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STATE OF CONNECTICUT *v.* JOHN DEAN ORR
(SC 18172)

Rogers, C. J., and Norcott, Palmer, Vertefeuille and Schaller, Js.

Argued September 15, 2008—officially released May 26, 2009

W. Theodore Koch III, special public defender, for the appellant (defendant).

Marjorie Allen Dauster, senior assistant state's attorney, with whom, on the brief, were *Michael L. Regan*, state's attorney, and *Peter McShane*, supervisory assistant state's attorney, for the appellee (state).

Opinion

VERTEFEUILLE, J. The defendant, John Dean Orr, appeals[1] from the judgment of conviction, rendered after a jury trial, of two counts of harassment in the second degree in violation of General Statutes § 53a-183 (a) (3).[2] The defendant claims on appeal that the trial court improperly: (1) concluded that the dangerous client exception to the social worker-client confidentiality rule established in General Statutes § 52-146q (c) (2)[3] extends to in-court testimony, and thus improperly ordered the social worker who had previously treated the defendant to testify; and (2) admitted uncharged misconduct evidence, including the testimony of four witnesses for the state.[4] We affirm the judgment of the trial court.

The jury reasonably could have found the following facts. Beginning in 2001, the defendant began visiting with Kenneth Edwards, Jr., a captain in the New London police department. Over a two year period, the defendant's visits with Edwards at his office occurred almost weekly. During these visits, conversation between the two ranged from the defendant's concerns about the police department to discussion about both of their families and themselves. The defendant also regularly called Edwards by telephone, and the two exchanged dialogue similar to that of their face-to-face visits.

In 2003, Edwards terminated his relationship with the defendant after the defendant began exhibiting unhealthy aggressive behavior toward both Edwards and other officers working for the police department. Thereafter, the defendant became increasingly frustrated with Edwards, and started leaving him angry voicemails. In these voicemails, the defendant often would begin with a fairly calm demeanor, but eventually would escalate to the point that he was screaming angrily, yelling obscenities, saying that he wished Edwards was dead, and threatening both Edwards and his family.

On January 11 and 13, 2005, the defendant left two voicemail messages for Edwards on his office telephone in which he used curse words and accused Edwards of, among other things, giving the defendant's name "up to drug dealers," and attempting to charge him with arson.[5] As a result of these two voicemails, Edwards made a complaint to the New London police department. The defendant subsequently was arrested on a warrant.

The state ultimately charged the defendant with four counts of harassment in the second degree in violation of § 53a-183 (a) (1)[6] and (3).[7] Counts one and two concerned the January 11, 2005 telephone call to Edwards, while counts three and four concerned the January 13, 2005 telephone call. Each count was based respectively on different subdivisions of § 53a-183 (a). The defendant

moved to dismiss counts one and two on statute of limitations grounds, and the trial court thereafter denied the motion.

At trial, the state sought to introduce evidence of misconduct by the defendant through the testimony of five different witnesses. Doreen Fuller, the principal of an elementary school, Officers Graham Mugovero, Todd Bergeson and William Edwards,[8] all of the New London police department, and Christopher Burke, a licensed clinical social worker for the department of mental health and addiction services, all testified against the defendant. The defendant filed a motion in limine to preclude the misconduct evidence, but the trial court denied the motion, admitted the testimony and ordered Burke to testify after concluding that his testimony fell within the dangerous client exception to the social worker-client confidentiality rule.

At the conclusion of the trial, the jury acquitted the defendant of two counts of harassment in the second degree under § 53a-183 (a) (1), but found him guilty of two counts of harassment in the second degree in violation of § 53a-183 (a) (3). The trial court thereafter sentenced the defendant to a total effective term of six months incarceration, suspended after sixty days, with one year probation. This appeal followed.

I

The defendant first claims that the trial court improperly concluded that the dangerous client exception to the social worker-client confidentiality rule contained in § 52-146q (c) (2) permits in-court testimony by the social worker, and that Burke's testimony therefore was improperly ordered by the trial court. More specifically, the defendant claims that the trial court improperly ordered Burke to testify because the social worker-client confidence protected his testimony as confidential. The defendant further claims that recognition of the social worker-client confidence is essential to the mental health and well-being of Connecticut citizens, and that a testimonial exception to this confidentiality under § 52-146q (c) (2) would directly undermine this well-being. Additionally, the defendant asserts that admission of Burke's testimony was *not* a harmless impropriety because the testimony was probative in showing that Edwards was not alone in concluding that the defendant was a danger to Edwards and his family.

In response, the state asserts that § 52-146q (c) (2) creates a testimonial exception to the social worker-client confidentiality statute that allows social workers to testify and divulge otherwise protected confidential information communicated by a client only if the social worker believes that "there is a substantial risk of imminent physical injury by the person to himself or others . . . ." In the alternative, the state claims that even if this court should find that no testimonial exception

exists, the admission of Burke's testimony was a harmless impropriety because Edwards' testimony and the audiotapes of the voicemail messages demonstrate "an overwhelming case of harassment." We agree with the defendant that § 52-146q (c) (2) does not permit in-court testimony by the social worker, and that the trial court improperly ordered Burke to testify. We agree with the state, however, that this improper action by the trial court was harmless.

The following additional undisputed facts and procedural history are relevant to our resolution of this claim. The defendant filed a motion in limine to preclude the state from admitting evidence of misconduct by the defendant. Specifically, the defendant sought to preclude Burke, Fuller, Mugovero, Bergeson, and William Edwards from testifying. In his motion, the defendant objected to the admission of testimony by Burke, whom he argued would improperly breach the statutory social worker-client confidence by testifying. The trial court denied the motion in limine and ordered Burke to testify before the jury about the nature of his relationship as well as his prior communications with the defendant, concluding that his testimony fell within the dangerous client exception to the social worker-client confidentiality statute. The trial court then ordered Burke to answer questions not about the precise statements made to him by the defendant, but instead about his perceptions of what the defendant had told him. The trial court also gave a limiting instruction to the jury after Burke's testimony as to the proper use of the evidence.

