STATE OF CONNECTICUT *v.* RICHARD ANNULLI
(SC 18856)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh, McDonald and Espinosa, Js.

Argued April 15—officially released August 6, 2013

Mark G. Ouellette, for the appellant (defendant).

Marjorie Allen Dauster, senior assistant state's attorney, with whom were *Cynthia S. Serafini*, senior assistant state's attorney, and, on the brief, *Maureen Platt*, state's attorney, and *John A. East III*, former senior assistant state's attorney, for the appellee (state).

Opinion

McDONALD, J. The defendant, Richard Annulli, appeals from the judgment of the Appellate Court affirming his conviction, rendered after a jury trial, of two counts of sexual assault in the fourth degree in violation of General Statutes § 53a-73a (a) (1) (B), one count of attempt to commit sexual assault in the fourth degree in violation of General Statutes §§ 53a-49 and 53a-73a (a) (1) (B) and three counts of risk of injury to a child in violation of General Statutes § 53-21 (a). The sole issue in this certified appeal is whether the Appellate Court properly affirmed the trial court's ruling precluding the defendant from cross-examining the complainant, A,[1] about whether she had lied to the police regarding an unrelated matter on the ground that the proffered evidence would have injected collateral issues into the trial. *State* v. *Annulli*, 302 Conn. 936, 28 A.3d 990 (2011). The defendant contends that precluding this line of inquiry violated both his right to examine a witness' character for untruthfulness under § 6-6 (b) (1) of the Connecticut Code of Evidence[2] and his rights to confrontation and to present a defense under the sixth amendment to the United States constitution.[3] We affirm the judgment of the Appellate Court.

The opinion of the Appellate Court sets forth a complete statement of the facts that the jury reasonably could have found relating to the charges at issue; see *State* v. *Annulli*, 130 Conn. App. 571, 573–75, 23 A.3d 808 (2011); which need not be repeated in full for purposes of the present appeal. In brief, the jury reasonably could have found that four incidents occurred between A and the defendant, who was A's neighbor and the father of a friend of A's brother, during a two year period of time beginning in 2006, when A was approximately thirteen years old.[4] In those incidents, the defendant attempted to make A touch his penis, touched A's vagina over her clothing and placed his hands between her legs. There was no direct corroborative evidence of any of the incidents other than the first, in which A's friend, K, saw A being pulled by her arm into the defendant's car through the front passenger window and helped to extricate A from the defendant's grasp. A immediately thereafter reported to K, who only had been able to see the upper part of the defendant's body in the brief tussle, that the defendant had exposed himself to her as he sat in his car. A did not report the defendant's conduct regarding this or any other incident to anyone else, in response to the defendant's admonition, until the day after the fourth and final incident, at which time she disclosed all of the events to her mother, who in turn reported the incidents to the police.

The record reveals the following additional undisputed facts and procedural history. At trial, the defendant's theory was that A had lied about these incidents having occurred, but he proffered no motive for A to

have lied. Rather, the defendant, through cross-examination, attempted to paint A as having a proclivity for untruthfulness. The trial court permitted the defendant to ask A whether she had told lies to her parents or others, over the state's objection, ruling that credibility is always a factor. A admitted to lying to friends on occasions when she thought it necessary to avoid getting into fights with them. She denied, however, ever having lied to her parents or to her friends when she engaged in online communications with them. When defense counsel continued to pursue the line of questioning as to whether A ever had lied when she was on the Internet, the state objected and requested a discussion outside the presence of the jury. The court excused the jury and heard arguments from both parties.

After defense counsel claimed to have evidence that A had been untruthful in the context of an online communication, the state explained that this evidence related to an Internet exchange between A and a classmate, which A claimed contained a threat by her classmate to harm her. Although both young women had been summoned to the police station in connection with this matter, the state represented that there was a discrepancy in the two accounts as to what actually had been communicated in the exchange. In response to the court's inquiry, both parties agreed that this incident did not relate directly to the facts of the present case and therefore went to A's general credibility. When the court expressed concern that evidence of conflicting accounts of the same incident was different than evidence of a false statement, defense counsel claimed that he would present evidence through witnesses that would show A "intentionally altered e-mail documents and [had] lied [to the police] in an attempt to have another person arrested for threatening her."

