STATE OF CONNECTICUT *v.* MAKEE R.*
(SC 18494)

Rogers, C. J., and Norcott, Palmer, Zarella, McLachlan, Eveleigh and Harper, Js.**

Argued February 7—officially released September 11, 2012

John R. Gulash, for the appellant (defendant).

Frederick W. Fawcett, special assistant state's attorney, with whom, on the brief, were *John C. Smriga*,

state's attorney, and *Cornelius P. Kelly*, senior assistant state's attorney, for the appellee (state).

Opinion

EVELEIGH, J. In this certified appeal, the defendant, Makee R., appeals from the judgment of the Appellate Court, which affirmed the judgment of conviction, rendered after a jury trial, of sexual assault in the first degree in violation of General Statutes § 53a-70 (a) (2)[1] and risk of injury to a child in violation of General Statutes § 53-21 (a) (2).[2] *State* v. *Makee R.*, 117 Conn. App. 191, 192–93, 978 A.2d 549 (2009). On appeal,[3] the defendant claims that the Appellate Court improperly affirmed the judgment of the trial court because he was denied a fair trial in violation of the fifth, sixth and fourteenth amendments to the United States constitution.[4] Specifically, the defendant claims that the trial court's preliminary instruction to the jury regarding posttrial sentencing procedures and the trial court's final instruction to the jury regarding the minor victim's credibility were improper. In response, the state asserts that the trial court's instructions, when considered in their entirety, did not deny the defendant his right to a fair trial. We agree with the state, and although we do not approve of the trial court's instructions, upon a consideration of the entire jury instruction, we conclude that the improper instructions neither affected the fairness of the trial, nor prejudiced the defendant. Accordingly, we affirm the judgment of the Appellate Court.

The opinion of the Appellate Court sets forth the following facts that the jury reasonably could have found. "The defendant is the minor, paternal uncle of the victim. During the time in question, [the defendant] lived in his parents' home with his mother, father, grandmother, two sisters and two brothers. From January, 2003, to August, 2005, the victim was a frequent guest in the defendant's home where she received before and after school care from her grandmother, the defendant's mother.

"Almost every weekday, the victim's mother dropped the victim off at the defendant's house before school. The victim walked to and from school with the defendant's younger brother, who attended the same facility. She remained at the defendant's house in the care of her grandmother until late in the evening when she was picked up by one of her parents, usually her father. Occasionally, the victim also spent weekends at the defendant's house. While in the defendant's home, the victim spent most of her time with her grandmother and the defendant's younger brother, who was closest to her in age.

"The victim first revealed the sexual assault to her mother in August, 2005. At trial, the victim testified with specificity about two instances of sexual abuse. The first incident occurred in the defendant's upstairs bedroom. The victim explained that the defendant told her

to go upstairs, where he locked the door and made her perform fellatio. She also testified that a second, similar incident took place downstairs in the basement bedroom of the defendant's older brother while the defendant played a pornographic video. In addition to her verbal explanation, the victim demonstrated for the jury what happened on both occasions using anatomically correct dolls.

"When questioned, the victim could not recount a time when she was left alone with the defendant or remember the general time frame during which either incident occurred. The state's expert witness, a school psychologist who did not examine the victim personally, testified that it is typical for children to have difficulty pinpointing or sequencing events and that young children often run together similar events that happened on more than one occasion.

"The defendant's trial strategy was to undermine the victim's credibility and to establish that the sexual assault could not have taken place because the defendant and the victim were never alone together. The defendant's brothers testified that their mother never left the victim by herself in the house. Various members of the defendant's family stated that the defendant usually played baseball or basketball after school and was not often at home. They maintained that the defendant did not care for the company of children and was uninterested in playing with the victim. The defendant testified and denied ever having sexual contact with the victim or showing her pornographic materials.

