ZARELLA, J., with whom McLACHLAN, J., joins, concurring. I agree with and join parts II, III and IV of the majority opinion. I also agree with the result that the majority reaches in part I of its opinion, in which it upholds the trial court's denial of the petition for a new trial filed by the petitioner, Michael C. Skakel, on the basis of newly discovered hearsay statements made by Gitano "Tony" Bryant. I write separately, however, because the majority has failed to address the threshold issue in the present case—the admissibility of the Bryant evidence at a new trial—which, in my view, is dispositive of the petitioner's claim.[1] The Bryant evidence constitutes inadmissible hearsay that does not satisfy the definition of a statement against penal interest within the meaning of § 8-6 (4) of the Connecticut Code of Evidence. In addition, the Bryant evidence fails to satisfy any of the trustworthiness factors set forth in Conn. Code Evid. § 8-6 (4). Finally, even if I were to assume, arguendo, that portions of the Bryant evidence are against Bryant's penal interest and satisfy the trustworthiness factors, *only those portions* would be admissible because (1) in the present case, Bryant's self-inculpatory statements are severable from his self-serving statements, and (2) the United States Supreme Court, in *Williamson* v. *United States*, 512 U.S. 594, 114 S. Ct. 2431, 129 L. Ed. 2d 476 (1994), held that the federal hearsay exception for statements against penal interest; see Fed. R. Evid. 804 (b) (3); on which Conn. Code Evid. § 8-6 (4)[2] is patterned, permits only the admission of self-inculpatory statements and not collateral statements, "even if they are made within a broader narrative that is generally self-inculpatory." *Williamson* v. *United States*, supra, 600–601. The statements that Bryant made that are most relevant to the issue of whether the petitioner is entitled to a new trial are those that exculpate Bryant and the petitioner and inculpate two of Bryant's former classmates, Adolph Hasbrouck and Burton Tinsley. These statements are not admissible, either under our current jurisprudence or the rule set forth in *Williamson*. Accordingly, I conclude that the petitioner is not entitled to a new trial because none of Bryant's statements that exculpate the petitioner would be admissible, and, therefore, the Bryant evidence could not produce a different result at a new trial.

Under Connecticut law, the statement against penal interest hearsay exception has its roots in our decision in *State* v. *DeFreitas*, 179 Conn. 431, 449–52, 426 A.2d 799 (1980). In *DeFreitas*, "we adopted a rule, consistent with *Chambers* v. *Mississippi*, [410 U.S. 284, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973)], and in accord with rule 804 (b) (3) of the Federal Rules of Evidence,[3] which provides that trustworthy third party statements against

penal interest [that] are exculpatory to the defendant, are admissible if the declarant is unavailable." (Citations omitted; internal quotation marks omitted.) *State* v. *Payne*, 219 Conn. 93, 114, 591 A.2d 1246 (1991). Section 8-6 (4) of the Connecticut Code of Evidence embodies the hearsay exception recognized in *DeFreitas* and affirmed in its progeny. See, e.g., *State* v. *Lopez*, 239 Conn. 56, 70–71, 681 A.2d 950 (1996); *State* v. *Mayette*, 204 Conn. 571, 576–77, 529 A.2d 673 (1987). Section 8-6 (4) of the Connecticut Code of Evidence provides that "[a] trustworthy statement against penal interest that, at the time of its making, so far tended to subject the declarant to criminal liability that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true" is admissible as an exception to the hearsay rule when the declarant is unavailable as a witness. Section 8-6 (4) further provides that, "[i]n determining the trustworthiness of a statement against penal interest, the court shall consider (A) the time the statement was made and the person to whom the statement was made, (B) the existence of corroborating evidence in the case, and (C) the extent to which the statement was against the declarant's penal interest."

In determining whether a statement is admissible under the hearsay exception for declarations against penal interest, the trial court must engage in a two step analysis. See, e.g., *State* v. *Savage*, 34 Conn. App. 166, 172, 640 A.2d 637, cert. denied, 229 Conn. 922, 642 A.2d 1216 (1994); see also *United States* v. *Barrett*, 539 F.2d 244, 251 (1st Cir. 1976) (applying two step analysis under Fed. R. Evid. 804 [b] [3]); *United States* v. *Bagley*, 537 F.2d 162, 165 (5th Cir. 1976) (same), cert. denied, 429 U.S. 1075, 97 S. Ct. 816, 50 L. Ed. 2d 794 (1977). First, the court must determine whether the statement at issue is actually against the declarant's penal interest. See, e.g., *United States* v. *Brainard*, 690 F.2d 1117, 1124 (4th Cir. 1982) (whether statement is against penal interest is threshold inquiry). If the court concludes that it is, then the court proceeds to the second step under which it must determine the trustworthiness of the statement by "consider[ing] all of the relevant factors and determin[ing] whether the statement presents sufficient indicia of reliability to justify its admission." *State* v. *Smith*, 289 Conn. 598, 631, 960 A.2d 993 (2008).

In *State* v. *Gold*, 180 Conn. 619, 431 A.2d 501, cert. denied, 449 U.S. 920, 101 S. Ct. 320, 66 L. Ed. 2d 148 (1980), we formally adopted the definition of statement against penal interest contained in rule 804 (b) (3) of the Federal Rules of Evidence, stating: "We are persuaded of the logic and soundness of [rule 804 (b) (3)] and the trend to reject a narrow and inflexible definition of a statement against penal interest in favor of a definition which includes not only confessions, but other remarks which would tend to incriminate the declarant were he or she the individual charged with the crime."

Id., 642. Under this definition, statements that are "*exceedingly inculpatory*, but [fall] short of being a confession," may qualify for admission. (Emphasis added.) Id., 642–43. In addition, statements that strengthen the impression that the declarant has an "insider's knowledge of the crime" may be admissible, as are other statements that strongly imply the declarant's personal participation in a crime. See *United States* v. *Barrett*, supra, 539 F.2d 249 (declarant's statement that he was "going to have some trouble from the people from California" with respect to alleged stamp theft and that "[the defendant] wasn't involved," but that "it was [another party]," evidenced insider's knowledge of crime and was therefore admissible [internal quotation marks omitted]); *United States* v. *Alvarez*, 584 F.2d 694, 699–700 (5th Cir. 1978) (declarant's statement that he was calling defendant to set up drug transaction constituted statement against penal interest). Although our definition of "against penal interest" encompasses more than confessions to crimes, it is not without limits and "does not provide that any statement which 'possibly could' or 'maybe might' lead to criminal liability is admissible; on the contrary, only those statements that 'so far tend to subject' the declarant to criminal liability, such that 'a reasonable person would not have made it unless it were true' are admissible." *United States* v. *Butler*, 71 F.3d 243, 253 (7th Cir. 1995); see also Conn. Code Evid. § 8-6 (4). In determining whether this standard is met, the statement must be examined "in light of all the surrounding circumstances." *Williamson* v. *United States*, supra, 512 U.S. 604; see also *State* v. *Lopez*, 254 Conn. 309, 316, 757 A.2d 542 (2000).

In the present case, the trial court concluded that Bryant's statements were "clearly against his penal interest." Specifically, the trial court stated: "Bryant places himself in Belle Haven, on the night of the murder, in the company of [the victim], discussing assaulting [the victim] with Hasbrouck and Tinsley and in possession of golf clubs belonging to the Skakel family. Efforts to explain away possible physical evidence indicate a consciousness of guilt. . . . Bryant attempts to explain away the possibility that his fingerprints might be found on the murder weapon or another golf club nearby. . . .

"Considered with the fact that Bryant has asserted his [privilege against self-incrimination] after being served with a subpoena to testify at a deposition, the totality of circumstances indicates that . . . Bryant's story is against his penal interest."

