STATE OF CONNECTICUT *v.* MARKEASE HILL
(SC 18662)

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

Argued October 24, 2012—officially released February 5, 2013

David J. Reich, assigned counsel, for the appellant (defendant).

Timothy F. Costello, assistant state's attorney, with whom were *Kevin C. Doyle* and *Seth R. Garbarsky*, senior assistant state's attorneys, and, on the brief, *Michael Dearington*, state's attorney, for the appellee (state).

Opinion

HARPER, J. The defendant, Markease Hill, appeals[1] from the trial court's judgment of conviction of two counts of murder in violation of General Statutes (Rev. to 2007) § 53a-54a, and one count each of capital felony in violation of General Statutes (Rev. to 2007) § 53a-54b (7), carrying a pistol without a permit in violation of General Statutes § 29-35, and criminal possession of a firearm in violation of General Statutes § 53a-217c (a) (1).[2] On appeal, the defendant raises three claims relating to testimony and demonstrative evidence of his flight from police approximately two months after the commission of these crimes, which were admitted as evidence of his consciousness of guilt. The defendant contends that: (1) the trial court abused its discretion when it admitted the evidence because, if the court had properly considered the evidence as uncharged misconduct, it would have concluded that its prejudicial impact outweighed its probative value; (2) the trial court failed to give the jury a limiting instruction, sua sponte, that the evidence could not be used as evidence of bad character; and (3) the prosecutor engaged in prosecutorial impropriety by misleading the trial court on the law regarding the admissibility of the evidence. We disagree with the defendant's claims and, accordingly, affirm the judgment of the trial court.

The jury reasonably could have found the following facts. On June 11, 2008, the defendant shot and killed two men, Ensley Myrick and Joseph Reed, in a parking lot outside of the Catwalk, a strip club on East Street in New Haven, shortly after Myrick and Reed had exited the club. Prior to the shootings, Myrick and Reed had been drinking and socializing with two friends, Joseph Perrelli and Andrew Guarino. Meanwhile, the defendant, who had a .45 caliber handgun in his possession, was also drinking and socializing with friends, Thaddeus Sanders and Jaime Sanchez, across the street from the Catwalk's parking lot. When Myrick and his friends left the Catwalk, Guarino and Reed began "horsing around" in the adjacent parking lot. Their conduct startled a small group of women who had gathered in the vicinity of Myrick's and Guarino's vehicles. One of these women was the defendant's sister. At this time, the defendant crossed the street to check on his sister and demanded to know whether there was a problem. Guarino responded that "nobody [wants] any problems . . . ." Guarino and the defendant shook hands. Subsequently, Myrick and Reed got into Myrick's vehicle, but were unable to leave because their exit was blocked by the defendant and two of the women. After making unheeded demands that the group blocking his exit move aside, Myrick stepped out of the vehicle and approached the defendant with his hands raised. Reed, too, exited the vehicle. From a distance of five or six feet from Myrick, the defendant pulled out his gun and

inflicted a fatal shot to Myrick's head. The defendant then inflicted a nonfatal shot to Reed's head and a second fatal shot to his right shoulder after Reed fell to the ground. Perrelli, Guarino, Sanders and Sanchez all witnessed the shootings. The defendant then ran to Sanchez' parked car and got inside, with the gun still in his possession. When Sanders asked him what had happened, the defendant responded that he "had to kill the motherfuckers" because they had called him "a nigger."[3]