At trial, Burke testified that after being telephoned by the police department, he interviewed the defendant in August, 2003, while the defendant was in lockup for a prior, unrelated charge. Without testifying as to the specific content of his interview of the defendant, Burke testified that his impression after the interview was one of "concern"; he "was very concerned about some of the contents of what [the defendant] had said," and believed that the defendant was "very angry" with Edwards and that both Edwards and his family "might be in danger." Burke further testified that pursuant to the statutory exception to the social worker-client confidentiality statute, he "felt [he] had a duty to warn [Edwards]" of this danger. In answering the state's questions on redirect examination, Burke again testified before the jury that his interview of the defendant occurred while the defendant was in "lockup."

The defendant's claim requires us to interpret § 52-146q (c) (2). We first address the appropriate standard of review. "Well settled principles of statutory interpretation govern our review." *Viera* v. *Cohen*, 283 Conn. 412, 420–21, 927 A.2d 843 (2007); see also, e.g., *Edelstein* v. *Dept. of Public Health & Addiction Services*, 240 Conn. 658, 659, 692 A.2d 803 (1997) (interpretation of

General Statutes § 52-146o, physician-patient confidentiality statute). "Because statutory interpretation is a question of law, our review is de novo." *Andover Ltd. Partnership I* v. *Board of Tax Review*, 232 Conn. 392, 396, 655 A.2d 759 (1995); see also *State* v. *Arthur H.*, 288 Conn. 582, 590, 953 A.2d 630 (2008) ("[a]s with any question of statutory construction, our review of this threshold question as to the requirements of the statute is plenary").

In construing § 52-146q, we are mindful of General Statutes § 1-2z,[9] which instructs us that "[o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning . . . § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Internal quotation marks omitted.) *State* v. *Jenkins*, 288 Conn. 610, 620, 954 A.2d 806 (2008); see also *State* v. *Arthur H.*, supra, 288 Conn. 590, citing *State* v. *Bletsch*, 281 Conn. 5, 16, 912 A.2d 992 (2007); *Windels* v. *Environmental Protection Commission*, 284 Conn. 268, 294–95, 933 A.2d 256 (2007); *Viera* v. *Cohen*, supra, 283 Conn. 421, citing *Nine State Street, LLC* v. *Planning & Zoning Commission*, 270 Conn. 42, 46, 850 A.2d 1032 (2004). "The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Tarnowsky* v. *Socci*, 271 Conn. 284, 287 n.3, 856 A.2d 408 (2004).

In accordance with § 1-2z, we begin our analysis with the text of the statute. Section 52-146q (b) provides in relevant part: "All communications and records shall be confidential and, except as provided in subsection (c) of this section, a social worker shall not disclose any such communications and records unless the person or his authorized representative consents to such disclosure. . . ." The subsection creating the relevant exception in the present case, § 52-146q (c), provides in relevant part: "Consent of the person shall not be required for the disclosure or transmission of such person's communications and records in the following situations *as specifically limited* . . . (2) Communications

and records may be disclosed when a social worker determines that there is a substantial risk of imminent physical injury by the person to himself or others . . . ." (Emphasis added.)

The text of § 52-146q (c) thus provides us with particular instructions: it requires that the statutory exceptions to the social worker-client confidentiality statute[10] be "specifically limited" to the specified situations. With regard to § 52-146q (c) (2), we note that the text of the exception requires that, for disclosure to be permitted, the social worker must determine that there is a "substantial" risk of "imminent" physical injury by the client to himself or others. This exception is precise and limited. The apparent intent of this exception is to permit disclosure in order to prevent imminent physical injury. Section 52-146q (c) (2) is silent, however, as to whether this exception extends to permitting the social worker to testify in court proceedings. This silence is notable because, in contrast, two of the other exceptions specifically reference court proceedings. Section 52-146q (c) (3) provides in relevant part that "[c]ommunications and records made in the course of an evaluation ordered by a court may be disclosed *at judicial proceedings* in which the person is a party . . . ."[11] (Emphasis added.) Additionally, subdivision (4) provides that "[c]ommunications and records may be disclosed *in a civil proceeding* in which the person introduces his mental condition as an element of his claim or defense . . . ."[12] (Emphasis added.) General Statutes § 52-146q (c) (4).

We note with particular emphasis that this silence does not constitute ambiguity.[13] This court has recently made clear that "[t]he fact that . . . relevant statutory provisions are silent . . . does not mean that they are ambiguous." *Carmel Hollow Associates Ltd. Partnership* v. *Bethlehem*, 269 Conn. 120, 133, 848 A.2d 451 (2004); see also *Manifold* v. *Ragaglia*, 272 Conn. 410, 419, 862 A.2d 292 (2004) ("[statutory] silence does not . . . necessarily equate to ambiguity"). Significantly, "[t]he test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Viera* v. *Cohen*, supra, 283 Conn. 421; *Tarnowsky* v. *Socci*, supra, 271 Conn. 287 n.3; see also *Genesky* v. *East Lyme*, 275 Conn. 246, 278, 881 A.2d 114 (2005) (*Borden*, *J.*, concurring) ("if the text of the statute at issue, considering its relationship to other statutes, as applied to the facts of the case, would permit more than one likely or plausible meaning, its meaning cannot be said to be 'plain and unambiguous' "). The silence of § 52-146q (c) (2) regarding whether it permits in-court testimony by a social worker should not be skewed as to indicate ambiguity for the purpose of looking beyond the text as allowed by § 1-2z. Instead, our case law is clear that ambiguity exists only if the statutory language at issue is susceptible to more than one plausible interpretation. The text of § 52-146q (c)

(2) is not susceptible to more than one plausible interpretation. Rather, the statutory exception is silent with regard to court testimony and that silence only furthers our need to examine closely the precise language of the statute in order to understand the legislature's intention. See *Carmel Hollow Associates Ltd. Partnership* v. *Bethlehem*, supra, 133 n.18 (finding no need to resort to legislative history in order to construe statute at issue because, despite silence of statute as to contested meaning, careful examination of statutory scheme and language indicate clear and reasonable interpretation).