I

The first issue is whether the trial court abused its discretion in concluding that Bryant's statements were "against [his] penal interest" within the meaning of Conn. Code Evid. § 8-6 (4). As a preliminary matter, I note that it is undisputed that Hasbrouck's and Tinsley's

alleged statements to Bryant are against their penal interests. Because Hasbrouck and Tinsley have invoked the privilege against self-incrimination and, thus, are unavailable as witnesses, those statements would be admissible if Bryant were to testify to them, as long as the statements satisfied the requirement of trustworthiness set forth in Conn. Code Evid. § 8-6 (4). Bryant, however, also has asserted his privilege against self-incrimination and refuses to testify in the present case. Thus, all we have before us is Bryant's unsworn statements made to various individuals and those contained in video recordings, all of which constitute hearsay. Therefore, Bryant's statements regarding Hasbrouck's and Tinsley's alleged statements to him constitute hearsay within hearsay, or double hearsay. "Hearsay within hearsay is admissible only if each part of the combined statements is independently admissible under a hearsay exception." Conn. Code Evid. § 8-7; see also *State* v. *Lewis*, 245 Conn. 779, 802, 717 A.2d 1140 (1998) ("[w]hen a statement is offered that contains hearsay within hearsay, each level of hearsay must itself be supported by an exception to the hearsay rule in order for that level of hearsay to be admissible"). Accordingly, the admissibility of any of Bryant's statements turns on whether they are against Bryant's penal interest.

Our standard of review is well settled. On appeal, "[w]e 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). "The trial court has wide discretion to determine the relevancy [and admissibility] of evidence . . . ." (Internal quotation marks omitted.) *State* v. *Cecil J.*, 291 Conn. 813, 818, 970 A.2d 710 (2009). As such, "[w]e will make every reasonable presumption in favor of upholding the trial court's ruling . . . ." (Internal quotation marks omitted.) Id. "In determining whether there has been an abuse of discretion, the ultimate issue is whether the court could reasonably conclude as it did." *State* v. *Orr*, 291 Conn. 642, 667, 969 A.2d 750 (2009).

In my view, the trial court abused its discretion in concluding that Bryant's statements were against his penal interest within the meaning of Conn. Code Evid. § 8-6 (4). A review of the Bryant evidence reveals that *none* of his statements "*so far* tend[ed] to subject" him to criminal liability. (Emphasis added; internal quotation marks omitted.) *United States* v. *Butler*, supra, 71 F.3d 253. Indeed, it is doubtful that Bryant's statements even "possibly could" or "might maybe" lead to criminal liability. (Internal quotation marks omitted.) Id. As the trial court aptly stated, Bryant's statements "are merely claims of information [about] a crime accompanied by his alibi." Moreover, the trial court explicitly found that Bryant's statements were only "*minimally* against his interest." (Emphasis added.) Neither this court nor the Appellate Court ever has held such innocuous state-

ments to be admissible under the hearsay exception for statements against penal interest. In fact, the only Connecticut appellate decisions in which statements were held to qualify for admission under this hearsay exception are those in which the statements at issue somehow *directly* implicated the declarant in a crime. See, e.g., *State* v. *Smith*, supra, 289 Conn. 632 (declarant's statements were against his penal interest because they directly implicated him in unsolved murder and included chilling detail); *State* v. *Camacho*, 282 Conn. 328, 358–60, 924 A.2d 99 (declarant's dual inculpatory statement admitting that he had instructed defendant to kill two people and helped defendant flee after murders was admissible under Conn. Code Evid. § 8-6 [4]), cert. denied, 552 U.S. 96, 128 S. Ct. 388, 169 L. Ed. 2d 273 (2007); *State* v. *Pierre*, 277 Conn. 42, 68–69, 890 A.2d 474 (dual inculpatory statement in which declarant provided grisly details of both his own actions and accomplice's actions in murder was against declarant's penal interest because statement squarely implicated him in crime), cert. denied, 547 U.S. 1197, 126 S. Ct. 2873, 165 L. Ed. 2d 904 (2006); *State* v. *Rivera*, 268 Conn. 351, 368, 844 A.2d 191 (2004) (declarant's "statement was squarely against [his] penal interest . . . [because he] admitted his participation in a burglary that had given rise to a homicide"); *State* v. *Lopez*, supra, 254 Conn. 317 (declarant's confession to murder was against his penal interest); *State* v. *Schiappa*, 248 Conn. 132, 155, 728 A.2d 466 (declarant's dual inculpatory statement was squarely against his penal interest because he admitted his own participation in crime), cert. denied, 528 U.S. 862, 120 S. Ct. 152, 145 L. Ed. 2d 129 (1999); *State* v. *Bryant*, 202 Conn. 676, 696, 523 A.2d 451 (1987) (declarant's statement that he committed burglary but not sexual assault was "in a very real sense self-incriminatory and unquestionably against interest" [internal quotation marks omitted]); *State* v. *Gold*, supra, 180 Conn. 632, 639 (declarant's confession to murder held admissible as statement against penal interest); *State* v. *Savage*, supra, 34 Conn. App. 174 (declarant's statement that he was in possession of bag of heroin, "but it was purchased not by or from [the defendant]" was statement against declarant's penal interest [internal quotation marks omitted]); *State* v. *Lynch*, 21 Conn. App. 386, 389, 398, 574 A.2d 230 (declarant's dual inculpatory statement that "the only way that you're going to get this transaction through [the] town planning and zoning [commission] . . . is to cobroke this commission with [the defendant] . . . [who will], in turn . . . take care of [the declarant]," held admissible as statement against penal interest [internal quotation marks omitted]), cert. denied, 216 Conn. 806, 580 A.2d 63 (1990); cf. *State* v. *Rosado*, 218 Conn. 239, 243, 246–50, 588 A.2d 1066 (1991) (declarant's statements that drugs were hers and that defendant had nothing to do with it were against her penal interest, although not sufficiently trustworthy to be admitted).[4]

In the present case, none of Bryant's statements, when viewed in context, implicates *Bryant* in a crime. Therefore, there is no legal precedent for their admission. In addition, I conclude that the trial court's speculation as to Bryant's alleged consciousness of guilt regarding "the possibility that his fingerprints might be found on the murder weapon" is not supported by the record. I further conclude that the trial court's characterization of Bryant's statements as "discussing assaulting [the victim] with Hasbrouck and Tinsley" inaccurately and unfairly suggests that Bryant made self-inculpatory statements during those discussions, when, in fact, the record reveals the opposite. Accordingly, I conclude that the trial court's conclusion that the Bryant evidence would have been admissible was not reasonable in view of the legal landscape and factual circumstances of the present case. I therefore conclude that the trial court abused its discretion.

First, Bryant's statement that he was in Belle Haven on the night of the murder is not against his penal interest within the meaning of Conn. Code Evid. § 8-6 (4) because (1) his presence, alone, does not so far tend to subject him to criminal liability for the victim's murder, especially in light of the fact that Bryant states, and the record reflects, that *many* people were in Belle Haven that night,[5] and (2) Bryant specifically states that he took a train back to Manhattan, New York, from the town of Greenwich, which departed around 9:35 p.m., before the victim was murdered. Thus, when viewed in context, the totality of circumstances indicates that, although Bryant may have been in Belle Haven on the evening of the murder, Bryant places himself either on a train or in Manhattan at the *time* of the murder, thereby completely ruling out the possibility of his participation in the crime.