The record reveals the following additional undisputed procedural history. At trial, the state sought, over the defendant's objection, to adduce evidence of the defendant's flight from the police following an attempted motor vehicle stop approximately two months after the Catwalk shootings for reasons unrelated to that incident, as evidence of the defendant's consciousness of guilt. In his offer of proof, the prosecutor argued that the evidence of flight was admissible pursuant to *State* v. *Holmes*, 64 Conn. App. 80, 778 A.2d 253, cert. denied, 258 Conn. 911, 782 A.2d 1249 (2001), indicating that, in *Holmes*, the Appellate Court had held that flight evidence "is relevant . . . [and] doesn't amount to uncharged misconduct." The defendant argued that the evidence should be excluded on the ground that it was more prejudicial than probative because: there was a two month lapse between the shootings and his flight from the police; there was no outstanding warrant for his arrest or any indication that the police had attempted to contact him in regard to the shootings; and, finally, his flight arose out of circumstances unrelated to the shootings. In ruling that the evidence was admissible, the trial court stated: "The court will find that the probative value of flight . . . is relevant to the trial. The court finds that any prejudicial impact is outweighed by the probative value as indicated by the case cited by the state.[4] As it relates to any difference in time, that goes to weight, not its admissibility. And as it relates to whether or not there was a warrant, that is not a requirement for the offer of proof of evidence of flight." The court then memorialized its understanding that the defendant's objection applied to both testimony on and demonstrative evidence of his flight from the police.

Pursuant to this ruling, the state introduced evidence establishing the following facts. On August 26, 2008, Detective Bertram Ettienne and another detective of the New Haven police department were investigating an unrelated homicide in an unmarked police car when they received a call that a witness to the crime was being followed by a black vehicle. At that time, they observed a black Acura with tinted windows, which the defendant was operating. When the defendant pulled his vehicle to the side of the road, the detectives stopped their vehicle a few car lengths behind it. Shortly thereafter, the defendant sped away, eventually driving onto

Interstate 91. After Ettienne contacted the state police, Troopers Jack Vegliante and Dean Dubois, operating separate cruisers, joined in pursuit of the defendant's vehicle with their sirens activated. Rather than pulling his vehicle over, the defendant led the officers on a high speed chase, at times traveling in excess of 100 miles per hour, in a manner characterized by Ettienne as "[v]ery reckless . . . [and in] total disregard for other traffic on the highway." After Dubois pulled his cruiser in front of the Acura in an effort to force the defendant to stop, the defendant accelerated his vehicle and rammed Dubois' cruiser, causing the cruiser to swerve. The Acura then collided with a guardrail, at which point the defendant climbed out of the passenger's side window and fled down an embankment. The officers pursued the defendant on foot, and, shortly thereafter, apprehended and arrested him. At the time of his arrest, the defendant told Dubois that he was just "playing around with the troopers, just having fun." A video recording of the final portion of the pursuit and photographs of Dubois' and the defendant's damaged vehicles also were introduced as evidence of the defendant's flight.

During the course of the officers' testimony, the trial court, sua sponte, instructed the jury that "it is permissible for the state to show that conduct by a defendant after the time of an alleged offense may have been influenced by the criminal act, that is, the conduct shows a consciousness of guilt. Such acts, however, do not raise a presumption of guilt. If you find the evidence proved and also find that the facts were influenced by the criminal act then and not by any other reason, you may, but are not required to, infer from this evidence that the defendant was acting from a guilty conscience." The court later provided a similar instruction in its final charge to the jury; the defendant objected on the ground that no consciousness of guilt instruction should be given.

Following a verdict and judgment of guilty on all five counts, the court imposed a total effective sentence of life imprisonment without the possibility of release. The defendant thereafter appealed directly to this court, claiming that the trial court, induced by the prosecutor's mischaracterization of the law, improperly admitted the evidence of flight without considering its prejudicial impact as uncharged misconduct and without giving a limiting instruction to the jury precluding consideration of the evidence for an improper purpose. Specifically, the defendant contends that the evidence of the high speed chase, because it manifested disregard for the law and the lives of others, improperly permitted the jury to infer that the defendant has a bad character and exhibits criminal tendencies. The defendant contends that the improper admission of the evidence of flight, the absence of a limiting instruction, and prosecutorial impropriety constituted harmful error requiring rever-

sal of the judgment because, even though there was sufficient evidence to prove beyond a reasonable doubt that he killed Myrick and Reed, without these improprieties, the jury may have determined that the defendant did not have the required intent to kill and may have convicted him of a lesser offense than murder. We find no merit to the defendant's claims.

