STATE OF CONNECTICUT *v.* LARRY DAVIS
(SC 17829)

Rogers, C. J., and Katz, Palmer, Vertefeuille and Zarella, Js.

Argued October 17, 2007—officially released March 18, 2008

Ira B. Grudberg, with whom were *Trisha M. Morris*, and, on the brief, *Joshua D. Lanning*, for the appellant (defendant).

Timothy J. Sugrue, senior assistant state's attorney, with whom, on the brief, were *Michael Dearington*, state's attorney, and *James G. Clark*, senior assistant state's attorney, for the appellee (state).

Opinion

ROGERS, C. J. The dispositive issue in this certified appeal is whether the Appellate Court properly concluded that the defendant, Larry Davis, had not been deprived of his right to a fair trial under the due process clause of the federal constitution[1] by the joint trial of three legally unrelated informations.[2] We conclude that, although the offenses charged in one of the three informations involved brutal and shocking conduct, the trial court's thorough and proper jury instructions cured any risk of prejudice to the defendant. Accordingly, we affirm the judgment of the Appellate Court.

In connection with three separate incidents, the defendant was charged in three informations.[3] The first information, docket number CR00-0490576, pertained to a shooting that occurred on September 28, 1998, in a parking lot located near Yale-New Haven Hospital, during which Victoria Standberry was wounded severely (Standberry information or Standberry case). In connection with that incident, the defendant was charged with assault in the first degree in violation of General Statutes §§ 53a-8 (a) and 53a-59 (a) (5), carrying a pistol without a permit in violation of General Statutes (Rev. to 1997) § 29-35, criminal possession of a firearm in violation of General Statutes (Rev. to 1997) § 53a-217, failure to appear in the first degree in violation of General Statutes § 53a-172 and, in a part B information, being a persistent dangerous felony offender in violation of General Statutes (Rev. to 1997) § 53a-40 (a) and (f). The second information, docket number CR03-0024537, pertained to an armed robbery of Lenwood E. Smith, Jr., that occurred on January 25, 2002 (Smith information or Smith case). In connection with that incident, the defendant was charged with robbery in the first degree in violation of General Statutes § 53a-134 (a) (4), larceny in the second degree in violation of General Statutes § 53a-123 (a) (3) and, in a part B information, being a persistent dangerous felony offender in violation of General Statutes § 53a-40 (a) and (h). The third information, docket number CR03-0024538, pertained to an armed robbery of Leonard Hughes that occurred on March 13, 2002 (Hughes information or Hughes case). In connection with that incident, the defendant was charged with burglary in the second degree in violation of General Statutes § 53a-102 (a) (2), robbery in the first degree in violation of § 53a-134 (a) (4) and larceny in the second degree in violation of § 53a-123 (a) (3).

Prior to trial, the state moved to consolidate, and the defendant moved to sever, the three separate informations. Additionally, the state moved to consolidate for trial a fourth information that charged the defendant with robbery in the first degree, criminal use of a firearm, risk of injury to a child and failure to appear in the first degree (fourth information). The defendant

objected to the state's motion for consolidation, claiming that the offenses charged in the fourth information and in the Standberry information were brutal and shocking in nature and, therefore, a joint trial would "impede the defendant's constitutional right to a fair trial by an impartial jury." In its memorandum of decision on the motion to consolidate, the trial court, *Fasano, J.*, recognized that the offenses in the fourth information arose out of an incident in which the defendant allegedly had entered the home of an individual and had "demanded money at gunpoint and [had] threatened [that individual's] children at gunpoint." He therefore sustained the defendant's objection with respect to the fourth information, concluding that an "armed threat to children could well fuel the prejudice of jurors against the defendant with respect to the other similar crimes." The trial court overruled the defendant's objection with respect to the Standberry information, however, concluding that, although "the incident is obviously serious and involves violence, based upon the information before the court, it is not so brutal or shocking that its consolidation with the other matters would result in substantial injustice and prejudice beyond the curative power of the court's instructions." Accordingly, the trial court granted the state's motion to consolidate for trial the Standberry, Smith and Hughes informations, but denied the state's motion to consolidate the fourth information.