In my view, it was illogical for the trial court to conclude that Bryant's statement that he was in Belle Haven on the night of the murder was against his penal interest. Taken to the extreme, the trial court's logic would dictate that every out-of-court statement made by an eyewitness to a crime would constitute a statement against penal interest simply because the eyewitness was present at the scene of the crime, without regard to any temporal considerations. Further, under this scheme, all such statements would be admissible under the hearsay exception for statements against penal interest if the witness is unavailable to testify. This, of course, is illogical and not the law.

Second, I conclude that Bryant's statement that he picked up one of the Skakels' golf clubs, "swung it," and "[slung] it back to where the bag . . . was" also does not constitute a statement against his penal interest. Notably, Bryant does not state that he touched *the* golf club used in the murder. Indeed, if Bryant's statements are to be believed, it would not have been

possible for him to have made such a statement because he claimed not even to know how the victim was murdered.[6] Thus, at the time of his statement, Bryant would not have known that handling one of the Skakels' golf clubs could be against his penal interest.[7] This fact alone undercuts the trial court's speculation concerning Bryant's alleged consciousness of guilt regarding "the possibility that his fingerprints might be found on the murder weapon," and the rationale on which Conn. Code Evid. § 8-6 (4) is founded. See *State* v. *Bryant*, supra, 202 Conn. 696 ("it is not the fact that the declaration is against interest but the awareness of that fact by the declarant [that] gives the statement significance" [internal quotation marks omitted]); see also *State* v. *Rivera*, supra, 268 Conn. 368–69 (fact that declarant drove witness to remote location before making statement, told witness that he and defendant had done something wrong and admonished witness not to repeat statement clearly established that declarant "reasonably could have foreseen" that statement was against his penal interest).

In addition, even if Bryant knew how the victim was murdered, his statements regarding the Skakels' golf clubs, when viewed in context, demonstrate that those statements are insufficiently against his penal interest to be admitted pursuant to Conn. Code Evid. § 8-6 (4). Specifically, Bryant stated that "[*e*]*verybody* in Belle Haven touched those clubs," and that "those clubs went through *tons of people's hands*." (Emphasis added.) Accordingly, Bryant's statements no more implicate Bryant in the victim's murder than "[e]verybody in Belle Haven . . . ." This is insufficient to qualify as a statement against penal interest, especially in light of the fact that Bryant states that he was not in Belle Haven at the time of the murder.

Finally, I disagree with the trial court's characterization of Bryant's statements as an admission that Bryant "discuss[ed] assaulting [the victim] with Hasbrouck and Tinsley" because it inaccurately and unfairly implies that Bryant made *self*-inculpatory statements during those discussions, when, in fact, he did not. Quite the opposite, Bryant makes it clear that it was Hasbrouck who was "obsessed" with the victim and who "talked about her, and that was [Hasbrouck's] main focus." Moreover, Bryant stated that Hasbrouck's and Tinsley's alleged comments on the night of the murder made him "uncomfortable," made his decision to go home "a lot easier" and that he "didn't want any part of it." Bryant further distances himself from Hasbrouck and Tinsley by stating that he "didn't goad anybody into doing anything," and, in contrast, often discouraged Hasbrouck by telling him "[y]ou need to think about something else. You need to think about somebody else that is more obtainable, because it is not going to happen [with her]. She's not even interested in you." In sum, the totality of Bryant's statements reveals that, although

Hasbrouck and Tinsley allegedly talked about going "caveman style," Bryant never had any interest in or participated in Hasbrouck's or Tinsley's fantasy.

The problem with the trial court's characterization of Bryant's statements is that the court failed to consider Bryant's *role* in the discussions and what Bryant *actually said*. It is evident that the determination of whether a statement is against a declarant's penal interest requires an examination of the declarant's *actual statement*, and not just its context. In the present case, however, the trial court apparently leaped to the conclusion that Bryant's statements regarding the discussions were against *his* penal interest simply because he was present while Hasbrouck and Tinsley were making statements against *their* penal interests. This was unreasonable and improper.[8]

In concluding that the trial court abused its discretion in admitting the Bryant evidence, I also note that cases in this jurisdiction and various federal jurisdictions have held that statements that were far more inculpatory than Bryant's statements were not sufficiently against the declarant's penal interest to be admissible. See, e.g., *United States* v. *Bonty*, 383 F.3d 575, 579–80 (7th Cir. 2004) (declarant's statement that codefendant "had nothing to do with the [sexual assault]" was not against declarant's penal interest because declarant denied sexually assaulting victim, even though he admitted to picking up victim at shopping mall and taking her to his home, where assault occurred); *United States* v. *Butler*, supra, 71 F.3d 243, 252–53 (declarant's statement that he was in room when police arrived and found guns was not against declarant's penal interest because declarant "did not admit to anything remotely criminal"); *State* v. *Snelgrove*, 288 Conn. 742, 769, 954 A.2d 165 (2008) (declarant's statement that victim "got what she deserved" was not against penal interest because it did not imply that declarant was responsible for victim's death, even though declarant subsequently confessed to murder [internal quotation marks omitted]); *State* v. *Bryant*, 61 Conn. App. 565, 574, 767 A.2d 166 (2001) (declarant's admission that he shot victim was not against his penal interest because he claimed that it was in self-defense and declarant "must have known that people at the scene had seen him fire a gun at [the victim]"); *State* v. *Jones*, 46 Conn. App. 640, 648, 700 A.2d 710 (declarant's statement that friend told declarant "[a third party] had shot [the victim] last night" was not against declarant's penal interest, even though declarant admitted involvement in murder [internal quotation marks omitted]), cert. denied, 243 Conn. 941, 704 A.2d 797 (1997); *State* v. *Watkins*, 14 Conn. App. 67, 74, 540 A.2d 76 (declarant's written statement that he owned car in which shotgun was found but did not know shotgun was there could not be considered against his penal interest), cert. denied, 208 Conn. 804, 545 A.2d 1102 (1988).

In the present case, Bryant does not admit to or intimate any involvement with any crime. Instead, Bryant merely points the finger at Hasbrouck and Tinsley while claiming that he, himself, is totally innocent. In addition, Bryant's statements do not strengthen the impression that he has an "insider's knowledge of the [crime]." *State* v. *Bryant*, supra, 202 Conn. 695. To the contrary, Bryant specifically states that he was not present when the murder occurred and "never wanted to know" how the victim was murdered and "[t]o this day . . . [has] never looked at any autopsy reports . . . read any books . . . [or] magazine articles" that described the murder. Furthermore, Bryant states that Hasbrouck and Tinsley never confessed to murdering the victim and never disclosed any details about their alleged involvement in her murder. Indeed, Hasbrouck and Tinsley never mentioned the victim by name in their alleged comments to Bryant, and their comments always were couched in vague terms, such as, "[w]e did it," "[w]e achieved our fantasy," "[w]e achieved the caveman," and "[w]e got the girl caveman style." Thus, Bryant's statements reveal that he lacked not only an insider's knowledge of the crime but also knowledge of details of the crime that were publicly available. Under these circumstances, it was unreasonable for the trial court to conclude that the Bryant evidence would be admissible as statements against penal interest under Conn. Code Evid. § 8-6 (4). Accordingly, I conclude that the trial court abused its discretion in concluding that Bryant's statements would be admissible. Consequently, I also conclude that the petitioner is not entitled to a new trial because the Bryant evidence would not be admissible and, therefore, could not produce a different result at a new trial.

II

In light of the dissent's conclusion that the Bryant evidence satisfies the definition of a statement against penal interest within the meaning of Conn. Code Evid. § 8-6 (4), I next address the trustworthiness factors enumerated in Conn. Code Evid. § 8-6 (4), which comprise step two of the two part test for determining the admissibility of declarations against penal interest. See, e.g., *State* v. *Savage*, supra, 34 Conn. App. 171–72. A review of Bryant's statements reveals that the trial court abused its discretion in concluding that they were sufficiently trustworthy to be admitted under Conn. Code Evid. § 8-6 (4).