I

We begin with the defendant's claim that the trial court improperly admitted evidence of uncharged misconduct—his flight from the police—because the prejudicial effect of the evidence outweighed its probative value. In support of this position, the defendant claims that: (1) the court improperly failed to consider the prejudicial effect of the flight evidence as uncharged misconduct, in reliance on *State* v. *Holmes*, supra, 64 Conn. App. 80, the case cited by the state in its offer of proof; (2) the prejudicial effect of admitting evidence of his flight from the police, when viewed in conjunction with other admitted instances of uncharged misconduct, outweighed its probative value;[5] and (3) the evidence of flight was not highly probative of consciousness of guilt, because it occurred prior to the issuance of an arrest warrant and before the police were actively searching for the defendant in connection with the Catwalk shootings.[6]

At oral argument before this court, the defendant was pressed as to how he could have preserved this claim for appellate review when he had not objected to the admission of the flight evidence on the ground that it was unduly prejudicial uncharged misconduct, but, rather, had objected on the ground that it was more prejudicial than probative of consciousness of guilt due to its timing and circumstances, and because no arrest warrant had been issued. Acknowledging that his challenge to the admission of this evidence may have been unpreserved, the defendant indicated that he would rely instead on his alternate claim that relief was appropriate under the plain error doctrine. The state, however, conceded that the defendant's claim was, in fact, preserved for the reason that the prosecutor's comments would have put the trial court on notice that the defendant's flight was an act of misconduct, even though it was not being proffered for the purpose of showing bad character. In light of the state's concession, we assume that the defendant's claim on appeal was preserved. We conclude, however, that the record does not support the defendant's contention that the trial court improperly admitted the evidence of his flight as uncharged misconduct.

Our analysis is guided by the fact that, regardless of whether particular evidence constitutes uncharged misconduct or whether it is offered to prove consciousness of guilt, the same legal standard governs its admissibility. Under our Code of Evidence, although evidence

of other crimes, wrongs or acts, such as uncharged misconduct, is inadmissible to prove bad character or a propensity to engage in wrongdoing, such evidence may be admitted for other purposes. Conn. Code Evid. § 4-5. It is well settled that uncharged misconduct evidence may be admitted as long as it satisfies a two part test: (1) the evidence must be relevant and material to a recognized exception to the general rule precluding the admission of uncharged misconduct evidence; and (2) its probative value must outweigh its prejudicial effect. *State* v. *Cator*, 256 Conn. 785, 798, 781 A.2d 285 (2001). Similarly, evidence is admissible to prove consciousness of guilt if, first, it is relevant, and second, its probative value outweighs its prejudicial effect. See *State* v. *Coccomo*, 302 Conn. 664, 669–73, 31 A.3d 1012 (2011).

Furthermore, regardless of the nature or the purpose for which evidence is being offered, this court has identified four factors relevant to determining whether the admission of otherwise probative evidence is unduly prejudicial. These are: "(1) where the facts offered may unduly arouse the [jurors'] emotions, hostility or sympathy, (2) where the proof and answering evidence it provokes may create a side issue that will unduly distract the jury from the main issues, (3) where the evidence offered and the counterproof will consume an undue amount of time, and (4) where the defendant, having no reasonable ground to anticipate the evidence, is unfairly surprised and unprepared to meet it." (Internal quotation marks omitted.) *State* v. *Sorabella*, 277 Conn. 155, 213 n.58, 891 A.2d 897, cert. denied, 549 U.S. 821, 127 S. Ct. 131, 166 L. Ed. 2d 36 (2006); see, e.g., *State* v. *Coccomo*, supra, 302 Conn. 673 (citing same four factors in context of evidence of defendant's transfer of property offered to show consciousness of guilt); *State* v. *Gupta*, 297 Conn. 211, 246–47, 998 A.2d 1085 (2010) (citing same four factors in context of evidence of prior sexual misconduct); *State* v. *Robertson*, 254 Conn. 739, 757, 760 A.2d 82 (2000) (citing same four factors in context of evidence portraying defendant threatening witness).

