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KATZ, J., dissenting. The majority concludes that, when a motion for judgment of acquittal is denied at the close of the state's case, and a defendant subsequently produces evidence in his own behalf, the defendant thereby waives appellate review of that denial. In other words, applying the so-called ''waiver rule,'' the majority concludes that appellate review encompasses all of the evidence at trial, including the evidence presented by the defendant. Although I agree with the majority's conclusion that the waiver rule is constitutional, I cannot ignore the serious impact that the application of this rule will have on our system of criminal justice. In my view, the waiver rule places a criminal defendant on the horns of an unfair dilemma, forcing him to choose between two equally fundamental rights: the right to present a defense, and the right to have the state bear the burden of proving each and every element of a charged crime beyond a reasonable doubt. As this court previously has stated, ''[i]t is doubtful whether a criminal defendant should be placed in such a dilemma.'' *State* v. *Rutan*, 194 Conn. 438, 441, 479 A.2d 1209 (1984). Accordingly, I believe that this court should exercise its supervisory authority over the administration of justice to reject the application of the waiver rule in criminal cases.

In *Rutan*, this court stated: ''Under the waiver rule, when a motion for [judgment of] acquittal at the close of the state's case is denied, a defendant may not secure appellate review of the trial court's ruling without [forgoing] the right to put on evidence in his or her own behalf. The defendant's sole remedy is to remain silent and, if convicted, to seek reversal of the conviction because of insufficiency of the state's evidence. If the defendant elects to introduce evidence, the appellate review encompasses the evidence in toto. The defendant then runs the risk that the testimony of defense witnesses will fill an evidentiary gap in the state's case. The waiver rule, therefore, forces the defendant to choose between waiving the right to [present] a defense and waiving the right to put the state to its proof.'' Id., 440–41. It was the recognition of this choice that prompted the court to question the wisdom of placing a criminal defendant in such a dilemma. Although *Rutan* did not present an opportunity to reject the waiver rule, the court indicated that, ''in an appropriate case, we may well conclude that the denial of a defendant's motion for acquittal at the close of the state's case may be assignable as error on appeal from a conviction, whether or not the defendant has introduced evidence in his or her own behalf.'' Id., 444.

In so stating, the court in *Rutan* noted that ''[o]ur previous cases [had] applied the waiver rule without

any discussion of the rule's effect on the defendant's right to have the state prove his or her guilt beyond a reasonable doubt. . . . Our case law arose under former rules of practice which made no distinction between the motions for directed verdict in a civil trial and a criminal prosecution. In our courts, as in other jurisdictions, the waiver rule was imported from the civil to the criminal sphere along with the motion for directed verdict itself. . . . Our current rules of procedure, however, reflect a heightened awareness of the constitutional differences between civil and criminal fact finding under which the survival of the waiver rule is doubtful.'' (Citations omitted.) Id., 441–42; see *Cephus* v. *United States*, 324 F.2d 893, 896–97 (D.C. Cir. 1963); comment, ''The Motion for Acquittal: A Neglected Safeguard,'' 70 Yale L.J. 1151, 1151–52 (1961); W. Maltbie, Connecticut Appellate Procedure (2d Ed. 1957) § 212, pp. 262–63.

Practice Book § 42-40, which governs motions for judgment of acquittal in general, provides in relevant part: ''Motions for a directed verdict of acquittal and for dismissal when used during the course of a trial are abolished. Motions for a judgment of acquittal shall be used in their place. After the close of the prosecution's case in chief or at the close of all the evidence, upon motion of the defendant or upon its own motion, the judicial authority shall order the entry of a judgment of acquittal as to any principal offense charged and as to any lesser included offense for which the evidence would not reasonably permit a finding of guilty. . . .'' In other words, § 42-40 ''permits the defendant to make a motion for judgment of acquittal and thus avoid presenting a defense if the state has not made out a prima facie case.'' *State* v. *Allen*, 205 Conn. 370, 378, 533 A.2d 559 (1987). As an additional safeguard, Practice Book § 42-41 provides in relevant part that, ''[i]f the motion is made after the close of the prosecution's case in chief, the judicial authority *shall either grant or deny* the motion before calling upon the defendant to present the defendant's case in chief. . . .'' (Emphasis added.) Therefore, unlike a motion for a directed verdict made after the close of the plaintiff's case in a civil trial; see Practice Book § 16-37;[1] when a motion for judgment of acquittal is made at the close of the state's case in a criminal trial, the trial court cannot reserve its decision on that motion, but rather, must rule on that motion before proceeding with the defendant's case-in-chief. See Practice Book § 42-41.