Following a recess, the state suggested to the trial court that defense counsel make an offer of proof. Defense counsel argued that an altered version of the e-mail had been brought to the police station, that the police had investigated whether there had been a valid threat and that this investigation had revealed that A "did, in fact, alter the e-mail and it was determined that it was a lie." In response, the court expressed concern that the matter sounded collateral. The court noted that the defendant's claim raised two questions—whether A had lied to the police, and if so, what she had lied about, suggesting that perhaps it would need to see the two versions of the e-mails to ascertain the answers to those questions. When defense counsel acknowledged that he did not have the e-mails to produce, the court further questioned what proof the defendant had that there had been a determination that A had made a false complaint. The state interjected to explain that it had a copy of the e-mails in its possession. The state also informed the court that the police had taken no action regarding this incident after interviewing the young

women, other than to direct them to cease all communications with each other. The court then determined that the evidence did not appear to be able to establish definitely that A had lied, citing the fact that the police had taken no action on the matter. The court further deemed the matter collateral. In response to defense counsel's claim that he had witnesses who could verify that A had lied about her classmate's threat, the court expressed concerns about such evidence producing hearsay within hearsay and leading to a mini-trial about the electronic communication—a matter that was "too far afield." Although the court ruled that defense counsel could not pursue this general line of inquiry, it indicated that he could pursue other lines of questioning concerning A's credibility. In response to defense counsel's question of whether he would be permitted to ask A directly about this matter without being able to impeach her with extrinsic evidence, the court initially indicated that that question would not be allowed but later stated that it would "take each question as it comes."

After the jury was returned to the courtroom, defense counsel resumed cross-examination of A, asking if she had been involved in an incident with a classmate involving the exchange of e-mail messages. The state objected, and the court again excused the jury to allow defense counsel to make an offer of proof through examination of A to determine whether he should be permitted to pursue this line of inquiry. In response to defense counsel's questions, A admitted to having been involved in an incident with a classmate concerning an exchange of e-mails. Defense counsel then repeatedly asked A whether she had changed or altered the e-mail exchange that she had provided to the police regarding the incident. In response, A stated that she had copied and pasted the e-mail into a Word document and provided this information to the police. In further responses, A stated that the police were aware that the information she had provided to them had been copied and pasted from the original, and that she had not been arrested for changing the e-mail or filing a false statement with the police. After a litany of questions to which A denied any wrongdoing, the following exchange occurred:

"[Defense Counsel]: When you . . . were at the police station, the bottom line and end result was that it was determined that the e-mail you claimed you received you had changed, correct?

"[A]: Yes.

"[Defense Counsel]: *So you lied to the police because you told them you had been threatened and it really wasn't true, correct?*

"[A]: *Yes.*

"[Defense Counsel]: I have nothing further." (Empha-

sis added.)

On redirect examination, the state inquired as to what A had meant about having copied and pasted the e-mail. A responded that she had "highlighted [the e-mail] from MySpace and . . . copied it and went to Word Pad and pasted it." Upon further examination, A admitted that she had deleted some of the information contained in the original e-mail, but maintained that she had not altered it in such a manner so as to create a threat from her classmate that did not appear in the original. At the conclusion of the state's redirect examination, the following exchange occurred:

"[The Prosecutor]: And so as you sit here today, did you lie to the police about the threat that you got from [your classmate]?

"[A]: No.

"[The Prosecutor]: Was it a lie [that this classmate] had threatened you?

"[A]: No."

Upon the conclusion of the offer of proof, the court ruled: "Any line of questioning concerning whatever this incident may or may not have been between [A] and [her classmate] is collateral and that line of questioning is not allowed." When the jury returned, defense counsel was permitted to elicit testimony from A that several years earlier she had misrepresented her age as twenty-three on her MySpace page.

Thereafter, the jury returned a verdict of guilty of two counts of sexual assault in the fourth degree, one count of attempt to commit sexual assault in the fourth degree, and three counts of risk of injury to a child.[5] The court rendered judgment in accordance with the verdict, sentencing the defendant to a total effective term of ten years imprisonment, execution suspended after five years, followed by fifteen years probation. The defendant filed a motion for a new trial in which he argued that the court improperly had precluded him from cross-examining A on her "proclivity to lie, specifically as to her admission that she lied to the police and altered evidence in a complaint she made against a person who had allegedly threatened her" in violation of his right to confront his accuser, to present evidence in his defense, and to cross-examine the complainant's credibility. The trial court denied the motion.

