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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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ZARELLA, J., concurring in part and dissenting in part. I concur in parts II and III of the majority opinion, in which the majority addresses the propriety of the trial court's failure to issue a unanimity instruction and its refusal to instruct the jury on the credibility of S, the child victim who testified at trial, as the defendant requested. I respectfully dissent from part I of the majority opinion, however, because I do not believe that the state's attorney made religiously charged statements during closing arguments, that he improperly suggested that the jurors had a duty to convict the defendant, or that the cumulative effect of the alleged improprieties deprived the defendant of his due process right to a fair trial. Accordingly, I do not agree that reversal is warranted in the present case.

I

The state's attorney argued during summation: ''I would submit that the defendant is not concerned about what God is going to do to him, not now anyways. He's worried about what you people are going to do, and that's why he had to say what he said yesterday.'' The majority concludes that this argument was especially damaging in light of the state's attorney's earlier remark during summation that the defendant wanted the jury ''to believe that pure evil, Satan's daughter, appeared here on Friday morning in this courtroom . . . .'' I disagree.

It is well established that, ''[w]hen making closing arguments to the jury . . . [c]ounsel must be allowed a generous latitude in argument, as the limits of legitimate argument and fair comment cannot be determined precisely by rule and line, and something must be allowed for the zeal of counsel in the heat of argument. . . . Thus, as the state's advocate, a prosecutor may argue the state's case forcefully, [provided the argument is] fair and based upon the facts in evidence and the reasonable inferences to be drawn therefrom. . . . Moreover, [i]t does not follow . . . that every use of rhetorical language or device [by the prosecutor] is improper. . . . The occasional use of rhetorical devices is simply fair argument.'' (Citation omitted; internal quotation marks omitted.) *State* v. *Reynolds*, 264 Conn. 1, 162, 824 A.2d 611 (2003).

A reviewing court also should be mindful that the trial court views the proceedings in totality and, therefore, is in the unique position of observing the demeanor and conduct of the participants in a manner that is not fully reflected in the ''cold, printed record . . . .'' *Tulisano* v. *Schonberger*, 74 Conn. App. 101, 105, 810 A.2d 806 (2002). Indeed, this court often has recognized ''the power [and] the duty of the trial court to comment upon

the propriety of counsel's argument . . . to give curative instructions if necessary after the arguments of counsel to prevent prejudice . . . or to declare a mistrial or to set aside a verdict if counsel's comments were so prejudicial that no curative instruction could preserve the parties' right to a fair trial.'' (Internal quotation marks omitted.) *State* v. *McCahill*, 261 Conn. 492, 520, 803 A.2d 901 (2002). Consequently, I would give significant weight to the trial court's response, or lack thereof, to the allegedly prejudicial remarks.

In the absence of a per se misconduct rule, which the majority expressly rejects, not all religious references, including allusions to the Bible, God or other biblical characters, are impermissible. This is because many words and phrases traditionally viewed as religious in nature or derived from religious sources have become, over time, an integral part of the English language, and no longer may be recognized by either prosecutors or jurors as having purely religious connotations or derivations. Consider, for example, the phrases ''raising Cain''[1] and ''for whatever a man sows, that he will also reap.''[2] Both phrases are common expressions derived from the Bible. Still other expressions, such as ''an eye for an eye,'' have both religious[3] and secular[4] origins. This court never has adopted a per se misconduct rule—and declines to do so in the present case—because it recognizes that a prosecutor's religious references will not always rise to the level of misconduct.

In the present case, the state's attorney argued during summation that the defendant wanted the jury ''to believe that pure evil, Satan's daughter, appeared here on Friday morning in this courtroom . . . .'' Webster's Third New International Dictionary provides three definitions for ''satan'': (1) ''devil''; (2) ''a minion of the archfiend''; and (3) ''a wicked person: fiend . . . .'' The explanatory notes contained in Webster's Third New International Dictionary provide that the order of the definitions is historical, and, thus, regular reference to satan as the ''devil'' is deemed to have occurred the earliest in time of the three definitions provided. The entry for ''satan'' also provides that the definition, ''minion of the archfiend,'' is an obsolete definition, there being little or no evidence of its standard usage since 1755. The word ''satan,'' therefore, no longer can be construed as having purely religious connotations.