Implicit in §§ 42-40 and 42-41 of the rules of practice is a recognition of the principle that ''[a] criminal defendant has the right to put the state to its burden and need not defend until and unless the state has presented a prima facie case.'' *State* v. *Allen*, supra, 205 Conn. 376. Put another way, ''the prosecution must introduce sufficient evidence to justify a conviction before the defendant may be required to respond.'' *State* v. *Rutan*,

supra, 194 Conn. 442–43. "One of the greatest safeguards for the individual under our system of criminal justice is the requirement that the prosecution must establish a prima facie case by its own evidence before the defendant may be put to his defense. 'Ours is the accusatorial as opposed to the inquisitorial system. . . . Under our system society carries the burden of proving its charge against the accused not out of his own mouth. It must establish its case, not by interrogation of the accused even under judicial safeguards, but by evidence independently secured through skillful investigation.' " *Cephus* v. *United States*, supra, 324 F.2d 895, quoting *Watts* v. *Indiana*, 338 U.S. 49, 54, 69 S. Ct. 1347, 93 L. Ed. 1801 (1949); see also *State* v. *Rutan*, supra, 443.

The waiver rule, however, as applied in a criminal case, cuts against these well established principles by forcing the defendant to choose between presenting a defense, at the risk of aiding the state in its prosecution, and not presenting a defense, with the hope that the jury nonetheless will acquit him or that an appellate court will conclude that the state's evidence was insufficient to support a guilty verdict. As one court recently stated, the waiver rule "presents a defendant whose motion to dismiss has been erroneously denied with a Hobson's choice:[2] resting and sacrificing the right to present a defense out of fear that his or her testimony may cure defects in the prosecution's case, or putting on such evidence and thereby possibly assisting the prosecution in proving its case. This choice in essence compels a defendant to aid in his own prosecution and lessens the prosecutor's burden to prove each and every element of the case beyond a reasonable doubt. It denies a defendant the protections of the statute governing motions to dismiss." *In re Anthony J.*, 117 Cal. App. 4th 718, 732, 11 Cal. Rptr. 3d 865 (2004).

Essentially, the waiver rule unduly restricts the right of an accused to have the prosecution prove a prima facie case before he is required to present a defense. "[T]he defendant's willingness to ask for acquittal on the [prosecution's] evidence is not a willingness to gamble on a prediction that the jury or appellate court will find that evidence insufficient. Moreover, there is danger that under the waiver rule prosecutions may be pursued with inadequate evidence in the hope that defendants will supply missing evidence." *Cephus* v. *United States*, supra, 324 F.2d 896.[3] In other words, the application of the waiver rule, on appeal, generates an effect on the underlying criminal trial that is patently unfair. See *State* v. *Allen*, supra, 205 Conn. 379 ("[a]lthough . . . an important function of a trial is a search for facts and truth . . . a trial must also be fair" [citation omitted; internal quotation marks omitted]).

The majority reasons that the rule "merely governs *the appellate review* of a criminal defendant's trial; it does not govern the trial itself." (Emphasis in original.)