In the present case, after considering the parties' arguments for and against the admission of the evidence of flight, the trial court expressly stated that the evidence was relevant and that its probative value outweighed its prejudicial impact. This is precisely the two part test previously discussed for the admission of misconduct evidence. See *State* v. *Cator*, supra, 256 Conn. 798. Although the trial court did not explain the basis of its conclusion that the evidence was not unduly prejudicial, we have no reason to conclude that the court *did not* consider the very prejudice that concerns the defendant by considering whether the jurors' emotions, hostility or sympathy would be unduly aroused by admission of flight evidence that demonstrated the defendant's disregard for the law and the lives of others.

Cf. *State* v. *Faria*, 47 Conn. App. 159, 174, 703 A.2d 1149 (1997) (concluding that other misconduct evidence had little probative value and its admission "created a very strong likelihood that the [jurors'] emotions were unduly roused"), cert. denied, 243 Conn. 965, 707 A.2d 1266 (1998). To the extent that the defendant claims otherwise, it was his obligation to seek an articulation. See *Saunders* v. *Firtel*, 293 Conn. 515, 533–34, 978 A.2d 487 (2009) ("Without the necessary factual and legal conclusions furnished by the trial court . . . any decision made by us respecting [the appellant's claims] would be entirely speculative. . . . It is the appellant's responsibility to move for an articulation or rectification of the record where the trial court has failed to state the basis of a decision . . . to clarify the legal basis of a ruling . . . or to ask the trial judge to rule on an overlooked matter." [Citations omitted; internal quotation marks omitted.]). We conclude, therefore, that the record does not support the defendant's contention that the court improperly failed to consider the prejudicial effect of the evidence as misconduct.

The defendant claims, however, that the evidence of flight was not highly probative of consciousness of guilt.[7] Specifically, he points to the fact that the car chase occurred prior to the issuance of an arrest warrant and before the police were actively searching for him in connection with the Catwalk shootings. Although the defendant clearly did object to the admission of the evidence on this ground, he has not demonstrated that the trial court's conclusion was improper on this basis.

"We will make every reasonable presumption in favor of upholding the trial court's [evidentiary] ruling, and only upset it for a manifest abuse of discretion. . . . [Thus, our] review of such rulings is limited to the questions of whether the trial court correctly applied the law and reasonably could have reached the conclusion that it did." (Internal quotation marks omitted.) *State* v. *Coccomo*, supra, 302 Conn. 671. The question, moreover, is not whether the evidence is "highly" probative, but simply whether its probative value outweighs undue prejudice. *State* v. *Cator*, supra, 256 Conn. 798; see *State* v. *Coccomo*, supra, 672–73. In the present case, the trial court reasonably concluded that the probative value of the evidence was weightier than its prejudicial effect. First, the trial court observed that any lapse in time between the shootings and the high speed car chase went to the weight of the evidence, not to its admissibility. We cannot conclude that the intervening period between the Catwalk shootings and the defendant's flight from the police was so remote in time that the two incidents could not fairly be viewed as bearing some connection to each other. Furthermore, the court observed that it was not a requirement that a warrant first be issued for the defendant's arrest before evidence of flight would be admissible to prove consciousness of guilt. The defendant has pointed to no authority hold-