Moreover, even if certain words have religious implications or derivations, the majority misses the point. As in all languages, it is *how* the word is used that is important. In the present case, it is clear from the context of the statement that the state's attorney's reference to satan was intended to convey that the defendant wanted the jury to believe that S was a bad person, not that she was the devil or a minion of the archfiend. Similarly, when the state's attorney referred to S's acknowledgment during cross-examination that God

would punish her if she told a lie and then stated that ''the defendant is not concerned about what God is going to do to him,'' he was not suggesting that the defendant is or is not a God-fearing person, but, rather, that the defendant had a more immediate problem.[5] To conclude, as does the majority, that such a statement invokes ''notions of divine punishment for worldly transgressions'' defies common sense. I therefore disagree that the state's attorney made a religiously charged argument when he stated that the defendant wanted the jury to believe that S was ''pure evil, Satan's daughter,'' and that the defendant was ''not concerned about what God is going to do to him . . . . He's worried about what you people are going to do . . . .''

The majority insists that such references are fraught with religious implications, despite their common usage, but I would submit that not all religious references or arguments have a harmful effect when considered in context. In *Sandoval* v. *Calderon*, 241 F.3d 765 (9th Cir.), cert. denied, 534 U.S. 847, 122 S. Ct. 112, 151 L. Ed. 2d 69 (2001), and cert. denied, 534 U.S. 943, 122 S. Ct. 322, 151 L. Ed. 2d 241 (2001), a habeas action, the Ninth Circuit Court of Appeals examined references to religion during closing arguments at the petitioner's underlying trial. In *Sandoval*, defense counsel stated the following during closing arguments: ''[I]n . . . thinking about how hard your job is, how difficult your job is, in reality you could sit, play God to an individual. . . . [The petitioner] has a chance for doing some good. Anything that you do. I don't think society requires revenge. I don't think that you require revenge. An eye for an eye.'' (Internal quotation marks omitted.) Id., 777 n.2.

The court noted that defense counsel's use of the phrase, '' 'play[ing] God,' '' and his reference to ''an eye for an eye'' had occurred ''in the context of a secular argument against vengeance. Defense counsel did not invoke religious authority to support the result he advocated.'' Id., 777. Thus, the court determined that defense counsel's reference to ''[a]n eye for an eye'' was permissible in the context in which the reference was made. Id.

The court in *Sandoval* viewed the prosecutor's remarks in a different light, however. In *Sandoval*, the prosecutor, in responding to defense counsel's argument, argued to the jury in relevant part: ''[Defense counsel] says don't play God. Let every person be in subjection to the governing authorities for there is no authority except from God and those which are established by God. Therefore, he who resists authority has opposed the ordinance of God, and they who have opposed will receive condemnations upon themselves for rulers are not a cause of fear for good behavior, but for evil. Do you want to have no fear of authority? Do what is good and you will have praise for the same for it is a minister of God to you for good. But if you

do what is evil, be afraid for it does not bear the sword for nothing for it is a minister of God an avenger who brings wrath upon one who practices evil.'' (Internal quotation marks omitted.) Id., 775 n.1. The court concluded that, although defense counsel's reference to '' 'play[ing] God' '' was not improper, the prosecutor's use of the same phrase in the course of a fully developed argument with a clear religious message ''was not merely fair response to comments in defense counsel's closing argument.'' Id., 777. In the present case, by contrast, the state's attorney did not make his religious references amid a fully developed argument imbued with strong religious implications.