We are mindful of the significance of the precise language and syntax used by the legislature in § 52-146q (b) to indicate its understanding and use of the term "confidential" with regard to its characterization of both the social worker-client confidentiality statute and the exceptions to that confidence laid out in § 52-146q (c). As previously set forth herein, § 52-146q (b) provides that "[a]ll communications and records shall be confidential *and*, *except as provided in subsection (c) of this section, a social worker shall not disclose any such communications and records* . . . ." (Emphasis added.) Importantly, the legislature explicitly provided that all communications and records are *both* confidential *and* not subject to disclosure, except as specifically excepted in subsection (c) of § 52-146q. The legislature, by virtue of its explicit provision for both confidentiality *and* limited disclosure, clearly indicated that it did not consider the word "confidential" to include the possibility of disclosure[14] and that all communications and records are confidential, regardless of their potential for disclosure.

The implications of this strict reading of the text are significant. Because all communications between social workers and their clients are confidential, those communications falling under the dangerous client exception are confidential as well. When a social worker determines, through communication with his or her client, that there is a substantial risk of imminent physical injury to either the client or another person, he or she is authorized by the statute to divulge this information at that point for the purpose of preventing injury. The communications, however, retain their confidential nature by virtue of the statutory mandate in § 52-146q (b). Confidentiality is not destroyed by disclosure to prevent injury, and testimony in court proceedings by the social worker about the disclosed communications or records is not allowed.

The marked difference in the text of the statutory exceptions, together with the specific language and syntax used by the legislature, as well as the statute's direction to read the exceptions "as specifically limited," leads us to conclude that this exception was *not* intended to permit in-court testimony. If the legislature wanted to make specific allowances for the disclosure

of otherwise confidential communications between social workers and their clients in court proceedings, it could have done so, and, in fact, has already done so in two other subdivisions of § 52-146q (c). See, e.g., *Genesky* v. *East Lyme*, supra, 275 Conn. 258 ("if the legislature wants to grant benefits to [constables and police officers] in a single statutory provision, it knows how to do so"); *Carmel Hollow Associates Ltd. Partnership* v. *Bethlehem*, supra, 269 Conn. 135 ("if the legislature had wanted to grant a municipality . . . discretionary authority with respect to the classification of property as forest land it could have done so"); *State* v. *Higgins*, 265 Conn. 35, 46, 826 A.2d 1126 (2003) ("if the legislature had wanted to make knowledge as to location of a school an element of the offense [of possession of narcotics within 1000 feet of a school], it would have done so" [internal quotation marks omitted]); *State* v. *Sostre*, 261 Conn. 111, 135–36, 802 A.2d 754 (2002) ("if the legislature had wanted to turn killings accomplished during robberies, burglaries and larcenies into an [aggravating factor to be considered for the imposition of the death penalty for capital felony], it simply would have said so" [internal quotation marks omitted]); *State* v. *Rivera*, 250 Conn. 188, 199, 736 A.2d 790 (1999) ("if the legislature had wanted to prohibit the state from introducing a witness' testimony before an investigatory grand jury in the state's case-in-chief against that witness, it easily could have done so"). "We presume that the legislature is aware of the judicial construction placed upon its enactments." *State* v. *Crowell*, 228 Conn. 393, 401, 636 A.2d 804 (1994), citing *Cappellino* v. *Cheshire*, 226 Conn. 569, 576, 628 A.2d 595 (1993). Moreover, "[t]he intention of the legislature is found not in what it meant to say, but in the meaning of what it did say." *Colli* v. *Real Estate Commission*, 169 Conn. 445, 452, 364 A.2d 167 (1975), citing *Schwab* v. *Zoning Board of Appeals*, 154 Conn. 479, 482, 226 A.2d 506 (1967). Because the legislature expressly could have permitted disclosure in any court proceedings under § 52-146q (c) (2), as it did in subdivisions (3) and (4), but did not do so, we interpret the statute's silence as evidence of the legislature's intent not to apply the dangerous client exception in the context of court proceedings.

Our examination of the relationship of § 52-146q (c) (2) to other statutes establishing confidentiality of certain records and communications requires a similar interpretation. Section 52-146o, which was enacted in 1990 only two years prior to § 52-146q, protects patients' communications and information from disclosure by physicians, surgeons and health care providers. Section 52-146o (a) specifically provides that "in any civil action or any proceeding preliminary thereto or in any probate, legislative or administrative proceeding, a physician or surgeon . . . shall not disclose" any communications by or information from a patient. Although § 52-146o

is not substantively parallel to § 52-146q because it prohibits rather than establishes opportunities for in-court testimony by physicians, surgeons and health care providers, it further evidences the legislature's awareness that an issue frequently arises as to whether the statutory confidence can or should be enforced in court proceedings. Where the legislature wants to make an exception for court proceedings, court proceedings are *specifically* referenced.[15] Additionally, General Statutes § 52-146c (b), enacted in 1969, which protects communications between psychologists and patients, provides in relevant part: "[I]n civil and criminal actions, in juvenile, probate, commitment and arbitration proceedings, in proceedings preliminary to such actions or proceedings, and in legislative and administrative proceedings, all communications shall be privileged and a psychologist shall not disclose any such communications . . . ." Although enacted more than two decades before § 52-146q, § 52-146c emphasizes the legislature's ability and tendency to reference specifically court proceedings where it intends either to prohibit or to permit in-court testimony.[16]