Throughout the course of the proceedings before the trial court, *Licari, J.*, the defendant repeatedly renewed his objection to the order of consolidation, and moved to sever the Standberry, Smith and Hughes informations, claiming undue prejudice. The trial court, however, denied all of these motions, concluding that its detailed jury instructions were sufficient to cure any risk of prejudice to the defendant. During jury selection and throughout the trial, the trial court repeatedly and thoroughly instructed the jury that the Standberry, Smith and Hughes informations had been consolidated only for purposes of judicial efficiency, and that the evidence in each case must be considered separately and independently. Additionally, at trial, the state presented its evidence in each case chronologically and sequentially, beginning with the offenses charged in the Standberry information and ending with the offenses charged in the Hughes information.

The jury found the defendant guilty of all of the offenses charged in the Standberry and Smith informations, but not guilty of all of the offenses charged in the Hughes information. See also footnote 3 of this opinion. In a subsequent trial on the accompanying part B informations, the jury found the defendant guilty of two counts of being a persistent dangerous felony offender. The trial court rendered judgment in accordance with the jury's verdict, and imposed a total effective sentence of eighty years imprisonment.

The defendant appealed from the trial court's judgments of conviction to the Appellate Court claiming, inter alia, that the trial court improperly had granted the state's motion to consolidate, and had denied the defendant's motion to sever, the Standberry, Smith and Hughes informations for trial.[4] The Appellate Court concluded that the trial court had not abused its discretion by consolidating the three informations for trial under the standards enunciated in *State* v. *Boscarino*, 204 Conn. 714, 720–21, 529 A.2d 1260 (1987), and its progeny. *State* v. *Davis*, 98 Conn. App. 608, 614–25, 911 A.2d 753 (2006). Specifically, the Appellate Court concluded that, "[e]ach case was sufficiently factually dissimilar so that the defendant was not exposed to potential prejudice from the jury"; id., 618; and that the offenses charged in the Standberry information were "not so brutal and shocking [when compared to the offenses charged in the Smith and Hughes informations so] as to result in unfair prejudice to the defendant." Id., 622. Regardless, the Appellate Court concluded that the trial court's "repeated and detailed jury instructions cured any prejudice" that may have flowed from the trial court's order of consolidation. Id. Accordingly, the Appellate Court affirmed the judgments of the trial court; id., 638; and this certified appeal followed.

The jury reasonably could have found the following facts, as summarized in part by the Appellate Court, with respect to the offenses charged in the Standberry information. "In September, 1998, the first victim, [Standberry], had been introduced to the defendant by her best friend, Taraneisha Brown. Brown and the defendant were involved in a personal relationship. On September 27, 1998, Standberry asked Brown for payment toward a substantial debt owed by Brown. Brown replied that she would return Standberry's telephone call but never did.

"The next day, the defendant received a telephone call in the afternoon and left work early. On the evening of September 28, 1998, Standberry parked her vehicle in the Pro Park parking lot located near Yale-New Haven Hospital (hospital), where she was employed in the food and nutrition department. Brown knew that Standberry parked in that particular lot when working at the hospital. Standberry left the hospital carrying a plate of food at approximately 9:25 p.m. and went to her vehicle. As she was placing the food in her vehicle, she observed an individual approach. She attempted to close her door, but it was forced open. The defendant came up to Standberry, said 'revenge,' and shot her several times before slowly walking away." Id., 611. Despite severe physical injuries, Standberry was able to drive her vehicle, with the driver side door open and her injured leg hanging outside of the vehicle, to the entrance of the children's hospital. An ambulance was summoned and Standberry was rushed to the emergency room, where

she underwent several surgeries. Standberry testified that a cadaver bone was inserted in her shoulder to repair bone loss and nerve damage, and that two bullets remain in her body, one in her hip and one in her knee.[5]

The jury reasonably could have found the following facts, as summarized by the Appellate Court, with respect to the offenses charged in the Smith information. "The second victim, [Smith], was at a club in New Haven on January 25, 2002. After speaking with the defendant for approximately twenty minutes, he left at 2 a.m. The defendant stopped Smith in the parking lot and asked for a ride to Sheffield Street. Smith agreed, and the defendant and his friend entered Smith's vehicle. After arriving, the defendant asked Smith to drive them to Carmel Street, where an individual known as 'Mizzy' owed him money. After Smith drove to the bottom of a hill, the defendant took out a gun and threatened him. Smith continued on to Carmel Street and parked. The defendant placed his gun against Smith's head and demanded money. Smith gave the defendant his wallet and told him that he could get more from an automated teller machine. Smith drove to a nearby bank and, after parking, fled to a nearby gas station. Smith telephoned the police and showed them the bank parking lot where he had left his vehicle. The police recovered Smith's vehicle approximately one week later." Id., 612–13.