"The defendant, his mother and his two brothers also testified that the basement bedroom of the defendant's older brother was always locked. They contended that only the defendant's older brother and mother had keys to that room and that the defendant's older brother did not allow anyone in his room. The defendant's family insisted that the only videocassette recorder (VCR) in the house was in the living room and that the defendant's older brother did not have a VCR, a digital [video disc] player, a computer or pornographic movies in his bedroom. During their investigation, the police department did not attempt to determine whether there was a VCR or pornographic material in the basement bedroom of the defendant's house.

"The defendant was convicted on both counts and sentenced to a term of twenty-five years incarceration, suspended after fifteen years, and twenty-five years of probation." Id., 193–95. Thereafter, the defendant appealed to the Appellate Court, claiming, inter alia, that "the court's explanation of its sentencing process put extraneous information before potential jurors, misled them as to their role and 'created a mindset and framework for a finding of guilt' "; id., 195; and that "the child testimony instruction, which was requested by the state and delivered prior to the start of jury

deliberations, bolstered the victim's testimony and conveyed an expectation of a conviction in a case in which the credibility of the victim was critical to the state's case." Id., 196–97. The Appellate Court rejected the defendant's unpreserved claims and concluded "that the jury instructions, read as a whole, did not clearly violate the defendant's constitutional rights or clearly deprive him of a fair trial as required for reversal under [*State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989)]." *State* v. *Makee R.*, supra, 117 Conn. App. 202. This appeal followed. Additional facts will be set forth as necessary.

On appeal to this court, the defendant claims that the Appellate Court improperly affirmed the judgment of the trial court because the preliminary jury instruction regarding posttrial sentencing procedures and the final instruction regarding the victim's credibility were improper and deprived him of a fair trial. Because the defendant did not preserve this claim in the trial court, he seeks to prevail under *State* v. *Golding*, supra, 213 Conn. 239–40.[5]

Under *Golding*, "a defendant can prevail on a claim of constitutional error not preserved at trial only if all of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation clearly exists and clearly deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt." Id., 239–40. "The first two [prongs of *Golding*] involve a determination of whether the claim is reviewable; the second two . . . involve a determination of whether the defendant may prevail." *State* v. *George B.*, 258 Conn. 779, 784, 785 A.2d 573 (2001).

In the present case, the Appellate Court concluded that the defendant met his burden with respect to reviewability and the state does not challenge that conclusion. The defendant challenges the Appellate Court's conclusion that the trial court's instructions to the jury did not amount to a clear constitutional violation that clearly deprived the defendant of a fair trial. In response, the state asserts that the Appellate Court properly affirmed the judgment of the trial court because the instructions, taken as a whole, did not deprive the defendant of a fair trial. We agree with the state.

"Our standard of review for claims of instructional impropriety is well established. The principal function of a jury charge is to assist the jury in applying the law correctly to the facts which they might find to be established . . . . When reviewing [a] challenged jury instruction . . . we must adhere to the well settled rule

that a charge to the jury is to be considered in its entirety . . . and judged by its total effect rather than by its individual component parts. . . . [T]he test of a court's charge is . . . whether it fairly presents the case to the jury in such a way that injustice is not done to either party . . . . In this inquiry we focus on the substance of the charge rather than the form of what was said not only in light of the entire charge, but also within the context of the entire trial. . . . Moreover, as to unpreserved claims of constitutional error in jury instructions, we have stated that under the third prong of *Golding* [a] defendant may prevail . . . only if . . . it is reasonably possible that the jury was misled . . . ." (Internal quotation marks omitted.) *State* v. *Lawrence*, 282 Conn. 141, 179, 920 A.2d 236 (2007).

I

The defendant first claims that the Appellate Court improperly affirmed the judgment of the trial court because the trial court had deprived him of his right to a fair trial by improperly injecting an extraneous issue into the minds of the jury through the issuance of a preliminary instruction to each panel of venirepersons that contained a prejudicial and misleading description of the sentencing procedures attendant to a finding of guilt. He further contends that the timing, content and effect of this instruction invaded the province of the jury, unconstitutionally shifted the burden of proof, diluted the presumption of innocence, and violated the defendant's constitutional rights to due process, a fair trial and an impartial jury. We disagree.