Moreover, General Statutes § 52-146f, which establishes the eight exceptions for the psychiatrist-patient privilege created in § 52-146e, epitomizes the legislature's ability to make explicit allowances for testimonial exceptions in the language of the statute itself. Importantly, § 52-146f contains the same instruction that each exception be read "as specifically limited . . . ." In accordance with this instruction, subsections (4)[17] and (5)[18] of § 52-146f create express exceptions to the evidentiary confidentiality for in-court testimony by the psychiatrist. Subsection (2) of § 52-146f,[19] on the other hand, creates the analogous dangerous patient exception for the psychiatrist-patient privilege and contains no such explicit testimonial allowance. Although the concurring opinion may find significance in the placement of the dangerous patient exception with other exceptions in § 52-146f that may be understood to permit in-court testimony,[20] we find the exception's placement to be inapposite to our analysis today. Subsection (2) is one of eight exceptions to the psychiatrist-patient confidentiality statute listed in § 52-146f. Two of those eight exceptions create explicit exceptions for in-court testimony. See General Statutes § 52-146f (4) and (5). Six of the exceptions do not create such exceptions, and have not been interpreted as doing so one way or the other. See General Statutes § 52-146f (1), (2), (3), (6), (7) and (8). Accordingly, § 52-146f is not only structured precisely like § 52-146q (c), but also has been interpreted in a similar manner. It is a prime example of the legislature's ability to make and, indeed, history of making, explicit exceptions for in-court testimony with regard to the greater evidentiary confidentiality statutes. It only serves as further support for our conclusion today that § 52-146q (c) (2) clearly and unambiguously

does not extend to permitting in-court testimony by a social worker.

Having concluded that § 52-146q is clear and unambiguous, we are statutorily prohibited by § 1-2z from conducting any extratextual analysis. Even if we were to conclude, however, that § 52-146q is ambiguous and that we are therefore permitted to consider extratextual sources, we are not persuaded by the state's claim that the majority of state jurisdictions has concluded that the duty to warn third parties about threatening statements made to a psychotherapist gives rise to an exception to the psychotherapist-client evidentiary confidentiality. Indeed, four of the six state cases, as well as the federal Circuit Courts of Appeal cases,[21] cited by the state to support this proposition concern *common-law* exceptions to confidentiality statutes, and are thus irrelevant to our discussion today. See generally *United States* v. *Auster*, 517 F.3d 312 (5th Cir.), cert. denied, U.S. , 129 S. Ct. 75, 172 L. Ed. 2d 67 (2008); *United States* v. *Glass*, 133 F.3d 1356 (10th Cir. 1998); *Bright* v. *State*, 740 A.2d 927 (Del. 1999); *People* v. *Bierenbaum*, 301 App. Div. 2d 119, 748 N.Y.S.2d 563 (2002); *State* v. *Miller*, 300 Or. 203, 709 P.2d 225 (1985), cert. denied, 475 U.S. 1141, 106 S. Ct. 1793, 90 L. Ed. 2d 339 (1986); *State* v. *Agacki*, 226 Wis. 2d 349, 595 N.W.2d 31 (1999). Moreover, the California case to which the state cites interprets a section of the California Evidence Code that expressly creates an exception to the privilege. See *San Diego Trolley, Inc.* v. *Superior Court*, 87 Cal. App. 4th 1083, 1091, 105 Cal. Rptr. 2d 476 (2001); id., 1091 n.1 (quoting § 1024 of California Evidence Code, which provides that " '[t]here is no privilege under this article' "). We are not faced with such clear and express statutory language in § 52-146q (c) (2). Finally, in *Guerrier* v. *State*, 811 So. 2d 852, 855–56 (Fla. App.), review denied, 831 So. 2d 672 (Fla. 2002), the Florida Appellate Court interprets a statutory dangerous patient exception to the physician-patient privilege broadly and not strictly and narrowly, as must be done in this case by the express terms of § 52-146q (c).

The statutory exceptions in § 52-146q (c) should be strictly construed and limited to their plain and literal meaning. When compared to other subdivisions of the same statute as well as other similar confidentiality statutes, it is clear that the legislature carefully chose the very precise words that it used in § 52-146q (c) (2) and failed to authorize testimony in court proceedings. Where a social worker "determines that there is a substantial risk of imminent physical injury by the person to himself or others," he or she may choose to disclose that information to prevent physical injury. General Statutes § 52-146q (c) (2). That exception, however, as "specifically limited" by the precise language of the statute, does not permit the social worker to testify as to the client's confidential communication in any court proceedings. Accordingly, we further conclude that the

trial court improperly ordered Burke to testify about the communications made to him by the defendant in violation of § 52-146q (c) (2).[22]

We next turn to whether the improper admission of Burke's testimony was harmful. "When an improper evidentiary ruling is not constitutional in nature, the defendant bears the burden of demonstrating that the [impropriety] was harmful." *State* v. *Young*, 258 Conn. 79, 94–95, 779 A.2d 112 (2001). "[A] nonconstitutional [impropriety] is harmless when an appellate court has a fair assurance that the [impropriety] did not substantially affect the verdict." (Internal quotation marks omitted.) *State* v. *Sawyer*, 279 Conn. 331, 357, 904 A.2d 101 (2006); see also *State* v. *Snelgrove*, 288 Conn. 742, 758, 954 A.2d 165 (2008).

"[W]hether [the improper admission of a witness' testimony] is harmless in a particular case depends upon a number of factors, such as the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case. . . . Most importantly, we must examine the impact of the [improperly admitted] evidence on the trier of fact and the result of the trial." (Internal quotation marks omitted.) *State* v. *Sawyer*, supra, 279 Conn. 358; see also *State* v. *Gonzalez*, 272 Conn. 515, 527, 864 A.2d 847 (2005); *State* v. *Peeler*, 271 Conn. 338, 385, 857 A.2d 808 (2004), cert. denied, 546 U.S. 845, 126 S. Ct. 94, 163 L. Ed. 2d 110 (2005); *State* v. *Rolon*, 257 Conn. 156, 174, 777 A.2d 604 (2001).