ing to the contrary. Moreover, when the defendant made the decision to flee rather than stop his vehicle, he would not have known whether a warrant recently had been issued for his arrest or even whether he was being sought by police for questioning in connection with the shootings. That the defendant offered no other explanation for why he had fled from the police when they attempted to stop his vehicle amplifies the evidence's probative value as consciousness of guilt.[8] Cf. *State* v. *Freeney*, 228 Conn. 582, 593–94, 637 A.2d 1088 (1994) (observing that, even when "ambiguities or explanations may exist which tend to rebut an inference of guilt," evidence of flight is admissible to prove consciousness of guilt, and that any "innocent explanation[s]" constitute factor in jury's consideration, but not bar to admissibility [internal quotation marks omitted]). Reviewing the trial court's ruling with appropriate deference, we conclude that the trial court did not abuse its discretion in ruling that the evidence of flight was probative of consciousness of guilt. We hold, therefore, that the trial court properly concluded that the evidence was admissible.[9]

II

The defendant additionally claims that the trial court improperly failed to give the jury a limiting instruction on the uncharged misconduct evidence to preclude the jury from using the evidence as proof of the defendant's bad character or criminal tendencies, and that it was, in fact, prosecutorial impropriety that induced this error. Although the defendant concedes that he neither requested such a limiting instruction nor objected to the charge given due to the absence of such an instruction, he makes the following arguments in support of his claim that he is nonetheless entitled to prevail on this issue: (1) the claim is preserved for appellate review by his general objection to the admission of the flight evidence on the ground that it was more prejudicial than probative; (2) the state waived its right to challenge the reviewability of this issue because it induced the instructional impropriety by citing *State* v. *Holmes*, supra, 64 Conn. App. 80, as authority for the proposition that flight evidence is not uncharged misconduct evidence; (3) even if the issue is unpreserved, the claimed error is reversible under the plain error doctrine because a trial court is obligated to provide a limiting instruction, sua sponte, when it has admitted evidence of uncharged misconduct; and (4) this court should use its supervisory authority to require the trial courts to provide limiting instructions in these circumstances. We conclude, first, that the defendant has failed to preserve this issue, second, that his inducement argument is unavailing, and finally, that he is not entitled to relief either under the plain error doctrine or under our supervisory authority.[10]

We first reject the defendant's contention that he

preserved this claim. The defendant's objection to the admissibility of the evidence because of its limited probative value as consciousness of guilt evidence did not put the trial court on notice that the defendant was seeking a limiting instruction to mitigate the effect of prejudice arising from improper inferences of bad character. See *State* v. *Allen*, 289 Conn. 550, 565, 958 A.2d 1214 (2008) (concluding that defendant "has failed . . . to persuade us that [his] claim [that a limiting instruction was a necessary part of the admission of other evidence] is inextricably connected to the claim of prejudice that he raised in the trial court"); cf. *State* v. *Johnson*, 288 Conn. 236, 288, 951 A.2d 1257 (2008) (concluding that when defendant's "theory of objection has changed . . . the claim is not reviewable").

As to the defendant's second argument, we disagree with its factual predicate, namely, that the record establishes that the prosecutor induced the trial court to adopt the improper view that flight evidence per se is not uncharged misconduct evidence, which in turn affected the trial court's decision not to provide a limiting instruction, sua sponte. The prosecutor's statement to the court reasonably can be construed, as the state contended at oral argument, as a "shorthand" statement of the view that, under *Holmes*, once the evidence can be admitted for a proper purpose, that evidence no longer should be barred as misconduct evidence because it has not been proffered for that impermissible purpose.[11] See, e.g., *State* v. *Gant*, 231 Conn. 43, 58, 646 A.2d 835 (1994) ("We also reject the defendant's assertion that this evidence [of his threatening someone with a gun] constituted 'prior misconduct' or 'bad character' evidence that prejudiced the defendant. The state never offered this evidence for the purposes argued by the defendant on appeal, and the trial court never gave such instructions to the jury."), cert. denied, 514 U.S. 1038, 115 S. Ct. 1404, 131 L. Ed. 2d 291 (1995); *State* v. *Huckabee*, 41 Conn. App. 565, 581, 677 A.2d 452 (*Schaller*, *J.*, dissenting) ("The evidence was not offered as evidence of misconduct for the purpose of impeaching the credibility of the defendant or for showing a criminal propensity. I conclude, therefore, that [the] testimony on this matter does not constitute misconduct evidence."), cert. denied, 239 Conn. 903, 682 A.2d 1009 (1996). Moreover, as discussed in part I of this opinion, nothing in the record compels the conclusion that the trial court failed to consider any prejudicial effect of the flight evidence as uncharged misconduct.