The defendant appealed from the judgment to the Appellate Court, arguing, inter alia, that the trial court's ruling violated § 6-6 (b) (1) of the Connecticut Code of Evidence and his rights to confrontation and to present a defense under the sixth amendment. *State* v. *Annulli*, supra, 130 Conn. App. 576. Concluding that the proffered evidence was unclear regarding whether A had lied to the police and that the trial court reasonably could have concluded that the evidence would have

injected collateral issues into the trial, the Appellate Court held that the trial court had not abused its discretion in excluding the evidence. Id., 582. Because the evidence properly had been excluded in accordance with the rules of evidence, the Appellate Court noted that, under *State* v. *Davis*, 298 Conn. 1, 11, 1 A.3d 76 (2010), the defendant's constitutional claims necessarily failed. *State* v. *Annulli*, supra, 582. This certified appeal followed. *State* v. *Annulli*, supra, 302 Conn. 936.

On appeal, the defendant claims that the Appellate Court improperly concluded that the trial court had acted properly in precluding him from cross-examining A on the question of whether she previously had lied to the police about her classmate having threatened her. The defendant contends that the trial court's ruling deprived him of the minimum opportunity for cross-examination required under the sixth amendment. The defendant also contends that denying him the right to produce evidence impacting A's credibility and veracity, in a case in which credibility is the only real issue, is an abuse of discretion and an improper application of the Code of Evidence. Finally, he contends that the court's ruling was not harmless error. We agree with the Appellate Court that the trial court's ruling was proper.

In the present case, we first consider whether the trial court's decision to preclude this line of questioning violates the rules of evidence. See *State* v. *Davis*, supra, 298 Conn. 10. "To the extent [that] a trial court's [evidentiary ruling] is based on an interpretation of the Code of Evidence, our standard of review is plenary"; *State* v. *Saucier*, 283 Conn. 207, 218, 926 A.2d 633 (2007); but when the trial court's decision to exclude evidence is premised on a correct view of the law, our standard of review is for an abuse of discretion. *State* v. *Davis*, supra, 10–11. Under the abuse of discretion standard we make every reasonable presumption in favor of upholding the trial court's rulings, considering only whether the court reasonably could have concluded as it did. Id., 11. "If, after reviewing the trial court's evidentiary rulings, we conclude that the trial court properly excluded the proffered evidence, then the defendant's constitutional claims necessarily fail. . . . If, however, we conclude that the trial court improperly excluded certain evidence, we will proceed to analyze [w]hether [the] limitations on impeachment, including cross-examination, [were] so severe as to violate [the defendant's rights under] the confrontation clause of the sixth amendment . . . ."[6] (Citation omitted; internal quotation marks omitted.) Id. Our standard of review for this constitutional inquiry is de novo. Id.

The law in Connecticut on impeaching a witness' credibility provides that a witness may be cross-examined about specific acts of misconduct that relate to his or her veracity. See Conn. Code Evid. § 6-6 (b) (1) ("[a] witness may be asked, in good faith, about specific

instances of conduct of the witness, if probative of the witness' character for untruthfulness"); see also *State* v. *Colon*, 272 Conn. 106, 206, 864 A.2d 666 (2004), cert. denied, 546 U.S. 848, 126 S. Ct. 102, 163 L. Ed. 2d 116 (2005); *State* v. *Lewis*, 26 Conn. App. 574, 579, 602 A.2d 618, cert. denied, 221 Conn. 923, 608 A.2d 688 (1992). There are certain limitations, however, on cross-examination regarding such acts. "First, cross-examination may only extend to specific acts of misconduct other than a felony conviction if those acts bear a special significance upon the issue of veracity . . . ." (Internal quotation marks omitted.) *State* v. *Colon*, supra, 206. Second, extrinsic evidence of such acts is generally inadmissible.[7] Conn. Code Evid. § 6-6 (b) (2). Consistent with the aforementioned general evidentiary principles, "[w]hether to permit cross-examination as to particular acts of misconduct . . . lies largely within the discretion of the trial court." (Internal quotation marks omitted.) S*tate* v. *Colon*, supra, 206; see also *State* v. *Vitale*, 197 Conn. 396, 401, 497 A.2d 956 (1985) ("A defendant's right to cross-examine witnesses is not absolute and is subject to reasonable limitation. . . . Whether to permit cross-examination as to particular acts of misconduct to show a lack of veracity lies largely within the discretion of the trial court." [Citation omitted.]).

