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PALMER, J., concurring. In *State v. Miranda*, 245 Conn. 209, 715 A.2d 680 (1998), I questioned whether the defendant, Santos Miranda, had fair warning that his failure to act in the particular circumstances of that case fell within the purview of General Statutes § 53a-59 (a) (3). *State v. Miranda*, supra, 232 (*Palmer, J.*, concurring). Subsequent to the issuance of our decision in *Miranda* and the issuance of the decision of the Appellate Court in the present case; *State v. Miranda*, 56 Conn. App. 298, 742 A.2d 1276 (2000); the United States Supreme Court decided *Rogers v. Tennessee*, 532 U.S. 451, 121 S. Ct. 1693, 149 L. Ed. 2d 697 (2001), which, for the reasons set forth by the majority, resolves the defendant's due process claim against him. Because I also agree with the opinion of the majority in all other respects, I join it.