The first trustworthiness factor requires the court to consider "the time the statement was made and the person to whom the statement was made . . . ." Conn. Code Evid. § 8-6 (4). With regard to the timeliness prong, in general, a prompt declaration is considered to be indicative of trustworthiness, whereas delayed statements typically are deemed to be untrustworthy. See, e.g., *State* v. *Lopez*, supra, 254 Conn. 317. In the present

case, the trial court found that, "[a]lthough Bryant acquired his information within days of the offense, he . . . kept it to himself for [more than one] quarter of a century . . . [and] [o]n finally disclosing [it], he insisted [on] anonymity [and] . . . did not come forward voluntarily . . . ."

Neither the trial court, the petitioner nor the dissent has identified any legal authority, from this jurisdiction or any other, that supports a finding of trustworthiness with respect to a statement that was made more than two years following the crime that is the subject of the statement, let alone one that was made more than *twenty-five years* later, such as the statements in the present case. Although the trial court identified various reasons for the delay, those reasons do not make Bryant's statements any more timely or trustworthy. Moreover, several of the reasons that the trial court and the dissent cite are speculative and presume facts not in evidence, or otherwise lack support. Specifically, both the trial court and the dissent refer to the fact that Bryant has a law degree and, therefore, *somehow* had knowledge that there was no statute of limitations for murder in Connecticut in 1975. In addition, both the trial court and the dissent rely on Bryant's conclusory statement to Vito Colucci, the petitioner's private investigator, that it would have been "easier" for the state to have convicted Bryant than the petitioner. Neither of these reasons has merit; nor do they support a finding of trustworthiness.

First, just because Bryant obtained a law degree from the University of Tennessee Law School does not necessarily mean that he had any knowledge of whether Connecticut had a statute of limitations for murder in 1975. Indeed, Bryant never passed *any* state's bar examination, let alone Connecticut's. The trial court's and the dissent's conclusion is further flawed because, even if Bryant was well versed in Connecticut law when he made his statements in the early 2000s, he would have known that, in 1975, *Connecticut had a five year statute of limitations for murder*. See General Statutes (Rev. to 1975) § 54-193. Moreover, in making his statements, Bryant would have been further comforted by the fact that this court, in *State* v. *Paradise*, 189 Conn. 346, 350, 456 A.2d 305 (1983), held that the 1976 amendment to General Statutes (Rev. to 1975) § 54-193; Public Acts 1976, No. 76-35, § 1 (P.A. 76-35); "which excepted all class A felonies, including murder, from the purview of § 54-193, did not apply retroactively to offenses committed prior to April 6, 1976, the effective date of P.A. 76-35." *State* v. *Skakel*, 276 Conn. 633, 664, 888 A.2d 985, cert. denied, 549 U.S. 1030, 127 S. Ct. 578, 166 L. Ed. 2d 428 (2006). Our decision in *Paradise* remained the law in this state for twenty-three years, including during the time frame in which Bryant made his statements, and was not overruled until 2006 with respect to offenses for which the preamendment limitation period

had not yet expired when P.A. 76-35 became effective. *State* v. *Skakel*, supra, 666, 693. Thus, unless Bryant was clairvoyant and foresaw our 2006 decision in *Skakel* when he made his statements, we must presume that Bryant believed that there was a five year statute of limitations that had long since expired with respect to the victim's murder.

The second prong of the first trustworthiness factor "require[s] that the witness testifying [about] the [declarant's] statement . . . be one in whom the declarant would naturally confide." (Internal quotation marks omitted.) *State* v. *Lopez*, supra, 254 Conn. 317–18. The rationale is that "[a]cknowledgment of criminal activity is generally made only to confidants or to persons in whom the declarant imposes trust." *United States* v. *Goins*, 593 F.2d 88, 91 (8th Cir.), cert. denied, 444 U.S. 827, 100 S. Ct. 52, 62 L. Ed. 2d 35 (1979).[9] Thus, "[t]here must be a relationship in which the two parties to the conversation had a close and confidential relationship." *State* v. *Rivera*, 221 Conn. 58, 70, 602 A.2d 571 (1992). "[T]he burden of establishing the requisite relationship rests on the proponent of the statement." *State* v. *Lopez*, supra, 254 Conn. 318.

In the present case, Bryant initially disclosed his story to Crawford Mills, Bryant's former classmate. Although the trial court initially described Mills as "a friend that [Bryant] trusted," the trial court later clarified that their relationship was one of mere "former junior high school classmates [who] . . . maintained only *casual* contact over the years." (Emphasis added.) In addition, Bryant had absolutely no relationship with the petitioner's cousin, Robert Kennedy, Jr., or Colucci, prior to making his subsequent revelations to them. Accordingly, because Bryant did not have a close and confidential relationship with the persons to whom he made his statements, it is unlikely that Bryant actually believed those statements were against his penal interest, and the evidence in the record does not support a finding that this factor weighs in favor of admissibility. See *State* v. *Lopez*, supra, 254 Conn. 318–19 (nine year relationship insufficient to satisfy trustworthiness factor because relationship was not close and confidential); see also *State* v. *Hernandez*, 204 Conn. 377, 393, 528 A.2d 794 (1987) (trustworthiness factor not satisfied when declarant's statement was made to stranger).

The second trustworthiness factor requires the court to examine "the existence of corroborating evidence in the case . . . ." Conn. Code Evid. § 8-6 (4). We repeatedly have emphasized that "[t]he corroboration requirement for the admission of a third party statement against penal interest is significant and *goes beyond minimal corroboration*." (Emphasis in original; internal quotation marks omitted.) *State* v. *Lopez*, supra, 254 Conn. 319; accord *State* v. *Rivera*, supra, 221 Conn. 71; *State* v. *Rosado*, supra, 218 Conn. 249; *State* v. *Bryant*,

supra, 202 Conn. 700. Accordingly, "the statement must be accompanied by corroborating circumstances that *clearly indicate* the statement's trustworthiness." (Emphasis in original.) *State* v. *Lopez*, supra, 254 Conn. 319.

It is clear from the trial court's treatment of this factor, and its failure to reference the foregoing legal standard, that this standard was neither applied nor satisfied. Rather than examining whether Bryant's accusations implicating Hasbrouck and Tinsley were corroborated, the trial court based its finding of corroboration on a host of peripheral findings that have no bearing on whether Hasbrouck and Tinsley committed the murder.[10] Moreover, the trial court explicitly found that "[t]he corroboration for Bryant's claim is *minimal*" and "[t]he . . . Bryant [evidence] is *absent any genuine corroboration*."[11] (Emphasis added.) These explicit findings are wholly inconsistent with our legal standard that requires a level of corroboration that "*goes beyond minimal corroboration*." (Emphasis in original; internal quotation marks omitted.) *State* v. *Lopez*, supra, 254 Conn. 319. Accordingly, the trial court's conclusion that this requirement was satisfied was erroneous as a matter of law. See, e.g., *State* v. *Saucier*, supra, 283 Conn. 218 (plenary review applies to trial court's admission of evidence based on its interpretation of Code of Evidence).