The following additional facts are necessary to our resolution of this claim. On November 21, 2006, prior to individual voir dire, the trial court instructed a panel of prospective jurors as follows: "Now, as I said earlier, your duties as a juror, besides showing up on those dates and being attentive to the evidence, your duties essentially are to determine whether or not [the defendant] is guilty or not guilty of either one or both of these charges. It is never ever the duty or the responsibility or the concern of a juror, individually or as a group, to contemplate or worry about or speculate as to the consequences of a finding of guilty. That is the responsibility of the judge presiding over the case. So that when a jury verdict comes back and the verdict is guilty and the judge receives that verdict then the case is continued for a sentencing hearing.

"The sentencing hearing usually is continued from the verdict date by about six weeks, maybe longer, and at that sentencing hearing the judge hears from the state, hears from the defense, hears from any witnesses, including victims, hears from the defendant personally, and then the judge determines—and I also should say the judge has a report that is ordered, a very detailed report concerning the defendant, and the judge then determines what is a fair and what is a just and what

is a legal sentence. That is not the function of the jury."

On November 22, 2006, the trial court instructed a second panel of prospective jurors as follows: "Let me just comment to you about what your duties are if you're selected to be a juror in this case.

"The primary function of a jury in a criminal case is to determine if the accused is guilty or not guilty of any one or all of the crimes with which the accused is charged.

"It is never the function of the jury to consider or speculate over what the consequence of what a finding of guilty would be.

"When a jury returns a verdict of guilty in a criminal case, the judge presiding over that trial will continue the case for what we call a sentencing hearing. That usually is continued for a period of six or eight weeks, [and] when the six or eight weeks have expired, the judge will have a report, a very detailed report that [he or she] will consider. The judge will hear from the prosecuting attorney and if there are victims that wish to be heard, the victim's entitled to be heard at the sentencing hearing, the court will hear from the defense attorney, the court will hear from the accused himself, if he wishes to be heard personally, and any other person that should be heard from, and then the court decides what is a fair, and just, and legal sentence. That is not the function of the jury." On November 29, 2006, prior to the selection of two alternate jurors, the court instructed a third panel of prospective jurors using language similar to the first two charges in all material respects.

Connecticut courts have generally held that the "[p]reliminary instructions serve the important function of orienting the jurors to the nature of the trial to come. It is helpful to explain at the very start the nature and scope of the jury's duty, some of the basic ground rules and the issues to be decided." R. Fracasse, A Collection of Connecticut Selected Jury Instructions: Criminal (3d Ed. 1995) p. 1-1. Where the instructions are properly crafted, they do not infringe upon a defendant's constitutional rights. See *State* v. *Figueroa*, 235 Conn. 145, 182–85, 665 A.2d 63 (1995).

It is axiomatic that "[i]nformation regarding the consequences of a verdict is . . . irrelevant to the jury's task," and that "providing jurors [with] sentencing information invites them to ponder matters that are not within their province, distracts them from their [fact-finding] responsibilities, and creates a strong possibility of confusion." *Shannon* v. *United States*, 512 U.S. 573, 579, 114 S. Ct. 2419, 129 L. Ed. 2d 459 (1994). Nevertheless, as we have explained previously herein, it is well settled that jury instructions are to be reviewed in their entirety, and "[t]he test of a court's charge is . . . whether it fairly presents the case to the jury in such

a way that injustice is not done to either party under the established rules of law. . . . As long as [the instructions] are correct in law, adapted to the issues and sufficient for the guidance of the jury . . . we will not view [them] as improper." (Internal quotation marks omitted.) *State* v. *Ebron*, 292 Conn. 656, 685, 975 A.2d 17 (2009), overruled in part on other grounds by *State* v. *Kitchens*, 299 Conn. 447, 472–73, 10 A.3d 942 (2011); see also *State* v. *Ash*, 231 Conn. 484, 493–94, 651 A.2d 247 (1994) ("[a] charge to the jury is not to be critically dissected for the purpose of discovering possible inaccuracies of statement, but it is to be considered rather as to its probable effect upon the jury in guiding them to a correct verdict in the case" [internal quotation marks omitted]). Accordingly, we must determine whether, in the present case, there is a reasonable possibility that the jury was misled in reaching its verdict.