In addition, it is well settled that "[a] court . . . [may] exclude . . . evidence [that] has only slight relevance due to . . . its tendency to inject a collateral issue into the trial." *State* v. *Lewis*, supra, 26 Conn. App. 579. An issue is collateral if it is not relevant to a material issue in the case "*apart from its tendency to contradict the witness*." (Emphasis added; internal quotation marks omitted.) *State* v. *Davis*, supra, 298 Conn. 32, quoting *State* v. *Valentine*, 240 Conn. 395, 403, 692 A.2d 727 (1997); see, e.g., *State* v. *Brown*, 273 Conn. 330, 342–43, 869 A.2d 1224 (2005) (trial court properly precluded defendant from cross-examining arresting officer who had shot fleeing defendant about officer's use of deadly force on prior occasion and his knowledge of police department's deadly force policies, because "introduction of such testimony . . . potentially would have confused the issues in the case, and *diverted the jury's attention to . . . [a] collateral issue*" [emphasis added; footnote omitted]); *State* v. *Lee*, 229 Conn. 60, 75, 640 A.2d 553 (1994) (concluding that trial court properly precluded evidence when "the questions that the defendant sought to ask were too attenuated, and *would have led too easily into confusing and collateral issues*, to form the foundation of a legitimate inquiry into the credibility of the witness" [emphasis added]). This is so even when the evidence involves untruthfulness and could be used to impeach a witness' credibility. See *State* v. *James*, 211 Conn. 555, 571–72, 560 A.2d 426 (1989); see also *State* v. *Sullivan*, 244 Conn. 640, 652, 712 A.2d 919 (1998) (trial court properly precluded defendant from cross-examining

complaining witness about alleged prior false accusation, because "under the general evidentiary rules governing impeachment by prior misconduct . . . [t]he trial court reasonably could have concluded that the claimed events were remote in time, had minimal bearing on the victim's credibility and *would have injected a collateral issue into the trial*" [citation omitted; emphasis added]); see also C. Tait & E. Prescott, Connecticut Evidence (4th Ed. 2008) § 6.32.4, p. 361 (even if witness' misconduct evidence relates to veracity, court may still exclude it "if it has a tendency to confuse or impede the litigation by interjecting collateral issues"). Whether a matter is collateral also is a determination that lies within the trial court's sound discretion. *State* v. *Davis*, supra, 32; *State* v. *Sullivan*, supra, 652.

In the present appeal, the state does not dispute that evidence regarding A's character for truthfulness is relevant to a material issue. In fact, the state conceded at trial that this case "boils down to credibility." While relevant to a material issue, the evidence that the defendant believed he could elicit through cross-examination of A—that she had made a false accusation to the police regarding her classmate's threat—is, nonetheless, collateral. The evidence does not bear directly on whether the defendant engaged in, or had the requisite intent to engage in, any of the conduct underlying the charges at issue. Indeed, the evidence, even as the defendant characterized it, related to A's credibility insofar as she might have made a false accusation against a person who bore no similarity to the defendant, about a matter that bore no similarity to the crimes charged, under substantially different circumstances, and at some point in time after the crimes in the present case occurred. Therefore, the evidence that the defendant sought to elicit was not relevant to a material issue in the case "*apart from its tendency to contradict the witness.*" (Emphasis added; internal quotation marks omitted.) *State* v. *Davis*, supra, 298 Conn. 32; cf. *State* v. *Calvin N.*, 122 Conn. App. 216, 227–28, 998 A.2d 810 (trial court improperly precluded cross-examination of complaining witness about handwritten letter, purportedly written by complainant to her mother, stating that complainant had fabricated allegations of sexual abuse because she had been upset with defendant for restricting her telephone and computer privileges; ruling deprived defendant of significant means of attacking complainant's version of events), cert. denied, 298 Conn. 909, 4 A.3d 834 (2010).