Lastly, "[a] summary of the evidence presented against the defendant with respect to [the Hughes information] is necessary for our discussion. There was evidence presented that Hughes was the superintendent of a building at 260 Dwight Street in New Haven. During the early morning of March 13, 2002, the defendant rang Hughes' doorbell and said he was there to pick up items that an individual known as 'Magnetic' had left for him. These items included a motor vehicle, a safe, a bullet-proof vest and 2.5 kilograms of cocaine. The defendant entered the apartment, pointed a gun at Hughes and ordered him to turn over the requested items. The defendant took the keys to the motor vehicle and specifically asked for the cocaine. Hughes responded that there was no cocaine in the apartment. After being told to get on his knees, Hughes indicated that he would give the defendant the cocaine. The two men walked into a storage area, and Hughes managed to duck behind a steel door, escape through a window and flee to a nearby hotel. Hughes reported the incident to the police, who searched for the defendant, but were unable to locate him. Later that day, police officers recovered Hughes' motor vehicle." Id., 613–14.

On appeal to this court, the defendant renews the claim that he raised in the Appellate Court, namely, that the joint trial of the Standberry, Smith and Hughes informations resulted in substantial prejudice to the defendant because the evidence adduced in the

Standberry case was brutal and shocking in nature and, therefore, inflamed the passions of the jurors beyond the curative powers of the trial court's instructions.[6] We disagree.

The principles that govern our review of a trial court's ruling on a motion for joinder or a motion for severance are well established. Practice Book § 41-19 provides that, "[t]he judicial authority may, upon its own motion or the motion of any party, order that two or more informations, whether against the same defendant or different defendants, be tried together." See also General Statutes § 54-57 ("[w]henever two or more cases are pending at the same time against the same party in the same court for offenses of the same character, counts for such offenses may be joined in one information unless the court orders otherwise"). "In deciding whether to sever informations joined for trial, the trial court enjoys broad discretion, which, in the absence of manifest abuse, an appellate court may not disturb. . . . The defendant bears a heavy burden of showing that the denial of severance resulted in substantial injustice, and that any resulting prejudice was beyond the curative power of the court's instructions." (Internal quotation marks omitted.) *State* v. *Randolph*, 284 Conn. 328, 337, 933 A.2d 1158 (2007).

"Substantial prejudice does not necessarily result from a denial of severance even [if the] evidence of one offense would not have been admissible at a separate trial involving the second offense. . . . Consolidation under such circumstances, however, may expose the defendant to potential prejudice for three reasons: First, when several charges have been made against the defendant, the jury may consider that a person charged with doing so many things is a bad [person] who must have done something, and may cumulate evidence against him . . . . Second, the jury may have used the evidence of one case to convict the defendant in another case even though that evidence would have been inadmissible at a separate trial. . . . [Third] joinder of cases that are factually similar but legally unconnected . . . present[s] the . . . danger that a defendant will be subjected to the omnipresent risk . . . that although so much [of the evidence] as would be admissible upon any one of the charges might not [persuade the jury] of the accused's guilt, the sum of it will convince them as to all. . . .

"Despite the existence of these risks, this court consistently has recognized a clear presumption in favor of joinder and against severance . . . and, therefore, absent an abuse of discretion . . . will not second guess the considered judgment of the trial court as to the joinder or severance of two or more charges. . . .

"The court's discretion regarding joinder, however, is not unlimited; rather, that discretion must be exercised in a manner consistent with the defendant's right

to a fair trial. Consequently, we have identified several factors that a trial court should consider in deciding whether a severance may be necessary to avoid undue prejudice resulting from consolidation of multiple charges for trial. These factors include: (1) whether the charges involve discrete, easily distinguishable factual scenarios; (2) whether the crimes were of a violent nature or concerned brutal or shocking conduct on the defendant's part; and (3) the duration and complexity of the trial. . . . If any or all of these factors are present, a reviewing court must decide whether the trial court's jury instructions cured any prejudice that might have occurred." (Citation omitted; internal quotation marks omitted.) Id., 337–38; see also S*tate* v. *Boscarino*, supra, 204 Conn. 722–24.