We next consider whether this claimed error, though unpreserved, entitles the defendant to a reversal of his conviction under the plain error doctrine, and we conclude that it does not. "[T]he plain error doctrine is reserved for truly extraordinary situations where the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the

judicial proceedings. . . . [T]he claimed error must be both clear and harmful enough such that a failure to remedy the error would result in manifest injustice." (Citations omitted; internal quotation marks omitted.) *State* v. *Cator*, supra, 256 Conn. 801. In order to prevail in the present case, the defendant would have to demonstrate that a trial court is required to provide a limiting instruction, sua sponte, whenever it has admitted evidence of uncharged misconduct. There is, however, no such general rule.[12] Id.

Furthermore, the defendant does not contest that the jury reasonably found that he shot Myrick and Reed in the Catwalk parking lot. Rather, he argues that the jury may have found him guilty of a lesser offense not requiring a specific intent to kill had the flight evidence not been introduced or had the court provided a limiting instruction thereon. We conclude, however, that even if a limiting instruction were required under the facts of the present case, the defendant cannot establish that any deficiency resulting from the trial court's failure to provide one rises to the level of "manifest injustice" thereby warranting reversal under plain error. (Internal quotation marks omitted.) Id. Any such error would not diminish the overwhelming evidence supporting the conviction, and it would be purely speculative to conclude that the jury may have found the defendant guilty of a lesser offense had the court provided a limiting instruction.

We also decline the defendant's suggestion that this court should use its supervisory authority to require trial courts to provide limiting instructions in these circumstances. As this court has observed, "[c]onstitutional, statutory and procedural limitations are generally adequate to protect the rights of the defendant and the integrity of the judicial system. Our supervisory powers are invoked only in the rare circumstance where these traditional protections are inadequate to ensure the fair and just administration of the courts." (Internal quotation marks omitted.) *State* v. *Reid*, 277 Conn. 764, 778, 894 A.2d 963 (2006). We are not persuaded that the defendant has presented such a pervasive and significant problem to justify the invocation of this extraordinary power.

The judgment is affirmed.

In this opinion the other justices concurred.

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

[1] The defendant appeals directly to this court pursuant to General Statutes § 51-199 (b) (3).

[2] The defendant elected a bench trial on the charge of criminal possession of a firearm and a jury trial on the remaining counts.

[3] Myrick and Reed were Caucasian.

[4] In *State* v. *Holmes*, supra, 64 Conn. App. 84, the defendant had filed a motion in limine seeking to exclude as misconduct evidence his failure to reply to police efforts to contact him after certain crimes occurred. The trial court denied the motion, admitting the evidence of flight to prove consciousness of guilt. Id., 85. On appeal, the defendant argued that "the

state's offer failed to support an inference of flight because there was no evidence showing that the defendant was aware that he was wanted by the police" and that the trial court had "failed to consider the lack of immediacy between the incident and the police efforts to locate him." Id., 86–87. The Appellate Court concluded that the evidence properly could be used "even if the state [had] failed to introduce direct or inferential evidence that the defendant knew that he was wanted by the police"; id., 87; and that the trial court had not abused its discretion in determining that the evidence was more probative than prejudicial. Id., 88. Although the defendant in the present case attempts to distinguish *Holmes* on the ground that the evidence of flight in that case did not consist of any illegal acts, he appears to overlook the significance of the fact that the defendant in *Holmes* had sought to preclude admission of the evidence as misconduct evidence and had raised objections to the probative value of the evidence similar to those raised at trial in the present case.