Although it is true that the waiver rule applies on appeal to determine the scope of evidence to be reviewed, this court has recognized that ''[t]he trial of a criminal case, and the ensuing appeal from a judgment of conviction, are not separate and distinct proceedings divorced from one another. They are part of the continuum of the process of adjudication.'' (Internal quotation marks omitted.) *Bunkley* v. *Commissioner of Correction*, 222 Conn. 444, 459, 610 A.2d 598 (1992). Accordingly, a rule that is applied on appeal can have a definite effect on the underlying trial. See *Curry* v. *Burns*, 225 Conn. 782, 793, 626 A.2d 719 (1993) (''although the general verdict rule applies on appeal to preclude the consideration of certain claims, it has a definite effect on the trial''); see also *Ziman* v. *Whitley*, 110 Conn. 108, 114–15, 147 A. 370 (1929). The waiver rule requires a defendant's trial counsel to anticipate its application on appeal and, in the hurry of trial, decide whether to present a defense or remain silent. The result of this decision could have a substantial impact on either the jury's verdict, should the defendant decline to present a defense, or on appeal, should the defendant, in presenting a defense, unwittingly aid in his own prosecution.[4] This effect of the waiver rule, in my view, undermines both the integrity of the defendant Benjamin J. Perkins' trial, in the present case, and the perceived fairness of our judicial system as a whole.

Although, as I previously have stated herein, I agree with the majority that the waiver rule is constitutional, this determination does not end the analysis because, in my view, for all the reasons articulated in this dissenting opinion, the rule nevertheless places the criminal defendant in a dilemma that is of the utmost seriousness.[5] Therefore, in light of the rule's impact on the overall fairness of the proceedings, I would invoke this court's inherent supervisory authority over the administration of justice to reject the rule. ''Appellate courts possess an inherent supervisory authority over the administration of justice. . . . Supervisory powers are exercised to direct trial courts to adopt judicial procedures that will address matters that are 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. . . . *State* v. *Valedon*, 261 Conn. 381, 386, 802 A.2d 836 (2002). [O]ur supervisory authority is not a form of free-floating justice, untethered to legal principle. . . . *State* v. *Pouncey*, 241 Conn. 802, 812–13, 699 A.2d 901 (1997). Rather, the integrity of the judicial system serves as a unifying principle behind the seemingly disparate use of our supervisory powers. See *State* v. *Hines*, 243 Conn. 796, 815, 709 A.2d 522 (1998) ([o]ur supervisory powers are invoked only in the rare circumstance where [the] traditional protections are inadequate to ensure the fair and just administration of the courts) . . . .'' (Citation omitted; internal quotation marks omitted.) *State* v. *Higgins*, 265 Conn. 35, 61 n.26, 826 A.2d

1126 (2003).

In addition, ''[u]nder our supervisory authority, we have adopted rules intended to guide the lower courts in the administration of justice in all aspects of the criminal process.'' (Citations omitted; internal quotation marks omitted.) *State* v. *Valedon*, supra, 261 Conn. 386. I see no reason why this court should not invoke its supervisory authority, in conjunction with its supervisory power over proceedings on appeal; see Practice Book § 60-2;[6] to adopt a rule of appellate procedure that will guide this court and the Appellate Court in the fair administration of criminal appeals. See *State* v. *Madera*, 198 Conn. 92, 102, 503 A.2d 136 (1985) (this court has ''general supervisory powers over appellate procedure''); *State* v. *Revelo*, 55 Conn. App. 217, 232, 740 A.2d 390 (1999) (*Shea, J.*, dissenting) (appellate courts possess ''supervisory authority over proceedings on appeal 'to facilitate business and advance justice' ''), rev'd in part, 256 Conn. 494, 775 A.2d 260, cert. denied, 534 U.S. 1052, 122 S. Ct. 639, 151 L. Ed. 2d 558 (2001).

Accordingly, I believe that this court should exercise its supervisory authority over the administration of justice, and join those jurisdictions that reject the waiver rule in criminal cases.[7]