We note that the defendant challenges the propriety of the Appellate Court's conclusion that he was not prejudiced by the joint trial of the Standberry, Smith and Hughes informations on the basis of the second *Boscarino* factor only.[7] Whether one or more offenses involve brutal or shocking conduct likely to arouse the passions of the jurors must be ascertained by comparing the relative levels of violence used to perpetrate the offenses charged in each information. See, e.g., *State* v. *Ellis*, 270 Conn. 337, 378, 852 A.2d 676 (2004) (defendant's abuse of one victim "was substantially more egregious than his abuse of other two [victims]" and, therefore, joinder was improper under second *Boscarino* factor); *State* v. *Horne*, 215 Conn. 538, 549, 577 A.2d 694 (1990) ("[t]he brutality with which the assailant carried out the robbery and sexual assault in [one] case was very likely to have so aroused the passions of the jury that it interfered with their fair consideration of the other three cases" in which defendant was charged only with robbery); *State* v. *Stevenson*, 43 Conn. App. 680, 691, 686 A.2d 500 (1996) ("when all of the cases sought to be consolidated are brutal or shocking, they may be joined properly, if consolidation does not cause a high risk of one case being tainted by the unusually shocking . . . or brutal nature of the other, or others"), cert. denied, 240 Conn. 920, 692 A.2d 817 (1997). Accordingly, to resolve the defendant's claim, we must compare the evidence adduced in the Standberry case with the evidence adduced in the Smith and Hughes cases to ascertain whether the defendant's conduct in the Standberry case was brutal and shocking in nature and, therefore, likely to have inflamed the passions of the jurors.

In the Standberry case, the victim, without warning, was shot multiple times at close range in an empty parking lot and suffered serious and extensive physical injuries, which required multiple surgeries to repair. The jury reasonably could have found that the shooting was not accidental or incidental to the completion of another crime, but, rather, was purposeful, premeditated and motivated by a desire for revenge. By contrast,

in the Smith and Hughes cases, although physical violence was threatened, no injuries were inflicted and the victims escaped unharmed. Moreover, the threat of violence was incidental to the completion of another crime, namely, burglary, robbery and larceny, and was not, as in the Standberry case, the primary objective of the offense. Stated another way, in the Smith and Hughes cases, the threat of physical violence was a means to an end, whereas, in the Standberry case, ruthless physical violence was the end in and of itself. On the basis of the foregoing, we conclude that the defendant's conduct in the Standberry case was significantly more brutal and shocking than his conduct in the Smith and Hughes cases, and that the level of violence used to perpetrate the crimes charged in the Standberry case was likely to have aroused the passions of the jurors. See *State* v. *Ellis*, supra, 270 Conn. 378; *State* v. *Horne*, supra, 215 Conn. 549; see also *State* v. *Boscarino*, supra, 204 Conn. 723 ("[w]e have acknowledged that evidence of a defendant's brutal or shocking conduct in one case may compromise the jury's ability to consider fairly the charges against him in other unrelated, but jointly tried cases"); *State* v. *Silver*, 139 Conn. 234, 240–41, 93 A.2d 154 (1952) ("Substantial injustice might result to a defendant where the evidence of one of the several crimes charged will show such brutality on his part that it is apt to arouse the passion of the jury against him to such an extent that they probably would not give fair consideration to the evidence relating to the other charges. Such a situation, however, is rare . . . .").

The Appellate Court concluded, however, that the Standberry case did not involve brutal or shocking conduct. *State* v. *Davis*, supra, 98 Conn. App. 619–22. In arriving at this conclusion, the Appellate Court distinguished *Ellis*, *Horne* and *Boscarino* by noting that those cases involved the crime of sexual assault, which "[s]hort of homicide . . . is the *ultimate violation of self*." (Emphasis in original; internal quotation marks omitted.) Id., 621, quoting *State* v. *Ellis*, supra, 270 Conn. 377; *State* v. *Horne*, supra, 215 Conn. 549–50; see also *State* v. *Jennings*, 216 Conn. 647, 659, 583 A.2d 915 (1990) (concluding that crimes of assault and kidnapping were not brutal and shocking in nature because "[t]he physical harm that was inflicted on the victim, although serious, was not disabling, and the element of sexual derangement present in *Boscarino* was absent"). We take this opportunity to clarify that the crimes of homicide and sexual assault are not the only crimes that are brutal and shocking under the second prong of the *Boscarino* test. Indeed, it is not the classification of the crime charged, but, rather, the level of violence and brutality used to perpetrate the crime that is dispositive of the court's inquiry. See, e.g., *State* v. *Ellis*, supra, 377 ("Not all crimes of sexual assault . . . are equally brutal and shocking. . . . For example, although [s]exual assaults in the first degree can be characterized as