The defendant asserts that the trial court's instruction misled the jury by conveying the false impression that the jury was not solely responsible for fact-finding. We disagree.

First, the trial court explicitly instructed the panel that the jury's role is that of fact finder. Specifically, on the three days in which a panel of venire persons was presented to the court, the trial court instructed them as follows: "[Y]our job includes the responsibility to evaluate the believability of everyone that testifies before you"; "I should comment to you about another [responsibility] that you have, and that is the responsibility to evaluate the testimony of everyone who will testify before you"; and "[a]s a juror in a criminal case, you have the right to accept all of a witness' testimony, you have the right to reject all of a witness' testimony, and you have the right to accept some and reject other portions of any witness' testimony. You have the obligation, you have the duty to evaluate each and every witness' testimony by the same standards."

Second, the trial court properly advised each panel regarding the presumption of innocence and the burden of proof. Specifically, that court instructed the jury that "[i]n a criminal case the defendant is presumed to be innocent, which means that he is innocent. He's innocent from the moment of his arrest; he's innocent during the jury selection process, during the presentation of evidence, during the closing arguments by counsel, and the presentation of the law. And he continues to be innocent until such time as six jurors like yourselves having deliberated upon the evidence, having shared your views on the evidence, having determined the facts based solely and exclusively upon the evidence, have applied the law that the trial judge gives you to those facts, and have unanimously agreed that the state has met its burden of proof beyond a reasonable doubt. In other words, the state must prove the defendant guilty; the defendant does not have to prove himself innocent

because he's presumed to be not guilty, he's presumed to be innocent."

Third, it is important to note that the trial court prefaced and concluded each instruction to the venire panels by stating that sentencing is not the function of the jury. The trial court instructed the jury that "[i]t is never ever the duty or the responsibility or the concern of a juror, individually or as a group, to contemplate or worry about or speculate as to the consequences of a finding of guilty."

As the foregoing demonstrates, the trial court's preliminary instructions properly explained the roles of the jury and the trial court. The trial court clearly explained in its instructions that the jury was responsible for fact-finding and determining whether the state had met its burden of proof, and described in detail how these functions were to be performed.

The defendant also asserts that the timing of the improper instruction was prejudicial and tainted the jury's partiality. Specifically, the defendant asserts that, by including the information regarding the specifics of the sentencing procedures in its instruction to the panel of venirepersons, the instruction was more influential on the jurors. We disagree. The challenged instruction was given as only one part of the instruction related to the general background information about a criminal trial. Moreover, the challenged instruction was not repeated in the final instructions to the jury. Indeed, during the final instructions to the jury, the trial court reminded the jury that it "should not concern [itself] with the punishment to be meted out in the event of a conviction," without describing the sentencing procedure.

The defendant nonetheless asserts that the final jury charge did not ameliorate any potential harm from the challenged instruction. We disagree. In its final charge, the trial court made clear that the jury had the burden of determining the credibility of the witnesses. The trial court informed the jury that "[m]y actions during the trial and ruling on [the] motions or objections by counsel, or in any comments that [I] might have made to counsel, or any questions I might have asked of a witness, or in setting forth the law in these instructions are not to be taken by you as any indication whatsoever of my opinion as to how you should determine the issues of fact." In combination with the other aspects of the preliminary and final charge, we conclude that the trial court's instructions, considered as a whole, demonstrate that the court left all issues of fact-finding to the jury.