In the present case, Burke's testimony was not of great importance to the state's case against the defendant. First, Burke's testimony did not include a repetition of outrageous remarks made by the defendant, but was limited to a description of the defendant's alleged demeanor toward and feelings about Edwards. The state referenced the testimony only once in its closing argument before the jury, briefly describing it in that way, revealing its relative lack of importance. Second, Burke's testimony regarding the telephone call he made to Edwards was cumulative. Edwards himself also testified to receiving a telephone call from Burke which "put [him] in fear for [his] family's safety." Burke provided the jury with essentially the same information about his telephone call to Edwards as Edwards did himself. Moreover, the defendant concedes in his brief that Burke's testimony was "needlessly cumulative" in that it "simply amounted to a particularly colorful example of [the defendant's] unusual behavior." Accordingly, a third consideration is that not only was Burke's testimony cumulative, but it also was clearly corroborated by Edwards' testimony about the same incident.

Fourth, the defendant was given a unique opportunity to prepare his cross-examination of Burke with the knowledge and foresight of what questions the state would ask Burke during its direct examination. During argument over the defendant's objection to the admission of Burke's testimony, the state specifically outlined for both the court and the defendant the exact questions it planned to ask Burke. As the trial court remarked, the defendant "[knew] exactly what the direct questions [would] be" and thus could "cross-examine with any questions . . . with regard to any documentation or whatever else [he felt to be] necessary." Additionally, the defendant was given an opportunity to speak with Burke during the recess before Burke's testimony, in order to clarify certain points that would be important in his cross-examination. The defendant was thus clearly given a broad opportunity to prepare for his cross-examination of Burke.

Finally, even without Burke's testimony, the state had a strong case against the defendant. The state not only presented Edwards' testimony, but also played for the jury the actual voicemail recordings that the defendant had left for Edwards. Both the voicemail recordings and Edwards' testimony strongly supported the charge of harassment in the second degree. For all of these reasons, we conclude that the improper admission of Burke's testimony did not substantially affect the jury's verdict and it therefore was harmless.

II

The defendant next claims that the trial court improperly admitted the uncharged misconduct testimony of Fuller, and Officers Mugovero, Bergeson and William Edwards. The defendant claims that each witness' testimony should have been barred as irrelevant, more prejudicial than probative, or cumulative, or all three. He further contends that the admission of any and all of this testimony was harmful. In response, the state claims that the testimony of the four witnesses properly was admitted within the trial court's broad discretion. Specifically, the state asserts that the witnesses' testimony was relevant to the defendant's state of mind and not to his character. We agree with the state and conclude that the trial court did not abuse its discretion in admitting the challenged testimony.

The following undisputed additional facts and procedural history are relevant to our resolution of this claim. At trial, the state introduced the uncharged misconduct testimony.[23] Fuller, the elementary school principal, testified that on March 9, 2005, the defendant telephoned her and inquired if Edwards' children attended her school; she opined that the call was "reminiscent of child abduction cases." Mugovero, an officer in the New London police department, testified that on March 19, 2004, the defendant approached him and stated that he

"was going to skin Captain Edwards."

Bergeson, another New London police officer, testified that: (1) while investigating a reported disturbance at the defendant's home on November 15, 2005, he heard the defendant "yelling and screaming" about how "both . . . Edwards and his brother [William] Edwards should both be dead"; and (2) on April 12, 2006, the defendant told Bergeson that his constitutional rights were being violated, that "Edwards has one more coming," and that Bergeson should "[j]ust tell . . . Edwards that [he is] trying to protect his children, maybe [Edwards will] give [him] $20 for it." Finally, William Edwards, Captain Edwards' brother and an officer with the New London police department, testified about three encounters with the defendant prior to his arrest. During these encounters, which occurred in December, 2003, October, 2004 and November, 2004, respectively, the defendant: (1) accused William Edwards of being a thief; (2) stated that "you'll get yours, I know where your daddy is and where your brother is"; and (3) called William Edwards a coward and stated that "time was running out" for the Edwards family.

We first address the applicable standard of review for this evidentiary challenge. "We review the trial court's decision to admit evidence, if premised on a correct view of the law . . . for an abuse of discretion." *State* v. *Saucier*, 283 Conn. 207, 218, 926 A.2d 633 (2007). "We will make every reasonable presumption in favor of upholding the trial court's ruling, and only upset it for a manifest abuse of discretion." (Internal quotation marks omitted.) *State* v. *Ritrovato*, 280 Conn. 36, 50, 905 A.2d 1079 (2006); see also *State* v. *Ellis*, 270 Conn. 337, 355, 852 A.2d 676 (2004) ("[r]eversal is required only where an abuse of discretion is manifest or where injustice appears to have been done" [internal quotation marks omitted]). "In determining whether there has been an abuse of discretion, the ultimate issue is whether the court could reasonably conclude as it did." *DiPalma* v. *Wiesen*, 163 Conn. 293, 298–99, 303 A.2d 709 (1972); see also *State* v. *Hauck*, 172 Conn. 140, 144, 374 A.2d 150 (1976).

"The rules governing the admissibility of evidence of a criminal defendant's prior misconduct are well established. Although evidence of prior unconnected crimes is inadmissible to demonstrate the defendant's bad character or to suggest that the defendant has a propensity for criminal behavior . . . such evidence may be admissible for other purposes, such as to prove knowledge, intent, motive, and common scheme or design, if the trial court determines, in the exercise of judicial discretion, that the probative value of the evidence outweighs its prejudicial tendency." (Internal quotation marks omitted.) *State* v. *Ellis*, supra, 270 Conn. 354; see also *State* v. *Morowitz*, 200 Conn. 440,

442, 512 A.2d 175 (1986).