Undoubtedly our case law permits a party to ask a witness about a collateral matter, with the limitation that the party must accept the witness' response without having the opportunity to impeach that witness with extrinsic evidence. See *State* v. *Jose G.*, 290 Conn. 331, 344–45, 963 A.2d 42 (2009); *State* v. *Colton*, 227 Conn. 231, 247–48, 630 A.2d 577 (1993). This does not mean, however, that the trial court is obligated to permit such

questioning. In considering whether the court abused its discretion in this regard, "the question is not whether any one of us, had we been sitting as the trial judge, would have exercised our discretion differently. . . . Rather, our inquiry is limited to whether the trial court's ruling was arbitrary or unreasonable." (Citation omitted; internal quotation marks omitted.) *State* v. *Cancel*, 275 Conn. 1, 18, 878 A.2d 1103 (2005); see also *State* v. *Day*, 233 Conn. 813, 842, 661 A.2d 539 (1995) ("[o]ur role as an appellate court is not to substitute our judgment for that of a trial court that has chosen one of many reasonable alternatives" [internal quotation marks omitted]), overruled in part on other grounds by *State* v. *Connor*, 292 Conn. 483, 528 n.29, 973 A.2d 627 (2009). Several factors persuade us that the trial court's ruling was reasonable.

First, the testimony elicited from A during the offer of proof was indeterminate as to whether she had been untruthful. A gave contradictory answers on direct and cross-examination as to whether she had lied about her classmate having threatened her. Unlike inconsistent statements given at different points in time, this inconstancy appears to indicate that A, having been confused by defense counsel's question, simply corrected her answer, unequivocally, when given the opportunity to do so by the state. Indeed, other exchanges with A illustrate the confusion she exhibited throughout the offer of proof. For example, the prosecutor asked A if, when omitting certain portions of the e-mail from the copy that she provided to the police, she had "[made] the statement or the e-mail from her [classmate] contain a threat it had not contained originally," to which A responded: "Yes. She threatened me." This statement is internally conflicting and suggests that A often did not entirely understand the thrust of the questioning, conflating the issue of whether she had provided the police with a complete, original and/or accurate copy of the e-mail, with the issue of whether she truthfully had reported that her classmate had threatened her. Although evidence is not rendered inadmissible for the sole reason that it is inconclusive; see *State* v. *Rolon*, 257 Conn. 156, 177, 777 A.2d 604 (2001); whether impeachment evidence is presented in a consistent fashion goes to its probative force. See, e.g., *State* v. *Ciullo*, 140 Conn. App. 393, 422, 59 A.3d 293 (2013) (affirming trial court's exclusion of witness' testimony for tendency to inject collateral issue into trial where proposed testimony lacked "sufficient verification of [complainant's] truthfulness or lack thereof to form an opinion on the topic"); cf. *People* v. *Bittaker*, 48 Cal. 3d 1046, 1097, 774 P.2d 659, 259 Cal. Rptr. 630 (1989) ("[t]he value of the evidence as impeachment depends upon proof that the prior charges were false"); *People* v. *Tidwell*, 163 Cal. App. 4th 1447, 1458, 78 Cal. Rptr. 3d 474 (2008) ("[w]hile a prior false complaint establishes an instance of dishonesty on the very issue hotly disputed

in this case . . . a prior complaint *not proven to be false has no such bearing*" [emphasis added]).

Second, even if A's testimony in the offer of proof could be construed to indicate that she had misrepresented some aspect of the exchange with her classmate to the police, it was far from clear what that misrepresentation may have been. The extensive questioning during the offer of proof—more than *sixty* questions and responses in all—resolved little about A's alleged prior misconduct. Had the court permitted the defendant to pursue this line of questioning before the jury, the best the defendant could have hoped for is to have produced the same result as had occurred during the offer of proof, thereby creating a mini-trial and confusing the jury. See *State* v. *Brown*, supra, 273 Conn. 342–43 (extensive questioning on matter court deemed collateral would have created separate trial within larger one); *State* v. *Paradise*, 213 Conn. 388, 404, 567 A.2d 1221 (1990) (questioning precluded that "would inevitably have led to a 'mini-trial' "), overruled in part on other grounds by *State* v. *Skakel*, 276 Conn. 633, 693, 888 A.2d 985, cert. denied, 549 U.S. 1030, 127 S. Ct. 578, 166 L. Ed. 2d 428 (2006). Risk of jury confusion alone is adequate ground for the exclusion of evidence. See *State* v. *DeJesus*, 260 Conn. 466, 482, 797 A.2d 1101 (2002).