Although we reiterate that relaying information to the jury regarding the consequences of a guilty verdict, or about the sentencing process, is improper, and accordingly instruct our trial courts in future cases to

refrain from discussing these issues in a jury instruction, in examining the instructions in their entirety, as this court is compelled to do, we conclude that the jury in the present case was "fully and properly instructed at the critical time, after all the evidence and after the arguments of counsel." (Internal quotation marks omitted.) *State* v. *Marra*, 222 Conn. 506, 537, 610 A.2d 1113 (1992). Accordingly, we conclude that the Appellate Court properly determined that mentioning sentencing proceedings in the preliminary instructions did not affect the overall fairness and integrity of the proceeding as a whole.

II

The defendant next claims that the Appellate Court improperly concluded that the trial court's final instructions to the jury regarding the victim's credibility did not unfairly bolster the credibility of the victim, dilute the state's burden of proof or prejudice the defendant. We disagree.

The challenged instruction provided: "Now, in a case involving the sexual abuse of a very young child that . . . child's capacity to recall specifics and the state's . . . concomitant ability to provide exactitude in an information are very limited. The state can only provide what it has. This court will not impose a degree of certitude as to date, time and place that will render prosecutions of those who sexually abuse children impossible. To do so would have us establish by judicial fiat a class of crimes committable with impunity."[6]

The defendant claims that this was not a correct charge on credibility because it invaded the jury's province to determine the credibility of witnesses and bolstered the credibility of the victim. He claims that the phrasing of these comments conveyed to the jury what could reasonably be understood as the court's own view of the victim's testimony and how that testimony should be treated in connection with the circumstances of the defendant's case. The defendant also contends that, because the victim's credibility was the central issue in the case, the charge unfairly removed the contested credibility issues of time, date and place from the jury's consideration. The state counters that the court was entitled to give a special instruction as it related to young children. Moreover, the state contends that the defendant was not prejudiced because he never contested the date, time and place of the assaults but, instead, claimed that the assaults never happened because he was never alone with the victim. Further, the state claims that, when considering the charge as a whole, there was no harm to the defendant and there is not a reasonable possibility that the jury could have been misled. We agree with the state.

"The prevailing view . . . is that a trial judge retains discretion to determine whether the jury should receive

a special instruction with respect to the credibility of a young witness, and, if so, the nature of that instruction." (Internal quotation marks omitted.) *State* v. *James*, 211 Conn. 555, 567–68, 560 A.2d 426 (1989). Although we do not place our imprimatur on the exact wording of the charge given in the present case, we agree that a trial court has discretion to give a special instruction with relation to the testimony of young children. Moreover, we note that the court's instruction referred to young witnesses in general, and not the victim in the present case. We instruct our trial courts in future cases that the portion of the charge that commented "[t]o do so would have us establish by judicial fiat a class of crimes committable with impunity," was unnecessary and should be avoided. Nevertheless, whether the defendant's constitutional rights were violated "depends upon the way in which a reasonable juror could have interpreted the instruction." (Internal quotation marks omitted.) *State* v. *Vasquez*, 182 Conn. 242, 247, 438 A.2d 424 (1980). The question remains whether, in consideration of the charge in its entirety, there is a reasonable possibility that the jury was misled. We conclude that the jury was not misled and, consequently, that the defendant was not deprived of a fair trial.

As we have explained previously, we view the charge in its entirety in order to determine if the defendant has been denied a fair trial and if the jury could reasonably have been misled by the instruction. In the present case, a review of the charge in its entirety demonstrates that the instruction regarding child testimony did not dilute the state's burden of proof or prejudice the defendant.