brutal . . . [s]ome . . . evince a greater degree of brutality or shocking behavior than others. The question then becomes whether one of the sexual assault crimes . . . is so brutal and shocking when compared with the other, that a jury, even with proper instructions, could not treat them separately." [Citation omitted; internal quotation marks omitted.]); *State* v. *Herring*, 210 Conn. 78, 97, 554 A.2d 686 ("[w]hile any murder involves violent and upsetting circumstances, it would be unrealistic to assume that any and all such deaths would inevitably be so 'brutal and shocking' that a jury, with proper instructions to treat each killing separately, would necessarily be prejudiced by a joint trial"), cert. denied, 492 U.S. 912, 109 S. Ct. 3230, 106 L. Ed. 2d 579 (1989). It is beyond dispute that an unprovoked, ruthless and violent assault that results in life threatening physical injuries, as in the Standberry case, may be so brutal and shocking, especially when compared to the less violent offenses charged in a legally unrelated information, that the ability of the jury to deliberate objectively and dispassionately on the jointly tried cases may be impaired.

Having concluded that the defendant's conduct in the Standberry case was brutal and shocking when compared to his conduct in the Smith and Hughes cases, we next consider whether the trial court's jury instructions were sufficient to cure the risk of prejudice to the defendant. See *State* v. *Atkinson*, 235 Conn. 748, 766–67, 670 A.2d 276 (1996) ("in cases in which the likelihood of prejudice is not overwhelming . . . [the trial court's] curative instructions may tip the balance in favor of a finding that the defendant's right to a fair trial has been preserved" [internal quotation marks omitted]). The record reflects that, during voir dire, the trial court instructed each potential panel of jurors that the Standberry, Smith and Hughes informations had been consolidated for trial only for purposes of judicial efficiency, and that the evidence presented in each case must be considered separately and independently.[8] The trial court repeated these instructions after the jury was impaneled,[9] in its final charge[10] and after the jury had returned its verdicts on the offenses charged in the Smith and Standberry informations.[11] We conclude that the trial court's thorough, explicit and proper jury instructions cured the risk of prejudice to the defendant and, therefore, preserved the jury's ability to consider fairly and impartially the offenses charged in the jointly tried cases.[12] See *State* v. *Rivera*, 260 Conn. 486, 493, 798 A.2d 958 (2002) ("[a]lthough we might disagree with the trial court's conclusion that the two cases were not brutal or shocking, we cannot say, as a reviewing court, that the trial court's conclusion, coupled with proper and adequate jury instructions, constituted an abuse of discretion").

Our conclusion on this point is buttressed by the sequence in which the jury rendered its verdicts, as well

as the substance of those verdicts. After the Standberry, Smith and Hughes cases had been submitted to the jury for deliberation, the jury indicated that it had reached a unanimous verdict with respect to each of the offenses charged in the Smith case. The jury found the defendant guilty of those offenses, the trial court accepted the jury's verdicts and the jury resumed its deliberations on the offenses charged in the Standberry and Hughes cases. Thereafter, the jury indicated that it had reached a unanimous verdict with respect to each of the offenses charged in the Standberry case. The jury found the defendant guilty of those offenses, the trial court accepted the jury's verdicts and the jury resumed its deliberations on the offenses charged in the Hughes case. Finally, the jury indicated that it had reached a unanimous verdict with respect to each of the offenses charged in the Hughes case. The jury found the defendant not guilty of those offenses and the trial court accepted the jury's verdicts. We conclude that the sequential order in which the jury rendered its verdicts reveals that the jury considered the evidence adduced in each separately and independently in accordance with the trial court's instructions. Moreover, by acquitting the defendant of all of the offenses charged in the Hughes case, the jury evidently was able to keep the three cases separate and did not blindly condemn the defendant on the basis of the evidence adduced in the Standberry case. See *State* v. *Atkinson*, supra, 235 Conn. 766 ("by returning a verdict of not guilty on the charge of possession of a weapon in a correctional institution . . . the jury evidently was able to separate the two cases and did not blindly condemn the defendant on his participation in the murder"); *State* v. *Rodriguez*, 91 Conn. App. 112, 120–21, 881 A.2d 371 ("Although the jury found the defendant guilty of all the counts of burglary, attempt to commit burglary, larceny and criminal trespass that it considered, it found the defendant not guilty of one count of breach of the peace in the second degree. That acquittal demonstrated that the jury was able to consider each count separately and, therefore, was not confused or prejudiced against the defendant."), cert. denied, 276 Conn. 909, 886 A.2d 423 (2005).[13] Accordingly, we conclude that the defendant was not prejudiced by the joint trial of the Standberry, Smith and Hughes informations.