The third and final trustworthiness factor requires the court to examine "the extent to which the statement was against the declarant's penal interest." Conn. Code Evid. § 8-6 (4). Although the trial court, prior to analyzing this factor, conclusorily stated that Bryant's statements were "clearly against his penal interest," the trial court later contradicted itself and concluded that, "[*o*]*n analysis*, [Bryant's statements] are merely claims of information of a crime accompanied by his alibi. The statements appear to be *minimally* against his interest." (Emphasis added.) As I discussed in part I of this opinion, for a statement to qualify as a declaration against penal interest within the meaning of Conn. Code Evid. § 8-6 (4), it must be "*exceedingly inculpatory*"; (emphasis added) *State* v. *Gold*, supra, 180 Conn. 644; such that it "*so far tended* to subject the declarant to criminal liability . . . ." (Emphasis added.) Conn. Code Evid. § 8-6 (4). Thus, on the basis of the trial court's own conclusion, and for the reasons set forth in part I of this opinion, I conclude that the trial court abused its discretion in concluding that Bryant's statements were sufficiently against his penal interest to be admissible under Conn. Code Evid. § 8-6 (4).

III

Even if I were to assume, arguendo, that the trial court did not abuse its discretion in determining that portions of the Bryant evidence were against Bryant's penal interest and satisfied the trustworthiness factors,

I nonetheless would conclude that the trial court improperly concluded that *all* of the Bryant evidence, rather than only those portions that were against Bryant's penal interest, would have been admissible at a new trial. In concluding that the Bryant evidence would be admissible in its entirety, the trial court stated: "Bryant's statements against penal interest are [admissible], and his self-serving statements go to their weight and will not preclude their admissibility under [the hearsay] exception [for declarations against penal interest]." This ruling was premised on an erroneous interpretation of Conn. Code Evid. § 8-6 (4) and contravenes our decision in *State* v. *Bryant*, supra, 202 Conn. 676, and the United States Supreme Court's decision in *Williamson* v. *United States*, supra, 512 U.S. 594. "To the extent a trial court's admission of evidence is based on an interpretation of the Code of Evidence, our . . . review is plenary." *State* v. *Saucier*, supra, 283 Conn. 218.

A

In *State* v. *Bryant*, supra, 202 Conn. 696–97, we addressed the issue of whether the hearsay exception for statements against penal interest permitted the admission of narratives that contain both self-inculpatory and self-serving statements. In *Bryant*, the defendant was convicted of burglarizing an apartment, sexually assaulting a woman therein and stealing her pocketbook. Id., 677–78. At trial, the defendant proffered, under the hearsay exception for statements against penal interest, various statements that his brother had made for the purpose of showing that his brother was the actual perpetrator. Id., 689. Specifically, the defendant introduced evidence that his brother had confessed to several witnesses that he had burglarized the apartment and stole the victim's pocketbook. Id., 690. The defendant's brother did not, however, admit to sexually assaulting the victim. Id.

The trial court held that the statements of the defendant's brother were inadmissible because his admission regarding the burglary alone was a "selective declaration against penal interest . . . [that] casts doubt [on] the offense [of sexual assault] as to which there [was] no admission against penal interest." (Internal quotation marks omitted.) Id., 695. On appeal, we held that the trial court improperly precluded the defendant from offering the statements, stating: "In vacuo, one might contend that [the brother's] silence as to the latter charge after direct admissions to the former has self-interest connotations and thus any statement short of a complete confession to both crimes should not be admitted into evidence. Any such claim, however, lacks merit *in this case*. . . . Our view is that [when] the disserving parts of a statement are *intertwined* with self-serving parts, it is more prudential to admit the entire statement and let the trier of fact assess its evidentiary quality in the complete context."[12] (Emphasis

added.) Id., 696–97.

In the present case, the trial court concluded that the Bryant evidence was admissible in its entirety without discerning whether Bryant's self-inculpatory statements were intertwined with his self-serving statements. The trial court's mistake of law is understandable in light of the fact that, over the years, commentators have incorrectly omitted this requirement from their commentary. See C. Tait, Connecticut Evidence (3d Ed. 2001) § 8.43.2; see also Conn. Code Evid. § 8-6 (4), commentary.[13] Nevertheless, it remains part of the rule in *Bryant*.

Unlike the statements at issue in *Bryant*, in which it was not possible for the court to sever the brother's *silence* as to the sexual assault charge from his confession to the burglary, Bryant's purportedly self-inculpatory statements in the present case are severable from his self-serving statements. Therefore, only the former are admissible. According to the trial court, Bryant's self-inculpatory statements include the following: On the night of the murder, (1) Bryant was in Belle Haven, (2) Bryant picked up one of the Skakels' golf clubs, "swung it," and "[slung] it back to where the bag . . . was," and (3) at one point, Bryant and the victim were among ten to fifteen teenagers socializing in the meadow.[14] Notably, under the rule in *Bryant*, none of Bryant's statements concerning Hasbrouck and Tinsley[15] would be admissible because they are self-serving, have no bearing on Bryant's penal interest and, most importantly, are not "intertwined" with Bryant's self-inculpatory statements.[16] *State* v. *Bryant*, supra, 202 Conn. 697. Because these statements are the only statements that purportedly serve to exculpate the petitioner, their inadmissibility precludes the granting of a new trial.

B

The trial court's conclusion that the Bryant evidence is admissible in its entirety also is in contravention of the Supreme Court's decision in *Williamson* v. *United States*, supra, 512 U.S. 594. In *Williamson*, the issue was whether the federal hearsay exception for statements against penal interest; Fed. R. Evid. 804 (b) (3); permits the admission of statements that are not self-inculpatory when they are made in the course of a narrative that also contains self-inculpatory statements. *Williamson* v. *United States*, supra, 599. Resolution of this issue required the court to determine the meaning of the word "statement" as used in the rule. Id. The court noted that the word "statement" could be defined either as "a report or narrative," which connotes an extended declaration, or as "a single declaration or remark." (Internal quotation marks omitted.) Id. Under the first definition, a declarant's entire narrative would be admissible, even if it contains parts that are self-inculpatory and parts that are not self-inculpatory, as "long as

in the aggregate the confession sufficiently inculpates [the declarant]." Id. Under the second definition, however, the rule "would . . . cover only those declarations or remarks within [a larger narrative] that are individually self-inculpatory." Id.

The court held that "the principle behind the [r]ule . . . points clearly to the narrower reading. Rule 804 (b) (3) is founded on the commonsense notion that reasonable people, even reasonable people who are not especially honest, tend not to make self-inculpatory statements unless they believe them to be true. This notion simply does not extend to the broader definition of 'statement.' The fact that a person is making a broadly self-inculpatory confession does not make more credible the [parts of the confession that are not self-inculpatory]. One of the most effective ways to lie is to mix falsehood with truth, especially truth that seems particularly persuasive because of its self-inculpatory nature. . . .

"And when part of [a] confession is actually self-exculpatory, the generalization on which [r]ule 804 (b) (3) is founded becomes even less applicable. Self-exculpatory statements are exactly the ones [that] people are most likely to make even when they are false; and mere proximity to other, self-inculpatory, statements does not increase the plausibility of the self-exculpatory statements. . . .

"Nothing in the text of [r]ule 804 (b) (3) or the general theory of the hearsay [r]ules suggests that admissibility should turn on whether a statement is collateral to a self-inculpatory statement. The fact that a statement is self-inculpatory does make it more reliable; but the fact that a statement is collateral to a self-inculpatory statement says nothing at all about the collateral statement's reliability. We see no reason why collateral statements, even ones that are neutral as to interest . . . should be treated any differently from other hearsay statements that are generally excluded. . . .

"In [the court's] view, the most faithful reading of [r]ule 804 (b) (3) is that it does not allow admission of [statements that are not self-inculpatory], even if they are made within a broader narrative that is generally self-inculpatory. The [trial] court may not just assume for purposes of [r]ule 804 (b) (3) that a statement is self-inculpatory because it is part of a fuller confession, and *this is especially true when the statement implicates someone else*." (Citations omitted; emphasis added.) Id., 599–601.