First, the trial court explained to the jurors their duty as fact finders. Specifically, the trial court instructed the jury "[n]ow you are the sole judges of the facts. It is your duty to find the facts. You are to recollect and weigh the evidence and form your own conclusions as to what the ultimate facts are." The trial court further instructed the jury: "Now in deciding what the facts are you must consider all of the evidence that's been presented in this case and in doing so you must decide what testimony or which testimony to believe and which testimony not to believe. You may believe all, none or any part of any witness' testimony and in making that decision you may take into account a number of factors . . . . With each witness you should consider his or her ability to observe facts correctly, recall them and relate them to you truly and accurately. You should consider whether and to what extent witnesses needed their memories refreshed while testifying. You should, in short, size up the witnesses and make up your own judgment as to their credibility and decide what portion, all, some or none of any particular witness' testimony you will believe based upon these principles and considerations." The trial court also

specifically instructed the jury that it should weigh the victim's credibility: "To the extent that the [victim] has been consistent in what she has said you may find her testimony in court to be corroborated or supported. To the extent that her testimony has been inconsistent you may consider the degree of the inconsistency which you find and whether such testimony was not supported or not corroborated. You may also consider any delay in reporting the incident as a factor in determining the credibility of the witness." The trial court also instructed the jurors, "it is your duty to resolve any conflicts in the testimony and find where the truth lies, and in doing so the credibility of the witnesses is entirely within your province as jurors."

Second, the trial court properly instructed the jury on the presumption of innocence and the state's burden of proof. Specifically, that court instructed the jury: "In this case as in all criminal cases the accused is presumed to be not guilty until and only if he is proved guilty beyond a reasonable doubt. That means that at the moment when he was presented before you for trial he stood before you free of any bias, prejudice or burden arising from his position as an accused. . . . This presumption of innocence was with the defendant when he was first presented for trial in this case. It continues with him throughout this trial unless and until such time as all of the evidence produced here in the orderly conduct of the case considered in the light of these instructions of law and deliberated upon by you in the jury satisfies you beyond a reasonable doubt that he's guilty." The trial court further explained that "[t]he burden is on the state, as you know, to prove the accused guilty of the crimes with which he's charged and he, the accused, does not have to prove that he's not guilty. . . . This means that the state must prove every element necessary to constitute the crime charged . . . ."

Third, the trial court properly instructed the jury on the elements of the crime of sexual assault in the first degree. The trial court instructed the jury: " 'A person is guilty of sexual assault in the first degree when such person engages in sexual intercourse with another person and such person is under thirteen years of age and the actor is more than two years older than such person.' The statute sets up three elements, all of which must be established beyond a reasonable doubt in order to justify a verdict of guilty. One, the accused must have engaged in sexual intercourse with another person. Two, the other person must have been under thirteen years of age at the time of the sexual intercourse. And, three, the actor must have been two years older than such person at the time of the sexual intercourse." The trial court continued, "[i]n order for you to reach a verdict of guilty, you must find beyond a reasonable doubt that all of the elements of the offense were proven, namely, that the defendant engaged in sexual intercourse with [the victim]; that she was under the

age of thirteen at the time; and, that [the defendant] was at least two years older than [the victim] at the time of the sexual intercourse." After explaining the elements of the crime of sexual assault in the first degree, the court properly reemphasized the burden of proof by stating that, "[a]s I said before, if the state has failed to satisfy you beyond a reasonable doubt as to any one of the elements, you must find the defendant not guilty of [the] specific crime [charged]."

Fourth, in its instruction to the jury relating to the charge of risk of injury to a child, the trial court again stressed the importance of proving all elements of the crime and the jury's function as fact finder. The court stated, "as I said before, it's your duty to resolve any conflicts in the testimony and to find where the truth lies . . . [a]nd in doing so the credibility of the witnesses is entirely for you to decide. If you find all of these elements to be proven beyond a reasonable doubt, you should find the defendant guilty, however, if you do not find all of these elements to have been proven beyond a reasonable doubt, you should find him not guilty."

Fifth, the trial court gave the following charge regarding the time of the event. "The state has alleged that the defendant committed these crimes at a certain time. It is not essential in a criminal prosecution that a crime be proved to have been committed at the precise time alleged. It is sufficient for the state to prove the commission of the crime at any time prior to the date of the complaint within the statute of limitations. Time is not an element, an essential element, of the offense."