It is well established that the trial court is afforded broad discretion in determining whether to admit each witness' testimony; *State* v. *Ellis*, supra, 270 Conn. 355; and must conduct a balancing act of the testimony's prejudicial versus probative value. Id., 354. Also, "[s]ome degree of prejudice inevitably accompanies the admission of evidence of a defendant's other misconduct." (Internal quotation marks omitted.) Id., 365; see also *State* v. *Sierra*, 213 Conn. 422, 436, 568 A.2d 448 (1990); *State* v. *Faria*, 47 Conn. App. 159, 175, 703 A.2d 1149 (1997), cert. denied, 243 Conn. 965, 707 A.2d 1266 (1998). "Evidence is prejudicial when it tends to have some adverse effect upon a defendant beyond tending to prove the fact or issue that justified its admission into evidence." (Internal quotation marks omitted.) *State* v. *Feliciano*, 256 Conn. 429, 454, 778 A.2d 812 (2001); see also *United States* v. *Figueroa*, 618 F.2d 934, 943 (2d Cir. 1980).

We begin our analysis by noting first that harassment in the second degree under § 53a-183 (a) (3) is a specific intent crime. In the present case, therefore, the state had the burden to prove, beyond a reasonable doubt, the defendant's intent to "harass, annoy or alarm" Edwards. General Statutes § 53a-183 (a) (3); see, e.g., *State* v. *Roy*, 233 Conn. 211, 212–13, 658 A.2d 566 (1995) (state must "convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense" [internal quotation marks omitted]).

The testimony of each of these four witnesses was relevant to the defendant's intent. Fuller's testimony corroborated the state's claim that the defendant was fixated on Edwards, and was relevant to show the defendant's specific intent to cause alarm with regard to the safety of Edwards' children. The testimony of Mugovero and Bergeson showed the defendant's specific intent to cause annoyance, and helped the jury understand how a police officer might have been alarmed by the defendant's conduct. Likewise, William Edwards' testimony was relevant to show the defendant's intent to "harass, annoy or alarm" Captain Edwards in violation of § 53a-183 (a) (3).[24]

Because the trial court gave limiting instructions to the jury regarding each witness' testimony so that the jury would know specifically for which purposes the testimony should be considered, the court minimized any undue prejudice that might otherwise have occurred.[25] "[T]he instructions limiting the use of the misconduct evidence [serve] to minimize any prejudicial effect that it otherwise may have . . . ." *State* v. *Feliciano*, supra, 256 Conn. 454; see also *State* v. *Cooper*, 227 Conn. 417, 428, 630 A.2d 1043 (1993); *State* v. *Brown*, 199 Conn. 47, 58, 505 A.2d 1225 (1986).

Furthermore, the record in the present case reflects

that the trial court properly undertook a balancing of the probative value of the evidence against its prejudicial effect and determined that the prejudice did not outweigh its probative value. The trial court carefully listened to the defendant's arguments about prejudice as well as the state's offers of proof as to the probative value of the testimony. The court nevertheless properly found the evidence admissible.

We briefly address the defendant's claim that the testimony of Fuller and Bergeson was irrelevant because it concerned events that occurred three to four months after the defendant had been arrested. We conclude that the trial court reasonably could have determined that their testimony was relevant to the issue of the defendant's intent because it concerned ongoing conduct by the defendant that was relevant to his earlier intent. In a similar case, *State* v. *Wells*, 100 Conn. App. 337, 344, 917 A.2d 1008, cert. denied, 282 Conn. 919, 925 A.2d 1102 (2007), the Appellate Court concluded: "[T]he defendant's state of mind at the time of the shooting may be proven by his conduct before, during and after the shooting. Such conduct yields facts and inferences that demonstrate a pattern of behavior and attitude toward the victim by the defendant that is probative of the defendant's mental state." (Internal quotation marks omitted.) Likewise, in the present case, the trial court reasonably could have concluded that the defendant's mental state shortly after he left the voicemail messages for Edwards was relevant to his mental state at the time that he left the messages.

Under the given circumstances, with due regard for the broad leeway possessed by trial courts in determining the admissibility of evidence, we conclude that the trial court did not abuse its broad discretion in admitting the testimony of Fuller, Mugovero, Bergeson and William Edwards. Accordingly, we conclude that the trial court acted properly.

The judgment is affirmed.

In this opinion ROGERS, C. J., and NORCOTT and SCHALLER, Js., concurred.

[1] The defendant appealed from the judgment of conviction to the Appellate Court, and we transferred the case from the Appellate Court to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

[2] General Statutes § 53a-183 (a) provides in relevant part: "A person is guilty of harassment in the second degree when . . . (3) with intent to harass, annoy or alarm another person, he makes a telephone call, whether or not a conversation ensues, in a manner likely to cause annoyance or alarm."

[3] General Statutes § 52-146q (c) provides in relevant part: "Consent of the person shall not be required for the disclosure or transmission of such person's communications and records in the following situations as specifically limited . . .

"(2) Communications and records may be disclosed when a social worker determines that there is a substantial risk of imminent physical injury by the person to himself or others . . . ."

[4] The defendant raises two additional issues in his brief. He first claims that the trial court improperly denied his motion to dismiss the first two counts of the state's substitute information as being time barred by the applicable statute of limitations. He also claims that the prosecution was void ab initio on the ground that the arrest warrant was issued with the

wrong name. The defendant fails to cite any authority or to provide adequate analysis in support of these claims, however, and we therefore decline to review them. See *State* v. *T.R.D.*, 286 Conn. 191, 213–14 n.18, 942 A.2d 1000 (2008) ("We repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . Where a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned." [Internal quotation marks omitted.]).