The majority cites cases, almost all involving the imposition of the death penalty, in which courts in other jurisdictions have determined that the prosecutor made improper religious references. See part I B of the majority opinion. In each of those cases, however, the references were more numerous, developed or specific than the references in the present case. See, e.g., *Sandoval* v. *Calderon*, supra, 241 F.3d 775 (prosecutor ''paraphrased Romans 13:1-5, a passage from the Bible's New Testament commonly understood as providing justification for the imposition of the death penalty''); *Bennett* v. *Angelone*, 92 F.3d 1336, 1346 (4th Cir.) (prosecutor referred to Noah's sword of justice, Jesus and Romans), cert. denied, 519 U.S. 1002, 117 S. Ct. 503, 136 L. Ed. 2d 395 (1996); *Cunningham* v. *Zant*, 928 F.2d 1006, 1020 & n.24 (11th Cir. 1991) (prosecutor drew comparisons between defendant and Judas Iscariot); *United States* v. *Giry*, 818 F.2d 120, 132–34 (1st Cir.) (prosecutor compared defendant's denial of intent to import cocaine to Peter's denial of Christ), cert. denied, 484 U.S. 855, 108 S. Ct. 162, 98 L. Ed. 2d 116 (1987); *Long* v. *State*, 883 P.2d 167, 177 (Okla. Crim. App. 1994) (prosecutor included lengthy and colorful biblical quotation in penalty phase argument), cert. denied, 514 U.S. 1068, 115 S. Ct. 1702, 131 L. Ed. 2d 564 (1995); *State* v. *Cribbs*, 967 S.W.2d 773, 783–84 (Tenn.) (prosecutor referred to biblical passages and religious law), cert. denied, 525 U.S. 932, 119 S. Ct. 343, 142 L. Ed. 2d 283 (1998). I do not agree with the majority's suggestion that the references made by the state's attorney in the present case were similar in frequency, degree or specificity to those that were determined to be improper in the foregoing cases.

The majority acknowledges that both the trial court and defense counsel took no action at trial in response to the state's attorney's purportedly inflammatory remarks. The majority also observes that a defendant has the responsibility to object to perceived prosecutorial improprieties when they occur, that defense counsel's failure to object to the state's attorney's remarks in the present case was ''inexplicable,'' and that the inaction on the part of defense counsel suggests that he did not believe that the remarks were unfair or preju-

dicial when they were made. Part I G 3 of the majority opinion. I agree with those observations and, therefore, do not understand how the majority can conclude that the state's attorney's remarks were ''sufficiently egregious to overcome the suggestion that defense counsel did not think it was unfair at the time.'' In my view, the failure of the court and defense counsel to raise any objection indicates exactly the opposite, namely, that the overall tone and inflection of the words when they were spoken, and their effect on the jurors, could not have been so inflammatory as to raise any eyebrows or to warrant a response.

I believe that the invocation of a higher law urging the application of principles of various religious beliefs, in lieu of or in addition to our statutory and common law, as well as extensive quotations from religious sources, is almost always improper. I also believe that prosecutors should refrain from making any reference to religion unless it relates to a substantial issue in the case. Nevertheless, when a prosecutor makes reference to terms or phrases that originated in religious texts, but that, over time, have assumed a secular connotation, the court should conduct an analysis of the context, imagery and purpose of those terms or phrases. Reference to such terms or phrases can in certain instances be innocuous while in other instances rise to the level of misconduct. I conclude that the references in the present case were not improper, especially in view of the fact that the trial court failed to comment, and defense counsel failed to object, when the references were made.