Although rule 804 (b) (3) applies only to self-inculpatory statements, "whether a statement is self-inculpatory or not can . . . be determined [only] by viewing it in context. Even statements that are on their face neutral may actually be against the declarant's interest . . . in light of all the surrounding circumstances."

(Internal quotation marks omitted.) Id., 603–604. Thus, in determining whether a particular statement is admissible under rule 804 (b) (3), a judge must consider the *entire* narrative and other surrounding circumstances rather than analyze each statement in a vacuum.[17]

Although this court has not yet had occasion to formally give its imprimatur to the rule announced in *Williamson* v. *United States*, supra, 512 U.S. 600–601, our previous opinions indicate that the rule should be followed in Connecticut. Specifically, in *State* v. *DeFreitas*, supra, 179 Conn. 451–52, we explicitly stated that "the rule we adopt [with respect to third party statements against penal interest] is in accord with the Federal Rules of Evidence," and, in *State* v. *Gold*, supra, 180 Conn. 643, "we [took] a step further and adopt[ed] the definition of statement against penal interest contained in the Federal Rules of Evidence." It follows, therefore, that our rule should be interpreted in the same manner as the federal rule, especially when the United States Supreme Court in *Williamson* has interpreted the very definition that we formally adopted in *Gold*.[18]

In the present case, the bulk of Bryant's statements are not self-inculpatory and, thus, are inadmissible under the rule in *Williamson*. Of Bryant's many statements, including those contained in an hour long video recording, only three, when viewed in context, could arguably qualify as statements against Bryant's penal interest: (1) Bryant was in Belle Haven on the night of the murder; (2) Bryant picked up one of the Skakels' golf clubs, "swung it," and "[slung] it back to where the bag . . . was"; and (3) at one point, Bryant and the victim were among the ten to fifteen teenagers socializing in the meadow. The remainder of Bryant's statements are neutral or contextual—e.g., Bryant attended Brunswick School in Greenwich—or are blatantly self-serving—e.g., Bryant's statements inculpating Hasbrouck and Tinsley. Under the rule of *Williamson*, *none* of these statements is admissible.[19] Because Bryant's self-serving statements are the only statements that exculpate the petitioner, their inadmissibility precludes the granting of a new trial.

[1] The majority acknowledges that the state raised the issue of admissibility of the Bryant evidence before the trial court and in this appeal, yet the majority concludes that it "need not examine" that issue in light of its resolution of the secondary issue concerning the trial court's application of the test set forth in *Shabazz* v. *State*, 259 Conn. 811, 820–21, 792 A.2d 797 (2002), for granting new trials on the basis of newly discovered evidence. Footnote 22 of the majority opinion.

[2] I note that, although § 8-6 of the Connecticut Code of Evidence has been amended in recent years, subdivision (4), the subdivision at issue in the present case, has not been amended since its inception in 2000. Hereinafter, all references and citations to § 8-6 (4) of the Connecticut Code of Evidence are to the current edition.

[3] Rule 804 (b) of the Federal Rules of Evidence provides in relevant part: "Hearsay exceptions.—The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

* * *

"(3) Statement against interest.—A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest,

or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement. . . ."

[4] The dissent fails to cite to a single case from our jurisdiction, or any other, for that matter, in which a statement was held to be against the declarant's penal interest when that statement did not actually implicate the declarant in a crime. Indeed, no such case exists in Connecticut. Rather, the dissent relies heavily on certain broad statements contained in *State* v. *Bryant*, supra, 202 Conn. 676, while completely ignoring the facts in *Bryant* that gave rise to those statements. Specifically, in *Bryant*, the declarant's statements were held to be against his penal interest *because he admitted to committing felony burglary*. See id., 696. Similarly, the dissent relies on the Iowa Supreme Court's decision in *State* v. *Paredes*, 775 N.W.2d 554 (Iowa 2009), for the proposition that a statement may be admissible under the hearsay exception for statements against penal interest even though the declarant explicitly denies responsibility for the crime. Again, however, the dissent has failed to disclose the factual basis for the court's ruling. In *Paredes*, the defendant was convicted of child endangerment after his infant child was diagnosed with shaken baby syndrome. Id., 557. On appeal, the Iowa Supreme Court held that the trial court abused its discretion in declining to admit various statements that were made by the infant's mother as statements against penal interest. Id., 570. In particular, the court held that, although the mother denied hurting the infant, she previously had admitted that she and the defendant were the infant's only caregivers; id., 568–69; and stated that the defendant "did not do it . . . ." (Internal quotation marks omitted.) Id., 568. Accordingly, the court concluded that, "by making statements tending to exculpate [the defendant], [the mother] was indirectly implicating herself as the person who caused the injuries." Id., 569. In the present case, there are no comparable admissions to anything remotely criminal. It is undisputed that the hearsay exception for statements against penal interest includes "not only confessions" but also statements that are "*exceedingly inculpatory*, but [fall] short of being a confession . . . ." (Emphasis added.) *State* v. *Gold*, supra, 180 Conn. 642–43. It is disputed, however, whether the statements at issue in the present case are sufficiently inculpatory to qualify for admission under that standard. The dissent fails to cite to any legal authority supporting the admission of statements, like Bryant's, that are, as the trial court accurately described, "*minimally* against his interest."(Emphasis added.)

[5] Bryant stated that there could have been ten to fifteen teenagers socializing in the meadow around 9 p.m. on the night of the murder. In addition, Andrew Pugh, a witness that the state called at the petitioner's criminal trial, testified that, between approximately 6 and 7:30 p.m., he was behind the Skakels' house with "ten or twelve" neighborhood children. Maria Coomaraswamy-Falkenstein, another witness, also testified at the hearing on the petition for a new trial that she had observed "a large group" of people near the Skakels' house, and that the group split up and reassembled within the neighborhood throughout the night.

[6] Specifically, Bryant stated: "I never wanted to know. . . . To this day, I have never looked at any autopsy reports. I have never read any books, any magazine articles. I don't want to know."

[7] The dissent states that "it is perfectly clear that [Bryant], like virtually everyone else with any connection to this high profile case, generally was aware that the victim had been beaten to death." Footnote 47 of the dissenting opinion. Even if Bryant was so aware, it does not change the fact that he claimed to be unaware of the *instrumentality* used to commit the murder. Many objects can be used to bludgeon, such as a baseball bat or a hammer. If Bryant is to be believed, he could not have known that handling one of the Skakels' golf clubs could be any more against his penal interest than handling one of the Skakels' tools or other household items. Thus, the rationale for admitting the statement as a statement against penal interest does not apply. If, however, the dissent is suggesting that Bryant knew that one of the Skakels' golf clubs was, in fact, the murder weapon, then Bryant's conflicting statements reveal that he is untruthful and, as such, his statements are not trustworthy.

[8] The dissent mischaracterizes my analysis of Bryant's statements by incorrectly stating that I examine each of Bryant's disserving statements "in

isolation" and "out of the context in which they actually were spoken . . . ." If I had analyzed Bryant's statements in this simplistic manner, then my analysis may have proceeded in the following manner: Bryant states he was in Belle Haven on the night of the murder. Simply being present in Belle Haven is not a crime. Thus, the statement was not against Bryant's penal interest. Clearly, my analysis does not proceed in the crude fashion that the dissent suggests. Rather, as the foregoing analysis reveals, I have given due deference to the context of Bryant's statements, and that context renders the statements insufficiently against Bryant's penal interest to be admissible under Conn. Code Evid. § 8-6 (4). Specifically, Bryant qualified his statements with assertions that he was not in Belle Haven at the time of the murder, that many people were in Belle Haven on the night of the murder, that *everybody* in Belle Haven touched the Skakels' golf clubs, that he did not know how the victim was murdered, and that he "didn't want any part of" Hasbrouck and Tinsley's alleged plan. All of these assertions provide context for Bryant's statements and expose them for what the trial court recognized as being "[mere] claims of information [about] a crime accompanied by [Bryant's] alibi."