Arguably, the matter could have been elucidated with the introduction of other evidence. On this subject, the trial court suggested that it would need to see copies of both versions of the electronic exchange between A and her classmate in order to understand what A allegedly had lied about, and defense counsel argued to the court that any ambiguities could be dispelled by testimony of other witnesses. As we previously have indicated, however, extrinsic evidence is *not* admissible for impeachment on a collateral matter; *State* v. *Colton*, supra, 227 Conn. 247–48; and the introduction of such evidence, if permitted, would have expended a disproportionate amount of time in relation to the issue's probative value. See, e.g., *United States* v. *Crow Eagle*, 705 F.3d 325, 328–29 (8th Cir. 2013) (impeachment of witness with alleged prior false allegations not permitted if "probative value is weak"); cf. *State* v. *Myers*, Docket No. 25737, 2012 WL 1419104, *6–7 (Ohio App. April 25, 2012) (no abuse of discretion when trial court excludes evidence of false accusations by complaining witness that were: [1] lodged against person *other than* defendant; [2] *not* many in number; and/or [3] distant temporally). Accordingly, in order to preserve the integrity of the trial and comply with evidentiary principles, the trial court reasonably concluded that inquiry into this collateral matter should not be permitted.[8]

Because we conclude that the Appellate Court properly determined that the trial court's evidentiary ruling was not an abuse of discretion,[9] we do not address the

defendant's claim that precluding this line of inquiry in his cross-examination of A violated his rights under the sixth amendment. See *State* v. *Davis*, supra, 298 Conn. 11 (defendant's constitutional claims fail if trial court properly excluded proffered evidence).

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

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

[2] Section 6-6 (b) (1) of the Connecticut Code of Evidence provides: "A witness may be asked, in good faith, about specific instances of conduct of the witness, if probative of the witness' character for untruthfulness."

[3] The sixth amendment to the United States constitution provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . ."

[4] We have supplemented the facts set forth in the opinion of the Appellate Court with other facts supported by the evidence that provide context for the issue on appeal.

[5] The defendant also had been charged with one count of attempt to commit kidnapping in the second degree. *State* v. *Annulli*, supra, 130 Conn. App. 575. At the end of the state's case-in-chief, the trial court granted the defendant's motion for a judgment of acquittal on that charge. Id.

[6] The defendant contends that, contrary to this approach, which also was the one undertaken by the Appellate Court, the reviewing court first must determine whether exclusion of the evidence violated a defendant's constitutional rights before considering whether the trial court's ruling constituted an abuse of discretion under the rules of evidence. We disagree. Although this court has undertaken that approach in some cases; see, e.g., *State* v. *Erickson*, 297 Conn. 164, 188–90, 997 A.2d 480 (2010); *State* v. *Brown*, 273 Conn. 330, 339–40, 869 A.2d 1224 (2005); *State* v. *Francis*, 267 Conn. 162, 181, 836 A.2d 1191 (2003); we may address the claims in whichever order most readily addresses the matter at hand.

[7] But "[w]here . . . prior acts of misconduct are relevant to a substantive or material issue in the case, [they] can be proven by extrinsic evidence . . . ." (Internal quotation marks omitted.) *Hicks* v. *State*, 287 Conn. 421, 451, 948 A.2d 982 (2008).

[8] Therefore, we disagree with the defendant that the trial court's decision fails to accord with the commentary to § 6-6 (b) of the Connecticut Code of Evidence which provides that "[t]he trial court must . . . exercise its discretionary authority by determining whether the specific instance evidence is probative of the witness' character for untruthfulness, and whether its probative value is outweighed by any of the [§] 4-3 balancing factors." Those factors include "confusion of the issues, or misleading the jury, or by considerations of undue delay . . . ." Conn. Code Evid. § 4-3.

[9] To the extent that the defendant objects to reliance on cases that predate the effective date of the Connecticut Code of Evidence, we simply note the statement of purpose in the Code of Evidence expressing an intention "to adopt Connecticut case law regarding rules of evidence as rules of court"; Conn. Code Evid. § 1-2 (a); and this court's own reliance on cases predating the Code of Evidence. See, e.g., *Hicks* v. *State*, 287 Conn. 421, 451–52, 948 A.2d 982 (2008); *State* v. *West*, 274 Conn. 605, 640–41, 877 A.2d 787, cert. denied, 546 U.S. 1049, 126 S. Ct. 775, 163 L. Ed. 2d 601 (2005); *State* v. *Colon*, supra, 272 Conn. 206–208. We are not persuaded that the Code of Evidence effected a substantive change in the common law in regard to the issue in the present case.