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CRADLE, J., concurring. I agree that the judgment of conviction should be affirmed. I part ways, however, with the *Golding* analysis undertaken by the majority in part II of its opinion pertaining to the defendant's unpreserved claim that he was deprived of his right to due process because the court failed to hold a pretrial taint hearing to evaluate the reliability of the child complainant, R, to determine whether her statements and subsequent testimony were reliable or whether they were contaminated by coercive and suggestive questioning by family members and health-care providers. See *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015). I would assume, without deciding, that the defendant's claim is reviewable under *Golding*, but I would conclude, for the following reasons, that his claim fails under the third prong of *Golding* because he has failed to establish that the alleged constitutional violation exists and deprived him of a fair trial. Id., 240.

In support of his claim that he was entitled to a pretrial taint hearing, the defendant alleges that R's testimony and statements were marred by suggestive questions by L and medical professionals, biased interviewers, the absence of a spontaneous disclosure, incessant questioning, multiple interviews, the vilification of the defendant, the failure by the interviewers to entertain alternative explanations, and witness coaching. These allegations, however, are not persuasive, and, although the defendant attempts to analogize the present case to *State* v. *Michaels*, 136 N.J. 299, 642 A.2d 1372 (1994), he fails to make a showing that R's statements were the result of " 'some evidence' " of unduly coercive or suggestive questioning; id., 320; which, under *Michaels*, is necessary to trigger a *Michaels* pretrial taint hearing.

In my view, the evidence highlighted by the defendant is not indicative of suggestive questioning. For example, the defendant asserts that subjecting R to multiple rounds of questioning was a coercive technique akin to the incessant interrogation techniques employed in *Michaels*.[1] It is true that R was questioned on four separate occasions: first, L questioned R at home at the time of her initial disclosure; once at Bridgeport Hospital by Adam Paquin, a clinical social worker; once during her forensic interview; and once at Yale New Haven Hospital by Beth A. Moller, an advanced practice registered nurse. Unlike in *Michaels*, however, in which the child complainants were incessantly asked repeated suggestive questions by investigators—often until they gave inculpatory responses—the additional interviews in the present case were the product of standard reporting

procedures[2] and were part of a course of medical treatment, rather than as part of an incessant investigation.[3] See *State* v. *Michaels*, supra, 136 N.J. 314–15. Moreover, the interviewers made a conscious effort to minimize the number of times that R was questioned. Next, the defendant asserts that L's statements to Paquin and Moller—about what R told her—biased them against the defendant. This assertion misconstrues the nature of children's hospital visits, during which the parents, necessarily, must explain to medical personnel the reason they are seeking treatment for the child. Here, L had to report to Paquin and Moller what R told her so that they could properly evaluate and treat R. The defendant also attempts to construe Paquin's questions as suggestive because they were asked as " 'yes/no, fairly direct questions.' " Although a yes or no question can be suggestive, the form of question is not, by itself, inherently suggestive. Because the defendant does not identify specific questions that he believed to be misleading, the use of a yes or no question is not itself evidence of suggestibility. Moreover, the defendant argues that R's interviewers failed to ask R questions about details that could have demonstrated an innocent explanation for the defendant's contact with R's intimate parts. It is undisputed, however, that R was three years of age, had limited verbal skills, and all of her interviewers expressed some difficulty communicating with her, thus making it difficult for interviewers to elicit details from their conversations with her.

Furthermore, some of the defendant's assertions misrepresent the facts or are entirely unsupported by citations to the record. First, despite alleging that R was "questioned incessantly" by L, the defendant supports this notion by citing to trial testimony from R and Polite that imply little more than the fact that L and R talked about the incident between September 22, 2019, and the start of trial.[4] Next, the defendant alleges that L coached R on how to testify prior to trial but, rather than citing to any evidence of coaching, the defendant relies on occasional inconsistencies in R's testimony about specific details[5] and past disputes between L and the defendant. Although the defendant alleges that L "had a motive to coach [R] to make a false allegation," the record does not demonstrate that she acted on that motive. Additionally, although the defendant argues that he was vilified by L, he only identifies evidence that implies that L was upset with, and perhaps disliked, him, not that L communicated those feelings to R.

Finally, the defendant only identifies three questions asked of R that he argues were suggestive or leading. First, according to Moller's summary of her conversation with L, L asked R, "did [the defendant] hurt you?" Second, the same report stated that L asked R to "show [her] what he did." Third, Moller asked R if she had any " 'worries about [her] body.' " These are not " 'repeated leading questions,' " nor do they demonstrate an absence

of spontaneous disclosure, as R made the same representations to Paquin and at trial, outside the presence of L.

Accordingly, I would conclude, on the basis of the foregoing, that the defendant's claim fails under the third prong of *Golding* in that he has failed to establish that the alleged constitutional violation exists and deprived him of a fair trial. Accordingly, I concur in the judgment affirming the defendant's conviction.

[1] As the majority aptly recounted, the court in *Michaels* held that the record was "replete with instances in which children were asked blatantly leading questions that furnished information the children themselves had not mentioned" and subjected them to "repeated, almost incessant, interrogation." *State* v. *Michaels*, supra, 136 N.J. 314–15. The *Michaels* record also disclosed the "use of mild threats, cajoling, and bribing"; vilification of the defendant; encouragement that the children "keep [the defendant] in jail"; and provided the cooperative children with replica police badges. Id., 315. Moreover, the court in *Michaels* observed that "[p]ositive reinforcement was given when children made inculpatory statements, whereas negative reinforcement was expressed when children denied being abused or made exculpatory statements." Id.

[2] Officer Davon Polite testified that it was protocol to invite the complainant to go to the hospital. Paquin testified that it was standard practice to recommend that child sexual abuse victims visit the Center for Family Justice for a forensic investigation. Paquin also testified that it was common to refer the victim to resources for further assessment and treatment.

[3] Moller testified that the questions she asked R were medical in nature. Moller further testified that she questioned R to determine whether she had any concerns about her body for the purpose of deciding "what kind of checkup she may need . . . ." Paquin testified that he engaged with R as part of her treatment team.

[4] R testified that she had been talking to L about her upcoming testimony in court. In response to defense counsel's question about L's reason for waiting two days before calling the police, Polite testified that "[L] stated that she was still talking to her daughter and that [R] was very young, so it was hard to get any information out of her at that time."

[5] The defendant references several inconsistencies in R's testimony but assigns particular weight to R's statement during the forensic interview that " 'Justice hurt [her].' " Justice was identified at trial as R's brother. As the defendant himself reminds us, however, R is a young child with limited speech skills, and certain limitations and difficulties must be expected when dealing with the testimony of child witnesses. Furthermore, R's inconsistent testimony is not sufficient to prove that R was questioned in a suggestive manner. In fact, her consistent statements, over the course of two years, with regard to the substance of what happened during the incident—that the defendant touched her intimate parts with his finger in a way that hurt her—contradicts the defendant's point.