As the majority correctly notes; see footnote 23 of the majority opinion; the federal courts and a majority of state jurisdictions apply the waiver rule in criminal cases. There are at least seven states, however, that do not apply the waiver rule in criminal cases. See, e.g., *Ex parte Hardley*, 766 So. 2d 154, 157–58 (Ala. 1999) (''[w]e must review the denial of [the defendant's] motion for a judgment of acquittal at the close of the State's case-in-chief by considering the state of the evidence as it existed at that stage of the trial''); *In re Anthony J.*, supra, 117 Cal. App. 4th 730 (concluding that ''federal waiver rule . . . is not applicable in California''); *Cline* v. *State*, 720 A.2d 891, 892 n.6 (Del. 1998) (per curiam) (''The motion for acquittal must be tested solely on the State's case. The defendant's testimony in his case cannot be considered.''); *State* v. *Pennington*, 534 So. 2d 393, 395–96 (Fla. 1988) (en banc) (''[t]he Florida rule expressly states that a defendant's motion for judgment of acquittal at the close of the state's case is not waived by the defendant's subsequent introduction of evidence''); *Commonwealth* v. *Platt*, 440 Mass. 396, 400–401, 798 N.E.2d 1005 (2003) (''The only issue raised by a motion for a required finding of not guilty is whether the Commonwealth presented sufficient evidence of the defendant's guilt to submit the case to the jury. . . . To make this determination, we look only to the evidence presented by the Commonwealth, and disregard any contrary evidence presented by the defendant.'' [Citations omitted; internal quotation marks omitted.]); *People* v. *Garcia*, 398 Mich. 250, 256, 247 N.W.2d 547 (1976) (appellate review of denial of

motion for directed verdict of acquittal at close of prosecution's case limited to ''evidence *presented by the prosecution*'' [emphasis in original]); *State* v. *Reyes*, 50 N.J. 454, 459, 236 A.2d 385 (1967) (in reviewing denial of motion for judgment of acquittal made at conclusion of state's case, ''no consideration may be given to any evidence or inferences from the defendant's case'').

Because I would limit the scope of our review to the evidence presented by the state, I turn now to the sufficiency of that evidence. In so doing, I reiterate the standard of review that we apply to a claim of insufficient evidence. ''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. . . . *State* v. *Newsome*, 238 Conn. 588, 616, 682 A.2d 972 (1996).

''We note that the jury must find every element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense, [but] 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. . . . Id., 617.

''Moreover, it does not diminish the probative force of the evidence that it consists, in whole or in part, of evidence that is circumstantial rather than direct. . . . It is not one fact, but the cumulative impact of a multitude of facts which establishes guilt in a case involving substantial circumstantial evidence. . . . In evaluating evidence, the [finder] of fact is not required to accept as dispositive those inferences that are consistent with the defendant's innocence. . . . The [finder of fact] may draw whatever inferences from the evidence or facts established by the evidence it deems to be reasonable and logical. . . . *State* v. *McMahon*, 257 Conn. 544, 566–67, 778 A.2d 847 (2001) [cert. denied, 534 U.S. 1130, 122 S. Ct. 1069, 151 L. Ed. 2d 972 (2002)].

''Finally, [a]s we have often noted, proof beyond a reasonable doubt does not mean proof beyond all possible doubt . . . nor does proof beyond a reasonable doubt require acceptance of every hypothesis of innocence posed by the defendant that, had it been found credible by the [finder of fact], would have resulted in an acquittal. . . . 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 [finder of fact's] verdict of guilty. . . . Id., 567.'' (Internal quotation marks omitted.) *State* v. *Meehan*, 260 Conn. 372, 377–79, 796 A.2d 1191 (2002).

In the present case, I would conclude that the evidence presented by the state was insufficient to establish that the defendant had been under the influence of an intoxicating liquor at the time of the motor vehicle accident that caused the death of the victim, Michael Novack. Accordingly, I would conclude that the trial court improperly denied the defendant's first motion for judgment of acquittal as to the count of manslaughter in the second degree with a motor vehicle in violation of General Statutes § 53a-56b (a).[8]

The state presented Francis X. Grosner, who testified that, on November 20, 2000, he had worked as a bartender at the Tavern on Main in Westport from approximately 4:30 p.m. to 1:30 a.m. Grosner recalled seeing two men in the bar that night, and he testified that he believed that they had left the bar between 8 and 9 p.m. Grosner also testified that he had served two bottles of beer to one of the men. He could not, however, identify that man at the time of trial.