II

I also disagree with the majority's conclusion that the state's attorney's comment to the jury that S ''did her part'' and that ''it's now time for you to do your part'' was inappropriate under *State* v. *Whipper*, 258 Conn. 229, 780 A.2d 53 (2001). See part I C of the majority opinion. In *Whipper*, the state's attorney argued to the jury: ''Now you're here as members of the community. You represent what your community is going to be. Not me. I did my part. The police did their job . . . .'' (Internal quotation marks omitted.) *State* v. *Whipper*, supra, 271 n.19. In *Whipper*, this court determined that the argument of the state's attorney suggested to jurors that they had a duty, as members of the community, to find the defendant guilty. Id., 271. The present case, however, is distinguishable. Unlike in *Whipper*, the state's attorney in the present case did not suggest that the jurors' failure to find the defendant guilty might taint the community, but, rather, that the jurors had a duty to decide the case, just as S had a duty to testify at trial. Moreover, defense counsel in *Whipper* immediately objected to the state's attorney's comment whereas defense counsel in the present case did not. At best, the comment in the present case is a

borderline example of prosecutorial misconduct. Nevertheless, such a comment does not provide a basis for reversal.

III

Finally, I do not believe that the cumulative effect of the alleged prosecutorial misconduct in the present case deprived the defendant of his right to a fair trial. The majority concludes that the state's attorney's (1) inflammatory references to religion during closing arguments, (2) improper cross-examination of the defendant about the veracity of S and subsequent references to that improper cross-examination during closing arguments, and (3) request during summation that the members of the jury ''do [their] part,''[6] constituted a pattern of misconduct that compromised the fundamental fairness of the trial. I conclude, to the contrary, that the religious references were made in a secular context and, therefore, do not rise to the level of impermissible conduct. I also conclude that the cumulative effect of the other alleged improprieties, one of which I deem to be only borderline misconduct, if at all, does not require reversal pursuant to *State* v. *Williams*, 204 Conn. 523, 540, 529 A.2d 653 (1987).[7]

The standard for reversal of a judgment on the basis of prosecutorial misconduct requires the defendant to ''establish that the trial as a whole was fundamentally unfair and that the misconduct so infected the trial with unfairness as to make the conviction a denial of due process.'' (Internal quotation marks omitted.) *State* v. *Singh*, 259 Conn. 693, 700, 793 A.2d 226 (2002). ''[I]t is not the prosecutor's conduct alone that guides our inquiry, but, rather, the fairness of the trial as a whole.'' Id., 701. In the present case, the state's attorney's cross-examination of the defendant and the state's attorney's subsequent reference to that testimony during rebuttal does not satisfy the required standard.

I agree with the majority that the state's attorney's attempt during cross-examination to question the defendant regarding S's veracity was not invited by defense counsel and that the state's attorney improperly referred to that questionable cross-examination testimony in his rebuttal argument when attacking the defendant's credibility. I would not characterize those violations as ''frequent,'' however. The misconduct that had occurred during cross-examination of the defendant was limited to a single episode, as was the state's attorney's reference to the defendant's cross-examination testimony during closing arguments. Regardless of whether those two events are considered related improprieties or separate occurrences, they reasonably cannot be deemed to be *frequent*. Nevertheless, such conduct is impermissible, and, accordingly, I would agree with the majority that the conduct of the state's attorney in that regard was improper.

The majority next concludes that the trial court's curative instructions mitigated the prejudice stemming from the state's attorney's accusation that the defendant was a ''liar,'' but did not mitigate the prejudice stemming from his remarks concerning the defendant's cross-examination testimony regarding S's veracity or the improper cross-examination itself. The majority accordingly concludes that the trial court's instructions were insufficient to cure the resulting prejudice stemming from the latter conduct. I disagree because I believe that the majority misconstrues the state's attorney's argument and the court's curative instructions.

A careful review of the transcript shows that the last portion of the state's attorney's rebuttal argument was directed to the respective credibility of the defendant and S.[8] During his argument, the state's attorney discussed: (1) the defendant's testimony regarding the last time he had consumed an alcoholic beverage; (2) the defendant's testimony that he had gone back to sleep after S's mother and her cousin's husband confronted the defendant and accused him of sexually assaulting S; (3) S's accusation that the defendant had assaulted her, remarks that were based on the state's attorney's improper cross-examination of the defendant; and (4) the respective motives of the defendant and S to lie about the events that had transpired. All four points were made in support of a single contention, namely, that the credibility of the defendant was weaker than that of S. During the state's attorney's rebuttal argument, the word ''lie,'' or a derivation thereof, was used eleven times in describing the defendant or S, but only to suggest that the defendant's testimony was untruthful because S had no motive to lie.