The dissent ignores this *actual* context and, instead, relies on an inaccurate and hyperbolic summary of the "context" of Bryant's statements. Specifically, the dissent describes the context as follows: "Bryant places himself at the scene of the crime, in the company of the victim, shortly before the murder, holding the possible murder weapon, and discussing an attack on the victim with the two persons—both of whom Bryant had introduced and brought to Belle Haven—who, shortly after the victim's murder, boasted about having committed the crime." What is most disturbing about this characterization is that the dissent, in its zeal to find the Bryant evidence admissible, has stretched the "facts" to the point where they are no longer supported by the evidence. The *actual* facts contained in the record reveal that Hasbrouck and Tinsley *never* "boasted about having committed *the crime*," that is, the victim's murder. (Emphasis added.) To the contrary, Bryant explicitly stated that Hasbrouck and Tinsley *never* confessed to murdering the victim and *never* disclosed any details about their alleged involvement in her murder. Indeed, Hasbrouck's and Tinsley's alleged comments *never* contained any mention of the victim by name and were always couched in vague terms, such as, "I got mine," "[w]e did it," and "[w]e achieved our fantasy."

[9] The converse of this rationale also is generally true, that is, if a declarant makes a statement to a person with whom he does not share a close and confidential relationship, then it is unlikely that the declarant's statement was against his penal interest.

[10] Specifically, the trial court relied on the following "corroborating evidence," much of which was not *independently* corroborated but, rather, corroborated by Bryant's own prior statements: "Bryant went to . . . Brunswick School . . . and was classmates with the children in the Belle Haven neighborhood.

"Several witnesses, including . . . Mills and [childhood friend] Neal Walker, confirm[ed] that Bryant socialized [in] Belle Haven.

"At the hearing [on the petition for a new trial], witnesses confirm[ed] that Bryant [previously had] indicated that he [had been] present in Belle Haven on the night of the murder.

"One witness recall[ed] seeing . . . Hasbrouck and . . . Tinsley in Belle Haven with Bryant during the fall of 1975.

"Both Hasbrouck and Tinsley admitted to [Kennedy] that they had been in Belle Haven with Bryant on several occasions.

"Bryant also provide[d] detailed descriptions of the layout of Belle Haven, including accurate recitations of where people in the neighborhood lived.

"According to Bryant, Hasbrouck was [six feet, two inches tall], at least 200 pounds on the date of the homicide, and 'very strong.'

"Bryant stated that . . . Hasbrouck was obsessed with [the victim] . . . and [that he] 'wanted to go caveman on her,' meaning that he would club her, drag her away by the hair and sexually assault her.

"On the night of the murder, Bryant stated that he, Hasbrouck and Tinsley walked around Belle Haven with golf clubs from the [Skakels'] residence, with Hasbrouck stating that he had his 'caveman club' and that he would not leave Belle Haven unsatisfied.

"The victim had suffered multiple and severe injuries to her head and stab wounds to her neck [that] were consistent with being caused by a piece of golf club shaft. Pieces of the golf club found near the victim's body were the same brand of golf club found at the [Skakels'] residence. Evidence

presented at the petitioner's criminal trial shows that these clubs were commonly left about the [Skakels'] property."

[11] The trial court based these conclusions on the following findings of fact: "Of all the persons in Bryant's circle of Greenwich acquaintances at the time, none of them, other than [Neal] Walker and Mills, recalled [Hasbrouck and Tinsley]. Not even [the victim's] closest friends have any recollection of any association between [the victim] and Bryant, Hasbrouck and Tinsley. No one puts [the victim] in the company of Bryant and his companions on the night of [the murder]. There is no testimony that [Bryant, Hasbrouck or Tinsley] were in [the] company [of the victim] on any other occasion. Importantly, witnesses testify as to [the victim's] activities until 9:30 p.m. No one has any recall of ever seeing Bryant and [Hasbrouck and Tinsley] in Belle Haven on the night of the murder.

"The claim that Hasbrouck and Tinsley went 'caveman style' is not supported by the evidence. There was no evidence of the victim being dragged by [her] hair. Missing from Bryant's statement is anything concerning the breaking of the [golf] club or the stabbing of the victim."

The dissent, in contravention of this court's role as an appellate tribunal; see, e.g., *Saunders* v. *Firtel*, 293 Conn. 515, 535, 978 A.2d 487 (2009) ("[A]ppellate courts do not examine the record to determine whether the trier of fact could have reached a different conclusion. Instead, [they] examine the trial court's conclusion in order to determine whether it was legally correct and factually supported. . . . This distinction accords with [an appellate tribunal's] duty . . . to review, and not to retry, the proceedings of the trial court." [Internal quotation marks omitted.]); ignores these findings of fact that support the trial court's explicit conclusion that "[t]he . . . Bryant [evidence] is *absent any genuine corroboration*." (Emphasis added.) These findings, of course, are dispositive of the admissibility of the Bryant evidence. Rather than conceding this point and accepting these findings of fact, the dissent relies on its own selection of facts that it has culled from the case file and exhibits. In this regard, the dissent, as it aptly states, "violates the bedrock principle of appellate jurisprudence that the trial court, not this court, is the finder of fact, and, consequently, we are bound by those findings unless they are clearly erroneous." Footnote 52 of the dissenting opinion, citing *Key Air, Inc.* v. *Commissioner of Revenue Services*, 294 Conn. 225, 231, 983 A.2d 1 (2009) ("[t]o the extent that the trial court has made findings of fact, our review is limited to deciding whether such findings were clearly erroneous" [internal quotation marks omitted]).

[12] The dissent incorrectly advocates that we should give greater weight to the dictum in *Bryant* than to its unambiguous holding. In *Bryant*, we commented on the divide among commentators and some courts concerning the problem with statements that are both disserving and self-serving. See *State* v. *Bryant*, supra, 202 Conn. 696–97 n.18. We stated, as a matter of dictum, that we were "*inclined*" to agree—not that we actually agreed—with those commentators that "would admit the entire statement," rather than those who suggested "admitting only the disserving portion of the declaration and excluding the self-serving part where the two parts can be severed." (Emphasis added.) Id. Nevertheless, in the *text* of our opinion, we clearly *held* that it was "[o]ur view . . . that [when] the disserving parts of a statement are *intertwined* with self-serving parts, it is more prudential to admit the entire statement and let the trier of fact assess its evidentiary quality in the complete context." (Emphasis added.) Id., 696–97. Thus, in *Bryant*, although we mused about certain *inclinations* that we *possibly* could apply in a future case, our holding in that case was limited to a narrative in which the disserving and self-serving statements were intertwined, and it is that holding that is the law that must be applied. My conclusion in this case faithfully applies the holding in *Bryant*.