The defendant's friend, Jason Medvegy, testified that he had been with the defendant and the victim at La Cucina, a restaurant in Fairfield, from approximately 9:15 to 11 p.m. on November 20. Medvegy testified that the defendant was drinking scotch that night. He did not know, however, how much scotch the defendant had consumed that night. On cross-examination by defense counsel, Medvegy testified that the defendant had not appeared to be intoxicated.

Ralph Fidaleo, a bartender at La Cucina, testified that, between approximately 8:30 and 10:30 p.m., he had served three glasses of scotch to ''a G.Q. looking guy.'' According to Fidaleo, each glass contained about two ounces of scotch. Although Fidaleo described the customer as ''a very clean cut, good lookin[g] guy'' in his early thirties, he could not identify the defendant as that person at the time of trial. Further, on cross-examination by defense counsel, Fidaleo stated that the man had not appeared to be intoxicated. Fidaleo also admitted that the night had been ''fairly busy'' for the restaurant, and that he had been the only bartender servicing a crowd of twelve to fifteen people.

The state also presented the defendant's boss, Steven Habetz, who testified that the defendant had made five telephone calls to his cell phone between 12 a.m. and 12:30 a.m. on November 21, 2000, after the accident. Habetz explained that, through these telephone calls, he had been able to determine the defendant's location. Habetz testified that when he picked up the defendant,

he noted that the defendant ''looked like he had been in a brawl. He was bleeding from the head . . . and looked dirty.'' On cross-examination by defense counsel, Habetz testified that the defendant had appeared ''very upset,'' but had not appeared intoxicated. Indeed, Habetz stated that he had not smelled any alcohol on the defendant, and that the defendant had seemed ''very lucid.'' Habetz testified that he had brought the defendant back to his own house because he believed that the defendant needed to consult with an attorney, ''[a]nd it was my intention to get him an attorney.''

Finally, the state presented Joel Milzoff, a toxicologist with the department of public safety, who testified generally to the effects of alcohol. Milzoff testified that alcohol depresses functions of the nervous system, thereby inhibiting the reflexes and muscle control that are ''essential for operating a motor vehicle.'' Milzoff further testified that one dose of alcohol is equivalent to one twelve ounce beer, or one single ounce of scotch, and that even one dose of alcohol could depress the nervous system ''[t]o a slight degree . . . .'' According to Milzoff, this effect increases as the person consumes more alcohol.

Viewing this evidence as a whole and drawing all inferences in favor of supporting the jury's verdict, I cannot conclude that it establishes, beyond a reasonable doubt, that the defendant had been under the influence of intoxicating liquor at the time of the accident. Although Grosner and Fidaleo both testified that they had served alcohol to a man generally matching the defendant's description on the night of November 20, 2000, neither witness was able to identify the defendant at trial. In addition, Fidaleo testified that the man he had served the scotch to had not appeared intoxicated. Medvegy, who had been with the defendant at La Cucina for approximately two hours, could not testify as to how much alcohol the defendant had consumed that night. Moreover, both Medvegy and Habetz testified that the defendant had not appeared intoxicated. Finally, although Milzoff testified about the effects of alcohol, in general, he did not provide an expert opinion concerning whether *the defendant* had been intoxicated on the night of the accident. Therefore, I would conclude that the trial court improperly denied the defendant's first motion for judgment of acquittal on the charge of manslaughter in the second degree with a motor vehicle, because the state failed to present sufficient evidence to support a prima facie case on that charge.[9]

Accordingly, I respectfully dissent.

[1] Practice Book § 16-37 provides in relevant part: ''Whenever a motion for a directed verdict made at any time after the close of the plaintiff's case in chief is denied or for any reason is not granted, the judicial authority is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. The defendant may offer evidence in the event the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been

made. . . .''