The judgment of the Appellate Court is affirmed.

In this opinion VERTEFEUILLE and ZARELLA, Js., concurred.

[1] The fourteenth amendment to the United States constitution, § 1, provides in relevant part: "No State shall . . . deprive any person of life, liberty or property, without due process of law . . . ."

[2] We granted the defendant's petition for certification to appeal limited to the following issue: "Whether the Appellate Court properly concluded that the defendant's right to a fair trial was not prejudiced by the trial court's consolidation for trial of three separate informations against the defendant?" *State* v. *Davis*, 281 Conn. 915, 917 A.2d 999 (2007).

[3] The defendant also was charged in a separate information, docket number CR91-0345579, with three counts of violation of probation in violation

of General Statutes § 53a-32. Following a bench trial, the trial court found that the defendant had violated the terms of his probation and, accordingly, revoked the defendant's probation.

[4] The defendant also claimed that the trial court improperly had: (1) admitted evidence of the defendant's parole status to establish consciousness of guilt; *State* v. *Davis*, 98 Conn. App. 608, 625, 911 A.2d 753 (2006); (2) admitted the testimony of the defendant's former criminal defense attorney, Thomas Farver, in violation of the attorney-client privilege; id., 630; and (3) found that the defendant had violated the terms of his probation in violation of General Statutes § 53a-32. Id., 636–37; see also footnote 3 of this opinion. The Appellate Court rejected each of these claims and, therefore, affirmed the judgments of the trial court. *State* v. *Davis*, supra, 638. The Appellate Court's resolution of these claims is not at issue in this appeal.

[5] The jury reasonably could have found the following facts with respect to the offense of failure to appear in the first degree. The defendant's jury trial on the Standberry information originally was scheduled to commence on October 9, 2001, but, after the defendant failed to appear on that date and on October 10, 2001, the trial court issued a warrant for his arrest. The defendant subsequently was arrested in Palm Beach County, Florida, on October 6, 2003, and was returned to Connecticut on December 3, 2003.

[6] The defendant also claims that the liberal presumption in favor of consolidation should be abolished because the minimal advantages to consolidation are outweighed significantly by the risk of prejudice to the defendant. As we observed in *State* v. *King*, 187 Conn. 292, 296–98, 445 A.2d 901 (1982), the liberal presumption in favor of consolidation derives from the rules of practice, which explicitly permit the trial court, in the absence of prejudice to the defendant, to consolidate multiple unrelated informations for trial for the purpose of judicial efficiency. See also id., 296 ("[i]t is apparent that [Practice Book § 41-19] intentionally broadened the circumstances under which two or more indictments or informations could be joined and that whether the offenses are of the 'same character' is no longer essential"); Practice Book § 41-19 ("[t]he judicial authority may, upon its own motion or the motion of any party, order that two or more informations, whether against the same defendant or different defendants, be tried together"); cf. Practice Book § 41-18 ("[i]f it appears that a defendant is prejudiced by a joinder of offenses, the judicial authority may, upon its own motion or the motion of the defendant, order separate trials of the counts or provide whatever other relief justice may require"). Because the defendant has not asked this court to overrule *King*, nor has he provided us with a persuasive reason to do so, we reject the defendant's claim. See generally *Hummel* v. *Marten Transport, Ltd.*, 282 Conn. 477, 494, 923 A.2d 657 (2007) ("The doctrine of stare decisis counsels that a court should not overrule its earlier decisions unless the most cogent reasons and inescapable logic require it. . . . Stare decisis is justified because it allows for predictability in the ordering of conduct, it promotes the necessary perception that the law is relatively unchanging, it saves resources and it promotes judicial efficiency. . . . It is the most important application of a theory of decisionmaking consistency in our legal culture and it is an obvious manifestation of the notion that decisionmaking consistency itself has normative value." [Internal quotation marks omitted.]).

