a disqualification order, though final, is not independent of the issues to be tried. Its validity cannot be adequately reviewed until trial is complete. The effect of the disqualification on the defense, and hence whether the asserted right has been violated, cannot be fairly assessed until the substance of the prosecution's and defendant's cases is known. In this respect the right claimed by [the] petitioners is analogous to the speedy trial right." *Flanagan* v. *United States*, 465 U.S. 259, 268–69, 104 S. Ct. 1051, 79 L. Ed. 2d 288 (1984); see id., 269 (holding that "a disqualification order does not qualify as an immediately appealable collateral order in a straight-

forward application of the necessary conditions laid down in prior cases'').

[8] The defendant claims that, in deciding whether to disqualify Mastronardi, the trial court should have considered representations by counsel that no conflict existed; see *State* v. *Drakeford*, 261 Conn. 420, 429, 802 A.2d 844 (2002); and whether a stipulation regarding specific facts would have been a proper solution to the state's dilemma. See *State* v. *Crespo*, 246 Conn. 665, 696–97, 718 A.2d 925 (1998), cert. denied, 525 U.S. 1125, 119 S. Ct. 911, 142 L. Ed. 2d 909 (1999). Because we conclude that the state did not demonstrate that Mastronardi's testimony was necessary, we need not address these claims.

[9] The defendant claims that he is entitled to greater protections in this regard under the Connecticut constitution than under the United States constitution. The state contends that, in *State* v. *Webb*, 238 Conn. 389, 413–14 n.23, 680 A.2d 147 (1996), this court rejected the contention that the state constitution affords more extensive rights to counsel than does the federal constitution in the context of conflict free representation. The court in *Webb*, however, limited its review to the federal constitutional claim because the defendant did not present an independent and separate state constitutional analysis. See *State* v. *Vega*, 259 Conn. 374, 384 n.15, 788 A.2d 1221, cert. denied, U.S. , 123 S. Ct. 152, 154 L. Ed. 2d 56 (2002) (independent state analysis required). In light of our conclusion that the defendant is entitled to relief under the federal constitution, we need not decide whether the state constitution affords greater protection in this regard.

[10] Because the state never provided the court with the specific information that it wanted to elicit from Mastronardi, the possibility of an attempt to resolve the issue by Mastronardi providing a stipulation would have been illusory.

[11] The dissent's argument distills to its determination that, as the state asserts, the trial court reasonably could have found that the state had a compelling need to call Mastronardi as a witness to establish whether he had supplied the defendant with information in violation of an explicit court order. For all the reasons that we already have enumerated, we simply disagree.