STATE OF CONNECTICUT *v.* KETRIC BARNES
(SC 18774)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh and Vertefeuille, Js.

Argued January 9—officially released February 19, 2013

Daniel J. Foster, for the appellant (defendant).

Melissa Patterson, assistant state's attorney, with whom, on the brief, were *Kevin D. Lawlor*, state's attorney, and *Maria E. Sous*, assistant state's attorney, for the appellee (state).

Opinion

PER CURIAM. The defendant, Ketric Barnes, appeals, upon our grant of his petition for certification,[1] from the judgment of the Appellate Court affirming his conviction, rendered after a jury trial, of criminal possession of a firearm in violation of General Statutes § 53a-217, possession of narcotics in violation of General Statutes § 21a-279 (a), two counts of sale of narcotics by a person who is not drug-dependent in violation of General Statutes § 21a-278 (b) and two counts of sale of narcotics in violation of General Statutes § 21a-277 (a). *State* v. *Barnes*, 127 Conn. App. 24, 15 A.3d 170 (2011). On appeal, the defendant contends that the Appellate Court improperly concluded that his right to due process under the Connecticut constitution was not violated by the state's inability to produce audio recordings of certain drug transactions and that the Appellate Court also improperly concluded that the trial court did not abuse its discretion in denying his motion to dismiss. We disagree and affirm the judgment of the Appellate Court.

The opinion of the Appellate Court appropriately sets forth the relevant facts and procedural history. "The West Haven police department conducted two controlled drug buys using an informant, Grace Licausi, to purchase crack cocaine from the defendant. On March 14, 2008, after meeting with police and getting a prerecorded $20 bill from them for use in the drug purchase, Licausi went to the defendant's apartment, located at 22 West Spring Street, and made the first controlled buy from the defendant. In exchange for the $20, the defendant gave Licausi two bags of crack cocaine, which she later turned over to the police.

"On March 26, 2008, Licausi again went to the defendant's apartment with a prerecorded $20 bill to make another controlled buy of crack cocaine from the defendant. Again, in exchange for the prerecorded $20 bill the defendant gave Licausi two bags of crack cocaine. On the basis of these controlled buys, the police secured and, on April 4, 2008, executed a search warrant for the defendant's apartment.

"Upon searching the defendant's apartment, the police discovered a loaded nine millimeter handgun in the defendant's bedroom, as well as cocaine and marijuana. Because the defendant had two broken legs and was only mobile with the assistance of crutches, the police carried him down the stairs to an awaiting police vehicle. The defendant was charged in three separate informations. The amended long form informations charged as follows: in docket number CR-08-65953-S, the defendant was charged with criminal possession of a firearm and possession of narcotics; in docket number CR-08-65954-S, he was charged with sale of narcotics by a person who is not drug-dependent

and sale of narcotics; and, in docket number CR-08-65955-S, he was charged with sale of narcotics by a person who is not drug-dependent and sale of narcotics. After a jury trial, he was convicted on all counts and sentenced to a total effective term of twenty years imprisonment, execution suspended after ten years, with five years probation." Id., 26–27.

"The record reveals the following additional facts. During each of Licausi's controlled buys from the defendant, she was fitted with a transmitter so that Officer Mark D'Amico could monitor her conversations. Although recordings were made of these conversations, the tapes were lost by the police before trial. Neither the defendant nor the state ever had an opportunity to listen to the recordings, and they were not aware that the recordings were missing until less than one week before the start of evidence. On March 10, 2008, the first day of trial, the defendant moved to dismiss the charges against him on the ground that his state due process rights had been violated by the loss of this evidence. After hearing argument, the court stated that it would permit the defendant wide latitude in his cross-examination of Licausi and D'Amico regarding the recordings and that it would permit counsel to file a memorandum of law if he wanted a further remedy.[2] The next day, the defendant submitted a memorandum of law in support of his motion to dismiss, and the state filed an opposition. After hearing oral argument, the court conducted a balancing test in accordance with *State* v. *Asherman*, [193 Conn. 695, 724, 478 A.2d 227 (1984)], and concluded that it was unknown exactly what was on the missing recordings or whether there was anything favorable to the defendant and that the defendant had failed to demonstrate that he would have conducted cross-examination in a different manner or that his presentation of evidence would have been different if the recordings were available. Additionally, the court found that the defendant had not demonstrated any bad faith on the part of the police. Accordingly, the court denied the defendant's motion to dismiss, concluding that the defendant had not demonstrated any prejudice that could not be cured by the wide leeway given in cross-examination." *State* v. *Barnes*, supra, 127 Conn. App. 28–30.

On appeal, the Appellate Court determined that "having applied the *Asherman* factors, we conclude that the defendant has failed to demonstrate that his right to due process of law under article first, § 8, of the Connecticut constitution was violated by the failure of the police to preserve evidence, and we further conclude that the court did not abuse its discretion in denying the defendant's motion to dismiss." Id., 36. Accordingly, the Appellate Court affirmed the judgment of the trial court. Id., 45. This certified appeal followed. See footnote 1 of this opinion.

Our examination of the record and briefs and our consideration of the arguments of the parties persuade us that the judgment of the Appellate Court should be affirmed on the certified issue. *State* v. *Barnes*, supra, 127 Conn. App. 26–36. That issue was resolved properly in the Appellate Court's concise and well reasoned opinion. Because that opinion fully addresses all arguments raised in this appeal, we adopt it as a proper statement of the issue and the applicable law concerning that issue. It would serve no useful purpose for us to repeat the discussion contained therein. See, e.g., *Clinch* v. *Generali-U.S. Branch*, 293 Conn. 774, 777–78, 980 A.2d 313 (2009).

The judgment of the Appellate Court is affirmed.

[1] We granted the defendant's petition for certification to appeal limited to the following issue: "Did the Appellate Court properly determine that the trial court acted within its discretion in denying the defendant's motion to dismiss for the state's failure to produce lost audio recordings of a sting operation?" *State* v. *Barnes*, 300 Conn. 938, 17 A.3d 472 (2011).

[2] Specifically, the court stated: "This is what I'll do, given the timing of the motion and the timing of the disclosure [that the evidence was lost], I'll allow latitude . . . for cross-examination of any of the state's witnesses . . . including . . . D'Amico as to where the tape is, what efforts—and what was done with it. You can cross-examine until your heart's content, until you [find] out when the tape was last seen, if anybody listened to it, etc., and then I'll entertain—you can file some authorities with this [motion to dismiss] if you want any further remedy, and the same with the state. Those should be filed as soon as possible. But in terms of the missing evidence now, given the status of the case, we've already started the trial, but we're still on the first witness and you're still on cross-examination. So, as I say, you can cross-examine this witness and establish . . . what happened to the tape recording." (Internal quotation marks omitted.) *State* v. *Barnes*, supra, 127 Conn. App. 29 n.6.