Likewise, we disagree with the concurring opinion's proposed change from a liberal presumption in favor of consolidation to a presumption against consolidation, "under which joinder is presumptively favored *only* when the substantive evidence would be cross admissible in independent prosecutions; in the absence of such cross admissibility, prejudice is presumed and joinder will be proper only when the *Boscarino* factors demonstrate that the risk of prejudice is *substantially* reduced"; (emphasis in original); because such a change finds no support in the rules of practice governing joinder and severance; see Practice Book §§ 41-18 and 41-19; or in this court's jurisprudence. See, e.g., *State* v. *King*, supra, 187 Conn. 301–302 ("There is no question that joinder of the informations was obviously less advantageous than a separate trial. That, in and of itself, is hardly dispositive of the issue. . . . Needless to say, severance is not necessarily to be had for the asking. . . . The grant or denial of a motion for severance rests in the sound discretion of the trial judge. . . . Consistent with this discretion, which is broad, an accused bears a heavy burden to show that the denial of severance resulted in substantial injustice because of a manifest abuse of discretion in denying severance. . . . The burden includes a showing that any prejudice from joinder may be beyond the curative power of the court's instructions." [Citations omitted; internal quotation marks omitted.]); *State* v. *Silver*, 139 Conn. 234, 240, 93 A.2d 154 (1952) ("The discretion of a court to order separate trials should be exercised only when a joint trial will be substantially prejudicial to the rights of the defendant, and this means

something more than that a joint trial will be less advantageous to the defendant. . . . The test is whether substantial injustice will result to the defendant if the charges are tried together." [Citations omitted.]); *State* v. *Silver*, supra, 241 ("It is, of course, true that ordinarily upon the trial of one criminal charge evidence of the commission of another offense is not admissible. This principle, however, does not necessarily require separate trials when several offenses are charged against the same defendant. The rule itself is not one of universal application. There are many exceptions to it. . . . If the principle were applied to preclude the joint trial of several charges against the same defendant, the statute would be utterly meaningless. There never could be a joint trial and, therefore, there could be no reason for joining several counts in the same information." [Citations omitted.]).

[7] Accordingly, we do not analyze the first and third *Boscarino* factors, i.e., the similarity of the crimes charged and the duration and complexity of the trial. See, e.g., *State* v. *Ellis*, 270 Conn. 337, 376, 852 A.2d 676 (2004) (limiting analysis "to the second, and only, *Boscarino* factor addressed by the defendant").

[8] For example, on May 11, 2004, the trial court provided the following relevant instructions to the voir dire panel: "This first thing I want to tell you is that we are dealing with three criminal cases which have been commenced by the state of Connecticut against the defendant . . . . There are three separate cases which I will talk to you about in a moment. They have been consolidated by the court for trial . . . .

* * *

"Three separate cases. They're being tried together for the convenience of trial. The defendant is entitled to and must be given by you a separate and independent determination of whether he is guilty or not guilty not only as to each of these informations but as to each of the counts in those informations. The fact that there are three cases here as opposed to just one has absolutely no bearing whatsoever on whether the defendant is guilty or not guilty. The presumption of innocence is no less here because there is more than one charge or case. The defendant may just as well be not guilty in three cases as he can be in one. Whether the defendant is guilty or not guilty will ultimately depend on whether the state can meet its burden of proof with respect to each of these charges. What I am telling you is that you cannot and must not assume that just because of the number of charges against him or because of their similarity, that the defendant has done anything wrong. You cannot make that assumption.

"Your verdict on any count, the charge, does not control your verdict on the others. You must consider each count separately and independently, considering only the evidence that applies to it. That rule applies also to each information. You must separate the evidence. The defendant cannot be penalized in any way because the court, for the convenience of trial has combined these cases. These three separate cases have been consolidated for trial by the order of the court for the sake of judicial economy, which has nothing to do with whether the defendant is guilty or not guilty in any of these cases."

[9] The trial court instructed the jury in relevant part as follows: "Now, let me repeat one thing [I have] already told you—another thing [I have] already told you, and then [we are] going to get started with the evidence. I mentioned to you before that there are three separate cases on trial here. I want to repeat the comments that I gave you to make sure you understand that each of these cases is separate, and that you have to treat them separately. So, let me repeat the things that [I have] told you already in that regard . . . . There are three separate cases being tried here for the convenience of trial. The defendant is entitled to and must be given by you a separate and independent determination of whether he is guilty or not guilty, not only as to each count, but also as to each case or information. The fact that there are three cases here as opposed to just one has absolutely no bearing whatsoever on whether the defendant is guilty or not guilty. The presumption of innocence is no less here because there is more than one charge or case. The defendant may just as well be not guilty in three cases as he can be in one. Whether the defendant is guilty or not guilty will ultimately depend on whether the state can meet its burden of proof with respect to each of the charges before you. What I am flat out telling you is that you cannot and must not assume that the defendant has done something wrong just because of the number of charges against him or because of any similarity between them. Your verdict on any count—on any one count or charge does not control your verdict on any other. You must consider each count separately and independently, considering only the evidence that applies to that count. That rule applies to all three informations as well. You must separate the evidence. The defendant cannot be penalized in any way because the court, for the convenience of trial, has combined these cases. There are three

separate cases that have been consolidated for trial by my order for the sake of judicial economy, which has nothing to do with whether or not the defendant is guilty or not guilty of any of these cases. During voir dire, each of you assured us that consolidation would not prejudice the defendant in any way, and that you would consider each information and each count separately. It is your obligation to honor that assurance."