[5] Edwards saved the voicemails, which were played for the jury during the trial. The defendant left Edwards the following voicemail on January 11, 2005: "Hi, Ken Edwards. This is John Orr. Once again I'm telling the story about how you cheated me every day, denied my subpoena, denied me the right—(beeping sound heard)—anything else in the world, and that your brother threatens to kill me and you let him get away with it, and, um—uhh, I think the other day somebody was making a comment about me up at Sam's. You know, it's really a good police department you (beeping sound heard), right? What's the matter, you can't bust the heroin dealers in this town, Mr. Edwards? Well, just remember this: Don't tick me off too much because I will go to—I will go to Providence, I will go to New York City, I will go somewhere that (beeping sound heard) somebody that f_king really doesn't give a damn, okay? Have a good day, Captain Edwards."

The defendant left Edwards the following voicemail on January 13, 2005: "Hi, Captain Edwards. This is John Orr and I was just talking to some people that are telling me how you get people that are drug addicts to rat out on their drug dealers. And I just thought I would mention to them about Sheri and how she bought at 81 Hempstead Street and when I went to you (beeping sound heard), you gave my name up or somebody in your department gave my name up to drug dealers. And then you proceeded to use your father, the little stinkin' fire department—what was he, a deputy faggot or something like that? But anyway, um—and, I'm sorry, deputy chief (beeping sound heard), that's what they call it, right? And then you went after me for attempting ass—arson, asshole—arson, I'm sorry. I stutter, you know, mental illness and everything. And then you deny me subpoena. Well, you know what, Captain Edwards? You know what? When you burn in hell (beeping sound heard) with your family, you remember you owe me something, okay? You remember that you owe me your oath. And you can tell your father and your brother and the rest of your family that [they] are nothing but lying, cheating idiots that when (beeping sound heard) you burn in hell and when your children burn in hell and when your wife burns in hell, you deserved it. Have a good day."

Keith Crandall, a detective in the New London police department who was the initial investigating officer, testified at trial that the beeping sound heard during the recorded voicemails is an "electronic signature" to let the person who is making the call to the police department know that they are being recorded.

[6] General Statutes § 53a-183 (a) provides in relevant part: "A person is guilty of harassment in the second degree when: (1) By telephone, he addresses another in or uses indecent or obscene language . . . ."

[7] See footnote 2 of this opinion for the text of § 53a-183 (a) (3).

[8] William Edwards is Captain Edwards' brother. We refer herein to Captain Edwards by his last name only and to William Edwards by his full name.

[9] General Statutes § 1-2z provides: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

[10] We are mindful that under § 1-2z, we must first look to construe the text as it exists, without reference to outside sources. See, e.g., *Genesky* v. *East Lyme*, 275 Conn. 246, 277–78, 881 A.2d 114 (2005) (must first look to text under § 1-2z analysis). Accordingly, we are careful not to describe the social worker-client confidentiality statute as a privilege until we find an ambiguity that permits reference to extratextual sources and thus allows a deeper exploration of any alleged distinction between confidentiality and privilege.

[11] General Statutes § 52-146q (c) (3) provides: "Communications and records made in the course of an evaluation ordered by a court may be

disclosed at judicial proceedings in which the person is a party provided the court finds that the person has been informed before making the communications that any communications and records may be so disclosed and provided further that communications and records shall be admissible only on issues involving the person's mental condition."

[12] General Statutes § 52-146q (c) (4) provides: "Communications and records may be disclosed in a civil proceeding in which the person introduces his mental condition as an element of his claim or defense or, after the person's death, when his condition is introduced by a party claiming or defending through or as a beneficiary of the person. For any disclosure under this subdivision, the court shall find that it is more important to the interests of justice that the communications and records be disclosed than that the relationship between the person and the social worker be protected."

[13] The concurring opinion focuses on this silence and contends that because "[t]he provision does not specify one way or the other whether disclosable, nonconfidential communications and records are, nevertheless, privileged," the passage is ambiguous and therefore permits the consideration of extratextual sources. We strongly disagree because, as we will explain, statutory silence does not constitute ambiguity. Moreover, § 52-146q (c) (2) does not meet the standard for ambiguity that we have established in our case law.

[14] This is contrary to the assertion by the concurring opinion that the word "confidential" plainly and unambiguously means that the communications "generally may be disclosed under court order, over the objection of the information supplier, when a court deems it necessary to do so under a standard such as in the interests of justice or necessity." (Internal quotation marks omitted.) If the legislature intended to use this meaning of "confidential," it would not have felt the need to provide explicitly for both confidentiality *and* limited disclosure. Instead, the legislature would merely have described the communications as "confidential," without need to include any disclosure clause because of its inclusion within the meaning of confidentiality. The legislature's provision for confidentiality, however, is separate from its provision that prohibits limited disclosure, and so it is clear that, contrary to the concurrence's conclusion, the legislature intended that *all* communications between social workers and their clients be confidential.

[15] The concurrence finds it significant that while § 52-146q (c) (2) does not expressly allow the disclosure of communications or records in court proceedings, it also does not expressly prohibit that disclosure. Section 52-146q (c) explicitly requires, however, that the exceptions contained within be read as "specifically limited . . . ." Where those exceptions are limited to include disclosure during in-court testimony, such allowances are specifically made. See General Statutes § 52-146q (c) (3) and (4). Where those allowances are not specifically referenced, however, we decline to read them into the text.

[16] We note that many of the confidentiality statutes established in Connecticut contain specific exceptions for dangerous clients or patients, where those persons' confidences may be breached without their consent if the professional sharing those confidences believes, in good faith, that the person poses an imminent threat or danger either to themselves or to others. Most of these statutes notably reference court proceedings where the legislature either creates or prohibits in-court testimony opportunities. See generally, e.g., General Statutes § 52-146c (psychologist-patient confidentiality statute); General Statutes § 52-146f (psychiatrist-patient confidentiality statute); General Statutes § 52-146o (physician-patient confidentiality statute); General Statutes § 52-146p (marital and family therapist-person confidentiality statute); General Statutes § 52-146s (professional counselor-person confidentiality statute). Additionally, even those confidentiality statutes that do not contain exceptions for dangerous persons make specific reference to court proceedings where the legislature intends to permit or prohibit in-court testimony. See generally, e.g., General Statutes § 52-146k (battered women's assault counselor-victim confidentiality statute); General Statutes § 52-146*l* (interpreter-assisted person confidentiality statute); General Statutes § 52-146m (confidence between hearing impaired person and operator of special telecommunications equipment who provides assistance).