[13] The commentary to § 8-6 (4) of the Connecticut Code of Evidence provides in relevant part: "When a narrative contains both disserving statements and collateral, self serving or neutral statements, the Connecticut rule admits the entire narrative, letting the 'trier of fact assess its evidentiary quality in the complete context.' *State* v. *Bryant*, supra, 202 Conn. 697; accord *State* v. *Savage*, supra, 34 Conn. App. 173–74." The dissent argues that this commentary is dispositive with respect to how Conn. Code Evid. § 8-6 (4) is to be interpreted. This view, however, is incorrect because the stated purpose of the Code of Evidence was "to maintain *the status quo*, i.e., preserve the common-law rules of evidence *as they existed prior to the adoption of the* [*c*]*ode*, [and] its adoption [was] *not intended to modify any prior common-law interpretation of those rules*." (Emphasis added.) Conn. Code Evid. § 1-2 (a), commentary. Thus, even though the commentary

to Conn. Code Evid. § 8-6 (4) incorrectly contains dictum from *Bryant*, it neither binds this court nor abrogates our duty to apply the *actual* holding of *Bryant*. See *State* v. *DeJesus*, 288 Conn. 418, 421, 953 A.2d 45 (2008) (despite adoption of Code of Evidence, appellate courts retain authority to develop and change rules of evidence through case-by-case adjudication).

[14] Although I disagree with the trial court that *any* of these statements by Bryant satisfy the definition of against penal interest within the meaning of § 8-6 (4) of the Connecticut Code of Evidence; see part I of this opinion; I include this analysis to demonstrate that, regardless of whether one agrees with my conclusion in part I of this opinion, the portions of the Bryant evidence that exculpate the petitioner and Bryant would not be admissible in any event, and, therefore, the Bryant evidence could not affect the outcome of a new trial.

[15] Those statements include, but are not limited to, the following: (1) Hasbrouck was obsessed with the victim; (2) Hasbrouck and Tinsley discussed "going caveman" before, after and on the night of the murder; (3) Hasbrouck and Tinsley were in Belle Haven on the night of the murder and were carrying golf clubs; and (4) following the murder, Hasbrouck and Tinsley admitted to "achiev[ing] the caveman."

[16] Although the trial court lists among Bryant's self-inculpatory statements that, on the night of the murder, Bryant was "discussing assaulting [the victim] with Hasbrouck and Tinsley," this characterization of Bryant's statements is not supported by the record because it inaccurately and unfairly suggests that Bryant made self-inculpatory statements during those discussions, when, in fact, the record reveals the opposite. See part I of this opinion.

[17] In *Williamson*, the court provided several examples of statements that are neutral on their face but that might be against the declarant's penal interest when viewed in context: " 'I hid the gun in Joe's apartment' may not be a confession of a crime; but if it is likely to help the police find the murder weapon, then it is certainly self-inculpatory. 'Sam and I went to Joe's house' might be against the declarant's interest if a reasonable person in the declarant's shoes would realize that being linked to Joe and Sam would implicate the declarant in Joe and Sam's conspiracy. And other statements that give the police significant details about the crime may also, depending on the situation, be against the declarant's interest." *Williamson* v. *United States*, supra, 512 U.S. 603.

[18] I am mindful that the rule in *Williamson* is contrary to the rule in *Bryant* with respect to the admissibility of statements that are not self-inculpatory. *Bryant*, however, predates *Williamson* by about seven years, and this court indicated in *Bryant* no less than four times that *Bryant* was based on the particular circumstances of that case. See *State* v. *Bryant*, supra, 202 Conn. 695–97. In addition, this court never has applied the rule in *Bryant* since it was announced, and the Appellate Court has applied it only once, in *State* v. *Savage*, supra, 34 Conn. App. 173–74, which also was decided before *Williamson*. Furthermore, the statement at issue in *Savage* "incorporate[d] disserving and contextual components, rather than disserving and self-serving components." Id., 173. Thus, the rule in *Bryant* never has been applied to a narrative that contains disserving and self-serving parts, which is the type of narrative with which we are presented in the present case. Finally, in *State* v. *Rivera*, supra, 268 Conn. 351, we implicitly called into question the continued viability of the rule in *Bryant*, post-*Williamson*, but determined that the declarant's entire statement therein was admissible under either rule because the "entire statement was self-inculpatory . . . ." Id., 371 n.18.

I note that the dissent has identified four sister state courts that have considered and declined to follow the rule in *Williamson* for purposes of their respective state's hearsay exception for declarations against penal interest. See *People* v. *Newton*, 966 P.2d 563, 578–79 (Colo. 1998); *State* v. *Hills*, 264 Kan. 437, 447, 957 P.2d 496 (1998); *State* v. *Sonthikoummane*, 145 N.H. 316, 320–21, 769 A.2d 330 (2000); *Chandler* v. *Commonwealth*, 249 Va. 270, 279, 455 S.E.2d 219, cert. denied, 516 U.S. 889, 116 S. Ct. 233, 133 L. Ed. 2d 162 (1995). These cases, however, are outliers and merely represent the views of a small minority of jurisdictions. The reality is that the overwhelming majority of states that have considered the rule of *Williamson* have adopted its analysis. See, e.g., *State* v. *Prasertphong*, 206 Ariz. 70, 81–82, 75 P.3d 675 (2003); *Smith* v. *State*, 647 A.2d 1083, 1088 (Del. 1994); *Franqui* v. *State*, 699 So. 2d 1312, 1320 (Fla. 1997), cert. denied, 523 U.S. 1040, 118 S. Ct. 1337, 140 L. Ed. 2d 499 (1998); *State* v. *Averett*, 142 Idaho 879, 890–91, 136 P.3d 350 (App. 2006); *State* v. *Lucky*, 755 So. 2d 845, 857 (La. 1999), cert. denied, 529 U.S. 1023, 120 S. Ct. 1429, 146 L. Ed. 2d 319

(2000); *State* v. *Mutusky*, 343 Md. 467, 490, 682 A.2d 694 (1996); *State* v. *Ford*, 539 N.W.2d 214, 227 (Minn. 1995), cert. denied, 517 U.S. 1125, 116 S. Ct. 1362, 134 L. Ed. 2d 529 (1996); *Williams* v. *State*, 667 So. 2d 15, 19 (Miss. 1996); *State* v. *Castle*, 285 Mont. 363, 372–73, 948 P.2d 688 (1997); *State* v. *Torres*, 126 N.M. 477, 482, 971 P.2d 1267 (1998), overruled in part on other grounds by *State* v. *Alvarez-Lopez*, 136 N.M. 309, 98 P.3d 699 (2004); *State* v. *Holmes*, 342 S.C. 113, 117–18, 536 S.E.2d 671 (2000), cert. denied, 532 U.S. 906, 121 S. Ct. 1230, 149 L. Ed. 2d 139 (2001); *State* v. *Dotson*, 254 S.W.3d 378, 392–93 (Tenn. 2008); *Cofield* v. *State*, 891 S.W.2d 952, 956 (Tex. Crim. App. 1994, pet. denied); *State* v. *Roberts*, 142 Wash. 2d 471, 494, 14 P.3d 713 (2000); *State* v. *Mason*, 194 W. Va. 221, 230, 460 S.E.2d 36 (1995), overruled in part on other grounds by *State* v. *Melching*, 219 W. Va. 366, 633 S.E.2d 311 (2006); *Johnson* v. *State*, 930 P.2d 358, 363 (Wyo. 1996); see also *People* v. *Leach*, 15 Cal. 3d 419, 439, 541 P.2d 296, 124 Cal. Rptr. 752 (1975) (applying similar rule to that in *Williamson* prior to its announcement by United States Supreme Court), cert. denied, 424 U.S. 926, 96 S. Ct. 1137, 47 L. Ed. 2d 335 (1976).

[19] I further note that Bryant's statements inculpating Hasbrouck and Tinsley are inherently unreliable and are precisely the type of statements that the hearsay rule is designed to bar. See, e.g., *Williamson* v. *United States*, supra, 512 U.S. 600 ("[s]elf-exculpatory statements are exactly the ones [that] people are most likely to make even when they are false").