After examining the instructions in the present case as a whole, we agree with the Appellate Court that "[t]he [trial] court's final instructions spanned twenty-two pages of transcript and adequately explained the charges the defendant faced, the burden of proof, the presumption of innocence and the jury's role as fact finder. The [trial] court counseled the jury to consider a number of factors in deciding which testimony to believe and explained that expert testimony is not binding on the jury and could be disregarded either in whole or in part. Additionally, the final charge to the jury did not misstate the law. The general rule in Connecticut is that [t]ime is not an essential ingredient of the crime of [sexual assault]. . . . *State* v. *Horton*, 132 Conn. 276, 277, 43 A.2d 744 (1945). As a result, we believe the jury reasonably understood the law, scope and gravity of its task." (Citation omitted; internal quotation marks omitted.) *State* v. *Makee R.*, supra, 117 Conn. App. 201–202.

Accordingly, we conclude that the Appellate Court properly determined that the trial court's jury instructions, read as a whole, did not clearly violate the defendant's constitutional rights or clearly deprive him of a fair trial as required for a reversal under *Golding*.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

* In accordance with our policy of protecting the privacy interests of the victims of sexual abuse and the crime of risk of injury to a child, we decline to use the defendant's full name or to identify the victim or others through whom the victim's identity may be ascertained. See General Statutes § 54-86e.

** The listing of the justices reflects their seniority status on this court as of the date of oral argument.

[1] General Statutes § 53a-70 provides in relevant part: "(a) A person is guilty of sexual assault in the first degree when such person . . . (2) engages in sexual intercourse with another person and such other person is under thirteen years of age and the actor is more than two years older than such person . . . ."

[2] General Statutes § 53-21 provides in relevant part: "(a) Any person who . . . (2) has contact with the intimate parts, as defined in section 53a-65, of a child under the age of sixteen years or subjects a child under sixteen years of age to contact with the intimate parts of such person, in a sexual and indecent manner likely to impair the health or morals of such child . . . shall be guilty of . . . a class B felony . . . ." Although § 53-21 (a) has been amended since the actions giving rise to this appeal; see Public Acts 2007, No. 07-143, § 4; the changes are not relevant to this appeal. In the interest of clarity, we refer herein to the current revision of the statute.

[3] We granted the defendant's petition for certification to appeal limited to the following issues: "1. Did the Appellate Court properly conclude that the trial court's preliminary instruction to the jury regarding posttrial sentencing procedures was improper but nonetheless did not affect the fairness of the trial?

"2. Did the Appellate court properly determine that the trial court's final instructions to the jury regarding the child-victim's credibility did not unfairly bolster the credibility of the victim, nor dilute the state's burden of proof, nor prejudice the defendant?" *State* v. *Makee R.*, 294 Conn. 912, 983 A.2d 275 (2009).

[4] The defendant also alleges a violation of article first, § 8, of the constitution of Connecticut. Because the defendant has not set forth a separate state constitutional analysis, we deem this claim abandoned. See *State* v. *Simpson*, 286 Conn. 634, 651 n.17, 945 A.2d 449 (2008).

[5] The defendant also invites us to review his claims under our inherent supervisory authority and the plain error doctrine. We decline to do so. We agree with the Appellate Court that the plain error doctrine and our supervisory powers are reserved for extraordinary circumstances that are not implicated by the present case. See *Smith* v. *Andrews*, 289 Conn. 61, 79, 959 A.2d 597 (2008).

[6] The language of the charge was taken directly from an Appellate Court opinion in which that court had rejected a defendant's claim that a trial court improperly had denied his motion for a further bill of particulars providing greater specificity as to the date, time and place of the crime. See *State* v. *Saraceno*, 15 Conn. App. 222, 237, 545 A.2d 1116, cert. denied, 209 Conn. 823, 824, 552 A.2d 431, 432 (1988). It was not intended to be a jury instruction.