[2] In passing, I note that this is an inaccurate use of the term ''Hobson's choice.'' That term does not signify a situation in which either alternative may be unfavorable; rather, it represents an illusory choice that is, in fact, no choice at all. *State* v. *Messler*, 19 Conn. App. 432, 436 n.3, 562 A.2d 1138 (1989) (''We note that the defendant's use of the term 'Hobson's choice' as a synonym for a choice of evils is inaccurate. The term is derived from the practice of Thomas Hobson . . . an English liveryman, of requiring each customer to take the next available horse. Thus, in modern usage a Hobson's choice is '[a]n apparent freedom of choice with no real alternative.' American Heritage Dictionary of the English Language, New College Edition, [p.] 626. The defendant does not claim that he was required to take the next available horse, but that he had to choose between two nags.''). Therefore, it is more appropriate to state that the defendant in the present case, Benjamin J. Perkins, was wedged between Scylla and Charybdis.

[3] In *Cephus* v. *United States*, supra, 324 F.2d 895–97, the United States Court of Appeals for the District of Columbia Circuit expressed, in dictum, its strong disapproval of the waiver rule. The court later applied the *Cephus* dictum as a holding in *Austin* v. *United States*, 382 F.2d 129, 138 and n.20 (D.C. Cir. 1967). In this regard, *Cephus* was at the forefront of what one commentator has characterized as a ''sharp attack'' on the rule. See 2A C. Wright, Federal Practice and Procedure (3d Ed. 2000) § 463, p. 287. The Court of Appeals has since overruled its earlier decision in *Austin*, and has joined the other federal circuits in applying the waiver rule in criminal cases. See *United States* v. *Foster*, 783 F.2d 1082, 1085–86 (D.C. Cir. 1986) (en banc). Although I recognize that the principles enunciated in *Cephus* are no longer the law of that federal circuit, the discussion of those principles in *Cephus* persuades me that this court should reject the waiver rule in Connecticut.

[4] The majority notes that, when a motion for judgment of acquittal at the close of the state's case is granted, double jeopardy principles prevent the state from obtaining appellate review of that ruling. See *State* v. *Paolella*, 210 Conn. 110, 122, 554 A.2d 702 (1989). The majority therefore reasons that, ''[i]n this regard, the failure to follow the waiver rule would give the defendant the best of both worlds: if his motion for a judgment of acquittal is granted, the trial has ended and the state cannot obtain review of the trial court's ruling; if his motion is denied, he would be able to secure appellate review of that denial, irrespective of the evidence that was ultimately submitted to the jury.'' See footnote 27 of the majority opinion. In essence, the majority reasons that, because double jeopardy principles protect a defendant from successive prosecution following a judgment of acquittal, he somehow should have less of a right to have the state meet its burden to establish a prima facie case against him before he is required to present a defense. I cannot agree with the majority's observation.

[5] Unlike the examples of other difficult choices that a defendant confronts in the course of a criminal trial to which the majority points, the dilemma the defendant faces because of the waiver rule occurs essentially as a result of trial court error in failing to grant his motion for judgment of acquittal at the close of the state's case.

[6] Practice Book § 60-2 provides in relevant part: ''The supervision and control of the proceedings on appeal shall be in the court having appellate jurisdiction from the time the appeal is filed, or earlier, if appropriate, and, except as otherwise provided in these rules, any motion the purpose of which is to complete or perfect the trial court record for presentation on appeal shall be made to the court in which the appeal is pending. The court may, on its own motion or upon motion of any party, modify or vacate any order made by the trial court, or a judge thereof, in relation to the prosecution of the appeal. . . .''

[7] In addition, I note that even the jurisdictions that follow the waiver rule do not apply the rule in all cases. For example, some courts do not apply the waiver rule when the defendant has not presented evidence in his or her own behalf, but rather, merely has cross-examined or rebutted a codefendant's witnesses. See, e.g., *United States* v. *Belt*, 574 F.2d 1234, 1236 (5th Cir. 1978); *State* v. *Copes*, 244 Kan. 604, 610, 722 P.2d 742 (1989). In addition, at least one court has concluded that ''a defendant who presents evidence on one count, but no evidence on another count, preserves his right to have the nonrebutted count reviewed based on the government's case alone.'' *United States* v. *Thomas*, 987 F.2d 697, 703 (11th Cir. 1993).