[5] The defendant identifies the following evidence as other instances of misconduct: (1) evidence that he carried a gun on previous occasions; (2) evidence that he regularly socialized with drug dealers; and (3) a police photoboard showing mug shots of him in prison garb, which indicated that he had been arrested previously. The defendant concedes in his brief to this court that he did not object to the admission of all of this evidence, and he does not challenge the admission of any of this evidence on appeal.

[6] The defendant contends in his reply brief that this court should apply de novo review to the question of whether the trial court improperly admitted the flight evidence, arguing that the balancing test used by the Appellate Court in *Holmes* was substantively different than the balancing test set forth in this court's case law regarding uncharged misconduct, and, therefore, that the trial court's putative reliance on *Holmes* caused it to apply the wrong legal test. Although we generally decline to address a claim raised for the first time in a reply brief; see, e.g., *State* v. *Devalda*, 306 Conn. 494, 519 n.26, 50 A.3d 882 (2012); we note that it is well settled that we apply de novo review to a claim that the trial court applied an incorrect standard. See, e.g., *Gould* v. *Commissioner of Correction*, 301 Conn. 544, 557, 22 A.3d 1196 (2011); *DiGiovanna* v. *George*, 300 Conn. 59, 69–70, 12 A.3d 900 (2011). As we explain subsequently in this opinion, there is no basis to conclude that the trial court applied an incorrect standard or misapplied the correct standard.

[7] We note that the defendant asserted a broad objection to the admission of any evidence of flight. He did not make a separate objection that, even if testimonial evidence of flight properly could be admitted as proof of consciousness of guilt, documentary evidence of his flight—specifically, the videotape documenting the final portion of the high speed chase and ultimate collision—should be excluded. Our opinion, therefore, is limited to the question of whether evidence of any form relating to the defendant's flight from the police was properly admitted.

[8] Although the defendant, upon his arrest, told Trooper Dubois that he was just ƒplaying around with the troopers, just having fun," we are not convinced that such language provides any substantive rationale that may explain the defendant's motive for fleeing from the police. Indeed, it is not likely that a motorist with a clean conscience would lead the police on a high speed chase at personal risk to his own safety and then flee by foot after driving his vehicle into a guardrail.

[9] Although the defendant also claims that the unduly prejudicial effect of the evidence of flight was exacerbated by other acts of misconduct admitted into evidence, the defendant has not claimed on appeal that the admission of this other evidence was improper and did not raise a claim of cumulative prejudice before the trial court. Therefore, our rejection of the defendant's claim that the trial court improperly failed to consider the prejudicial effect of the evidence of flight necessarily disposes of the defendant's cumulative prejudice claim.

[10] We note that at oral argument before this court the state remarked that it had declined to pursue an argument that the defendant impliedly had waived a claim of instructional error pursuant to *State* v. *Kitchens*, 299 Conn. 447, 482–83, 10 A.3d 942 (2011), resting instead on its argument that the defendant had failed to preserve the issue.

[11] In light of this conclusion and our previous determination that *Holmes* was, contrary to the defendant's claim, relevant authority; see footnote 4 of this opinion; the defendant cannot prevail on his claim of prosecutorial impropriety.

[12] In *State* v. *Cator*, supra, 256 Conn. 801, this court observed that "[i]t is

well established in Connecticut . . . that the trial court generally is not obligated, sua sponte, to give a limiting instruction." In *Cator*, this court rejected the defendant's reliance on *State* v. *Huckabee*, supra, 41 Conn. App. 572, for a contrary proposition, finding that *Huckabee* was factually and legally distinguishable. *State* v. *Cator*, supra, 802. Neither, then, can the defendant in the present case prevail on his plain error claim in reliance on *Huckabee*, that a trial court is required to give a limiting instruction, sua sponte, whenever uncharged misconduct is admitted for an otherwise proper purpose.