Following closing arguments, defense counsel raised an objection with respect to the rebuttal argument of the state's attorney. Defense counsel stated: ''[O]n several occasions, [the state's attorney] called [the defendant] a liar. He lied to you, he's a liar, and . . . I don't think that that's proper argument, and I think there are cases that have indicated . . . that it's not proper to refer to a witness as a liar. So, I take exception to that. I ask the court to give some instruction along the lines, either an admonition or some comment to the jury, that that's not proper comment.''

In response to counsel's objection, the court, prior to delivering its general instructions to the jury, instructed the jury: ''[T]he term 'liar' was used during a portion of the state's [attorney's] rebuttal argument. Obviously, the credibility of all the witnesses is in your hands and you should consider all of the testimony and evidence about that in assessing credibility, but the use of the term 'liar' should be avoided in court and you should disregard that term that was addressed in the arguments . . . of the [state's attorney] in his rebuttal.'' Defense counsel raised no objection to the special

instruction.

In its general instructions to the jury, the court advised the jurors of their duty to assess the credibility of the witnesses. Thereafter, the court delivered a more detailed instruction in which it advised the jurors at least five different times of their duty to determine the credibility of the witnesses, the factors to be considered in determining whether a witness has testified truthfully and the importance of bringing the jurors' own personal experience to bear on such a determination.[9]

I therefore submit that, although the state's attorney used the word "liar" only in connection with the defendant's testimony regarding drinking, the effect of the trial court's curative instruction was to mitigate the prejudice stemming from the multiple references to lying that were made in his *single* argument regarding the relative credibility of the defendant and S. The majority's conclusion that the instruction mitigated the prejudicial effect of only one portion of the state's attorney's argument parses the instruction to such an extent that the forest cannot be seen for the trees. I also would submit that, to the extent that any doubt remains, the combination of the trial court's special instruction and the detailed and extensive instructions on witness credibility in general was more than sufficient to mitigate the prejudicial effect of the references of the state's attorney to lying in his rebuttal argument.

I also believe that the curative effect of the instruction extended to the improper cross-examination inasmuch as the state's attorney included in his rebuttal argument a nearly verbatim account of the disputed portion of the proceedings. See footnotes 26 and 27 of the majority opinion. Accordingly, the trial court's curative instructions regarding credibility mitigated or, perhaps, eliminated any prejudice to the defendant arising from the conduct of the state's attorney, especially in light of defense counsel's failure to object.

With respect to the comment of the state's attorney regarding the duty of the jury, the court specifically instructed the jury that the state had the burden of proving the defendant's guilt beyond a reasonable doubt, that the evidence is limited to the testimony of the witnesses and the exhibits, and that arguments of counsel are not evidence. In my view, those instructions were sufficient to cure any prejudice that may have resulted from such borderline misconduct. It therefore is unnecessary to consider the final two *Williams* factors, the centrality of the misconduct to the critical issues of the case, and the strength of the state's case.

Because I believe that the trial as a whole was not fundamentally unfair, I conclude that reversal is unwarranted. Accordingly, I respectfully dissent from part I of the majority opinion.

[1] Genesis 4:8.

[2] Galatians 6:7.

[3] Exodus 21:24.