Moreover, in 1994, the Federal Rules of Criminal Procedure were amended to permit the trial court to reserve its ruling on a motion for judgment of

acquittal made at the close of the prosecution's case. See Fed. R. Crim. P. 29 (b). If the trial court reserves its ruling, however, ''it must decide the motion on the basis of the evidence at the time the ruling was reserved.'' Id. According to one commentator, the 1994 amendment, which added subsection (b) to rule 29, ''put an end to the waiver doctrine for cases in which the court reserves but does not rule on the motion.'' 2A C. Wright, Federal Practice and Procedure (Sup. 2004) § 463, p. 35. Notably, prior to 1994, the federal rules were similar to our rules of practice, in that they did not permit the trial court to reserve its ruling on a motion for judgment of acquittal made at the close of the prosecution's case. Consequently, several federal courts refused to apply the waiver rule on appeal when the trial court improperly had reserved its ruling on such a motion. See, e.g., *United States* v. *Rhodes*, 631 F.2d 43, 44 (5th Cir. 1980) (''if the trial court erroneously defers ruling on the motion for acquittal and the defendant presents evidence, the appellate court in reviewing the sufficiency of the evidence will only consider the evidence presented in the Government's case-in-chief''); *United States* v. *House*, 551 F.2d 756, 760 (8th Cir.) (''the entire record should not be reviewed for evidence of guilt where the defendant has aggressively sought and was refused the trial judge's view of the sufficiency of the evidence''), cert. denied, 434 U.S. 850, 98 S. Ct. 161, 54 L. Ed. 2d 119 (1977).

[8] General Statutes § 53a-56b (a) provides: ''A person is guilty of manslaughter in the second degree with a motor vehicle when, while operating a motor vehicle under the influence of intoxicating liquor or any drug or both, he causes the death of another person as a consequence of the effect of such liquor or drug.''

[9] I nonetheless would conclude that the state's evidence was sufficient to support the defendant's conviction of misconduct with a motor vehicle in violation of General Statutes § 53a-57 (a), which provides: ''A person is guilty of misconduct with a motor vehicle when, with criminal negligence in the operation of a motor vehicle, he causes the death of another person.'' General Statutes § 53a-3 (14) defines criminal negligence in relevant part as ''a gross deviation from the standard of care that a reasonable person would observe in the situation . . . .'' In addition, ''[c]onsumption of alcohol, whether to the point of influence or intoxication, is not required to prove a violation of § 53a-57 . . . .'' *State* v. *Ortiz*, 29 Conn. App. 825, 834 n.5, 618 A.2d 547 (1993).

Through the expert testimony of David Kassay, a sergeant with the Westport police department, the state presented the following evidence. The accident had occurred on a section of Wilton Road that is a two lane roadway with winding curves and rolling hills. The roadway was ''damp'' on the night of the accident. The posted speed limit of that section of Wilton Road was twenty-five miles per hour. At the time of the accident, the defendant's vehicle had been traveling at a speed of at least forty-seven miles per hour. Kassay concluded, on the basis of several methods of accident reconstruction, that ''[e]xcessive speed'' was a contributing factor in the collision. In addition, although I believe that the state's evidence was insufficient to establish that the defendant had been under the influence of an intoxicating liquor, the state nonetheless presented sufficient evidence, through the testimony of Medvegy, that the defendant had been drinking scotch less than three hours before the accident occurred.

On the basis of the cumulative effect of this evidence and all the inferences reasonably drawn therefrom, the jury reasonably could have concluded, beyond a reasonable doubt, that the defendant had been criminally negligent in driving at a speed of approximately double the posted speed limit, late at night, on a damp, two lane roadway with winding curves and rolling hills, less than three hours after having consumed alcohol. See *State* v. *Ortiz*, supra, 29 Conn. App. 836–37; *State* v. *Dawson*, 23 Conn. App. 720, 723–24, 583 A.2d 1326 (1991). The jury also reasonably could have concluded that the defendant's criminal negligence had caused the collision which, in turn, had caused the victim's death. Therefore, I would conclude that the state presented sufficient evidence to support the conviction of misconduct with a motor vehicle and, accordingly, the trial court properly denied the defendant's motion for judgment of acquittal as to that count.