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PETERS, J., concurring. I agree with the majority that the conviction of the defendant, Charles E. Kerr, must be affirmed, but I would base that affirmance on the sufficiency of the evidence to establish that the defendant made the incriminating statements whose admissibility he contests rather than on a determination of harmless error. I therefore concur in the judgment of the court.

The central issue raised by the defendant's appeal is whether the state adduced sufficient evidence to establish that he was the speaker of certain incriminatory statements. Although out-of-court statements offered to prove the truth of the matter asserted generally are inadmissible hearsay, the defendant does not dispute the applicability of rule 8-3 of the Connecticut Code of Evidence that makes statements of a party opponent admissible. He argues, instead, that the state failed unambiguously to " 'connect' " his voice to the voice sought to be identified in court as that of the incriminatory speaker.

The majority opinion responds to the defendant's claim by invoking the principle of harmless error on the ground that the testimony of Lieutenant Lawrence Curtis and Detective Robert Spellman was cumulative of other unchallenged evidence in the record.[1] With respect, I find that resolution of the claim problematic. It seems to me that the admissibility of evidence offered by two of the three witnesses for the state on the central issue of whether the defendant made incriminating statements directly tying him to the criminal misconduct in which he allegedly engaged *cannot* be harmless.

Although our case law has not had the occasion to consider whether harmless error analysis is appropriate under such circumstances, I incline to think that so central a failure in the state's proof is structural error. "Structural [error] cases defy analysis by harmless error standards because the entire conduct of the trial, from beginning to end, is obviously affected. . . . Put another way, these errors deprive defendants of basic protections without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence . . . and no criminal punishment may be regarded as fundamentally fair." (Internal quotation marks omitted.) *State* v. *Brown*, 279 Conn. 493, 505, 903 A.2d 169 (2006). Just as the effect of the admission of a coerced confession cannot be calibrated in assessing the fairness of a trial; *Arizona* v. *Fulminante*, 499 U.S. 279, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991); so the evidentiary problem in this case, if there is one, fundamentally implicates the fairness of the defendant's conviction.

I am not, however, persuaded that we need to address this difficult issue because it seems to me that the evidence so admirably marshaled in the majority opinion amply demonstrates that the statements at issue were admissible. Rule 9-1 (a) of the Connecticut Code of Evidence states: "The requirement of authentication as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the offered evidence is what its proponent claims it to be." The commentary § 9-1 (a) explains that once a prima facie showing is made that the evidence is what the proponent claims it to be, "the evidence may be admitted and the ultimate determination of authenticity rests with the fact finder." The question in the present case, then, is whether the state presented sufficient evidence from which the jury reasonably could have found that the statements attributed to the defendant, which were admissible as hearsay statements by a party opponent, were made by the defendant.

In my view, the state properly relied on the testimony of Curtis and Spellman concerning the statements that they heard while listening to the electronic monitoring device worn by Danny Rhodes, the police informant, because Detective Thomas Murkowicz provided a voice identification that was based on his personal knowledge of the defendant's voice. See Conn. Code Evid. § 9-1 (a) (5), commentary ("[a]ny person having sufficient familiarity with another person's voice . . . can identify that person's voice or authenticate a conversation in which the person participated"). The defendant acknowledges that a voice identification may be made if "there is a basis of comparison for making the identification, the opportunity for which may come either before or after the event." *State* v. *Jonas*, 169 Conn. 566, 577, 363 A.2d 1378 (1975), cert. denied, 424 U.S. 923, 96 S. Ct. 1132, 47 L. Ed. 2d 331 (1976).

The defendant argues that Murkowicz' identification does not authenticate the conversation heard by Curtis and Spellman, but his argument is unconvincing. There is no evidence in the record to suggest that the three detectives heard different conversations involving Rhodes.[2] As detailed by the majority, the discrepancies in the testimony of Murkowicz and Curtis were minor. None of the officers testified that they heard Rhodes converse with more than one person. They all described the same gravelly voice.

Second, other circumstantial evidence also supports the conclusion that the voice heard by Curtis and Spellman was the defendant's. Rhodes agreed to speak with the defendant. Rhodes was seen entering the building located at 30 Groton Street, Harford, and was heard ascending the stairs to the second floor. There was only one second floor apartment in the building, which was the defendant's residence.

On this record, the jury reasonably could have found that Curtis and Spellman heard Rhodes speaking with the defendant. The Federal Rules of Evidence and supporting case law follow a similar analysis concerning the admission and authentication of statements by a party opponent. "Federal Rule of Evidence 901 (a) provides that identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what it purports to be. Identification of a voice heard through electronic transmission or recording may be established by an opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker or other circumstantial evidence. . . . [S]ee *United States* v. *Turner*, 528 F.2d 143, 163 (9th Cir. 1975) ([v]oice identification may be made both by direct evidence . . . consisting of telephone numbers, telephone wire tap locations, street addresses, both given and surnames in telephone conversations, and the observed conduct of appellants in visiting the places of residence of known co-conspirators.). Voice identifications are admissible if the identifying witness is minimally familiar with the voice he identifies. . . . Once the minimal showing has been made, the jury determines the weight to accord to the identification testimony." (Citations omitted; internal quotation marks omitted.) *United States* v. *Mendoza-Morales*, United States District Court, Docket Nos. 05-98-01-RE, 05-98-02-RE, 05-98-03-RE, 05-98-04-RE, 05-98-07-RE (D. Or. January 4, 2008).

I respectfully concur in the result reached by the court.

[1] Specifically, the majority concludes that Curtis' testimony was duplicative of the testimony of Detective Thomas Murkowicz and that any discrepancies were minor. The majority also concludes that Spellman's testimony concerning the amount of money allegedly taken was cumulative of that of an employee of the Hamilton Sunstrand Credit Union in Enfield, where the robbery at issue occurred. I agree that the testimony of Curtis and Murkowicz was largely duplicative, but I would conclude that the testimony by Spellman was, in fact, corroborative of the testimony by the credit union employee and linked the defendant to the robbery, which the credit union employee alone had not done.

[2] Although it was not before the jury, a police affidavit for a search warrant indicated that one of the co-conspirators was briefly present in the apartment while Rhodes was wearing a wire to record his conversations.