[10] The trial court charged the jury in relevant part as follows: "You must keep in mind that we have been trying three separate cases here. In the interest of time and economy, these cases have been tried together. Such consolidation has absolutely [no] bearing at all on the guilt or innocence of the defendant. The defendant is entitled to and must be given a separate and independent determination of whether he is guilty or not guilty not only as to each information but also with respect to each count of each information under which he is charged. The presumption of innocence is no less here because of the number of charges or the similarity. These factors are not evidence, and you must infer nothing from them. Whether the defendant is guilty or not guilty must be determined solely on whether the state, by its evidence presented here in court, has met its burden of proof not only as to each information, but also as to each count of each information. Again, you must infer nothing from consolidation, which was ordered by the court solely for the purpose of judicial economy. You cannot and must not assume that the defendant did something wrong just because of the number of charges against him or because of any similarity between them. The defendant cannot be penalized in any way because the court has combined these three separate cases. Even if you find that the defendant has been proven to have committed any one or more of the crimes charged against him, you may not use that conclusion to infer that he is therefore guilty of any of the other crimes charged against him. Your verdict on any one count does not control your verdict on any other count in any information. In short, each charge against the defendant requires an independent determination of whether the defendant is guilty or not guilty, considering only that evidence which applies to that particular charge. There can be no spillover of evidence; that is, each count in each information must be judged solely on the strength of the evidence that applies to it without regard to the evidence in any other count. I instruct you that your finding in any one count do[es] not in [itself] establish a basis for similar findings in any other count. For all practical purposes, the defendant is to be considered on trial separately in each information and count."

[11] After the jury had rendered its verdicts on the offenses charged in the Smith information, the trial court issued the following instructions: "I told you repeatedly that each of these cases is separate and that you must consider each one separately; that is apparent from the state of your deliberations at this point. Let me just again repeat to you that your verdicts on this case have absolutely no bearing at all on any decision you render in either the assault case or the remaining robbery case. This case has nothing to do with that and your verdicts here cannot effect you in any way. Do you all understand that? [Everybody is] saying yes. Okay." Similarly, after the jury had rendered its verdicts on the offenses charged in the Standberry information, the trial court issued the following instructions: "I would only add to that what I have already told you repeatedly, that regardless of the verdicts you have reached in the first two cases, they have absolutely no impact at all on any charge in the third case, and you are still obligated to reach an independent decision on the two remaining counts regardless of what you've done on anything else."

[12] The defendant claims that the trial court's instructions were insufficient to cure the risk of prejudice because, although the trial court properly instructed the jury that it could not "cross apply [the] evidence between the [three] cases," it failed to instruct the jury that it could not decide the outcome of one case "based on the emotion brought about by another." We reject this claim. The trial court repeatedly instructed the jury in relevant part that, "each charge against the defendant requires an independent determination of whether the defendant is guilty or not guilty, *considering only that evidence which applies to that particular charge. There can be no spillover of evidence*; that is, each count in each information must be judged solely on the strength of the evidence that applies to it without regard to the evidence in any other count." (Emphasis added.) Moreover, the trial court repeatedly emphasized that, "[t]he presumption of innocence is no less here because there is more than one charge or case." We conclude that these instructions more than adequately informed the jury that it could not find the defendant guilty of the offenses charged in the Smith and Hughes

cases on the basis of emotional spillover from the evidence adduced in the Standberry case.

[13] But see *State* v. *Boscarino*, supra, 204 Conn. 724 ("We can only speculate as to why the jury rendered varying conclusions as to the defendant's guilt in the four cases. It is beyond our power to probe the minds of the jurors in order to determine what considerations influenced their divergent verdicts. . . . The acquittals in [two of] the . . . cases suggest that the jury found the state's evidence in those cases insufficient to prove the defendant's guilt beyond a reasonable doubt. Those verdicts do not establish that the results in the four cases, had they been separately tried, would have been the same." [Citations omitted.]).