[17] General Statutes § 52-146f (4) provides in relevant part: "Communications made to or records made by a psychiatrist in the course of a psychiatric examination ordered by a court or made in connection with the application for the appointment of a conservator by the Probate Court for good cause shown may be disclosed at judicial or administrative proceedings . . . ."

[18] General Statutes § 52-146f (5) provides: "Communications or records

may be disclosed in a civil proceeding in which the patient introduces his mental condition as an element of his claim or defense, or, after the patient's death, when his condition is introduced by a party claiming or defending through or as a beneficiary of the patient and the court or judge finds that it is more important to the interests of justice that the communications be disclosed than that the relationship between patient and psychiatrist be protected."

[19] General Statutes § 52-146f (2) provides in relevant part: "Communications or records may be disclosed when the psychiatrist determines that there is substantial risk of imminent physical injury by the patient to himself or others or when a psychiatrist, in the course of diagnosis or treatment of the patient, finds it necessary to disclose the communications or records for the purpose of placing the patient in a mental health facility . . . ."

[20] The concurrence focuses on §§ 52-146e and 52-146f as the model for the legislature's enactment of § 52-146q. It contends that the legislature's 1969 creation of the dangerous patient exception to the psychiatrist-patient confidentiality statute; see Public Acts 1969, No. 819, § 4 (b), now codified at § 52-146f (2); was intended to be an exception to the more general evidentiary privilege as evidenced by its placement with other such exceptions within the statutory scheme, namely, § 52-146f (1), (4) and (5). We disagree. While the language of subsection (4) and (5) of § 52-146f itself creates exceptions to the evidentiary privilege for in-court testimony, subsection (1) merely allows for the disclosure of communications or records for the purpose of diagnosis or treatment and contains *no* provision that either explicitly permits disclosure of this information during in-court testimony or that has been interpreted by this court to permit the same.

[21] Both the state and the concurrence emphasize in particular the analysis in *United States* v. *Auster*, 517 F.3d 312 (5th Cir.), cert. denied, U.S. , 129 S. Ct. 75, 172 L. Ed. 2d 67 (2008). The analysis by the court in *Auster* bears no relation to our analysis today, however, because its reasoning is based on common-law principles governing federal evidentiary privileges. Thus, the court was not interpreting a statutory enactment, as we are in the present case. Common-law principles have no bearing on our statutory analysis in the present case.

[22] We briefly address the hypothetical situation proposed by the concurrence, which concerns a third party's failure to apply successfully for a restraining order because of a social worker's inability to testify at the court hearing for such an order. First, we emphasize that "[t]he process of statutory interpretation involves the determination of the meaning of the statutory language as applied *to the facts of the case* . . . ." (Emphasis added; internal quotation marks omitted.) *Weems* v. *Citigroup, Inc.*, 289 Conn. 769, 778, 961 A.2d 349 (2008). Section 1-2z, which specifically directs our attention to the actual text of the statute and its relationship to other statutes, does not permit statutory interpretation to be influenced by hypotheticals. Moreover, although § 52-146q (c) (2) prohibits social workers from testifying as to the substantive content of their confidential communications with and records of their clients, it may not preclude social workers from testifying to: (1) the existence of a confidential relationship; and (2) the fact that the social worker warned the third party of possible injury as permitted under the statute. Some courts have noted a possible distinction between testimony concerning the substance of confidential communications and testimony concerning the fact of disclosure of those communications. See, e.g., *United States* v. *Chase*, 340 F.3d 978, 988 n.4 (9th Cir. 2003), cert. denied, 540 U.S. 1220, 124 S. Ct. 1531, 158 L. Ed. 2d 157 (2004); *Reed* v. *Williams*, United States District Court, Docket No. CIV S-05-0060, U.S. Dist. LEXIS 55598 *4–5 (E.D. Cal. July 25, 2007).

[23] The defendant's motion in limine sought to preclude the testimony of these four witnesses as well as that of Burke. As we previously have referenced herein, the trial court denied the motion. It did, however, give limiting instructions to the jury after each witness testified so that the jury would know for what specific purposes it should consider the testimony.

[24] We note that the trial court admitted the testimony of these witnesses for the perhaps improper purpose of corroborating the state of mind of the victim. See footnote 25 of this opinion. Because the testimony was otherwise properly admissible to show the intent of the defendant, however, any evidentiary or instructional impropriety by the trial court was harmless. See, e.g., *State* v. *DeJesus*, 288 Conn. 418, 474–76, 953 A.2d 45 (2008) (uncharged misconduct evidence improperly admitted to prove common scheme or plan constituted harmless evidentiary impropriety where evidence otherwise was admissible to show defendant's propensity to engage in criminal behavior).

The trial court properly instructed the jury that it should *not* consider the testimony as evidence of the defendant's character, thus preventing its consideration for a highly improper and prejudicial purpose.

[25] The trial court gave the jury the following charge: "The testimony of this witness isn't being offered to go to the character of [the defendant], it is not to say that he has a bad character. That's not what it's admissible for. What we are talking about here is circumstantial evidence which I told you about and I'll tell you about again later. It goes to corroboration of the state of mind of the victim and not to [the defendant's] character which is not the issue here at all, [the defendant's] character. And when we do the final instructions I'll go back over this. I want you to be aware each time a witness testifies, that it's not [the defendant's] character that's in question here but what the state is doing now is putting on witnesses that they feel corroborate Captain Edwards' statements. And I'll be bringing that up again. I want you to hear that each time a witness testifies."