[4] The Code of Hammurabi ¶196, reprinted in C. Johns, Babylonian and Assyrian Laws, Contracts and Letters (1904) p. 62 ("[i]f a man has knocked out the eye of a patrician, his eye shall be knocked out"). "The frieze contained on the south wall of the courtroom of the United States Supreme Court includes a procession of great lawgivers of history, including Hammurabi, the Babylonian king who developed the Code of Hammurabi . . . ." *Books* v. *Elkhart*, 235 F.3d 292, 315 n.2 (7th Cir. 2000) (Manion, J., concurring in part and dissenting in part), cert. denied, 532 U.S. 1058, 121 S. Ct. 2209, 149 L. Ed. 2d 1036 (2001).

[5] See footnote 30 of the majority opinion.

[6] The majority includes this comment in its analysis of prosecutorial misconduct under *State* v. *Williams*, 204 Conn. 523, 529 A.2d 653 (1987), only with respect to whether it was invited by defense counsel, but nonetheless concludes that it was a significant factor in depriving the defendant of his right to a fair trial. See part I G of the majority opinion.

[7] "In determining whether prosecutorial misconduct was so serious as to amount to a denial of due process, this court . . . has focused on several factors. Among them are [1] the extent to which the misconduct was invited by defense conduct or argument . . . [2] the severity of the misconduct . . . [3] the frequency of the misconduct . . . [4] the centrality of the misconduct to the critical issues in the case . . . [5] the strength of the curative measures adopted . . . and [6] the strength of the state's case." (Citations omitted.) *State* v. *Williams*, supra, 204 Conn. 540.

[8] The state's attorney argued: "And the defendant, he got up there. I didn't do it. Now, ladies and gentlemen, I submit you just can't think that this didn't happen because he happened to get up there and say, I didn't do it. I hope you weren't expecting a courtroom confession. It makes good TV. It doesn't happen in real life. He denied it. Did he have another option? You know, you have to examine what he said very carefully. . . . [Defense counsel] says he came here, he got a job, he came to get educated. That doesn't mean he's not a pedophile, does it?

"You know, remember that drinking issue that came up? [One of the detectives] mentioned during his testimony that when he arrested the defendant, the defendant appeared to him to have been drinking. He might have been drunk. Okay. No big deal. What does that prove? Does that prove [S] was a liar? Does it prove that she was telling the truth? I don't know. It's just something [the] [d]etective . . . observed. But, you know, it turned out it didn't have anything to—bearing to do on [S's] testimony, but it did have some bearing on . . . his testimony, on his credibility, didn't it? You know, the defendant then puts on his witnesses . . . and they bring up this whole drinking thing. Well, he wasn't allowed to drink up there, he wasn't allowed to keep alcohol there, he didn't drink, this, that and the other thing. It's like, you know, who cares? And then he gets up there, and I ask him, you know, so you weren't drinking that night. When was the last time you had a drink? Three months. Three months before I got arrested. Three months. I didn't ask him once. I said, three months? You're sure? I didn't ask him that once. It wasn't three months, no. You know, it was April [1] when he admitted to somebody that he drank a pitcher of beer and he was drunk. Okay? It's not three months. . . . But you heard him start to backpedal. You know, *he was caught in a lie. He knew he was caught in a lie*, and I'm not saying because he drinks, because he had a pitcher of beer on April [1] or at any other time he necessarily sexually assaulted [S]. What I'm saying is, *he's a liar* and anything he says is suspect. *If he's going to lie about that*—the drinking thing, the so what thing, what—what else is [he] go[ing] [to] tell us. Is he go[ing] [to] tell us that he sexually assaulted that kid? He's not go[ing] [to] tell us that.

"You know, how about the description of what happened, the events of May [10] of 2000 when [S's mother] comes, he's supposedly—he says he fell asleep watching TV. When [S's mother] comes banging on that door, hey, my kid just told me that you sexually assaulted her, and a few epithets in there too, yelling, screaming. Can you blame her? Now, according to the defendant, he told [S's mother], well, go get the child checked out by the doctor. Go get the child checked out by the doctor? You've just been accused of sexually abusing a seven year old female. Go get the child checked out by a doctor, and then what do you do? Go back to sleep? That's what he said. After the banging, after the confrontation, what did you do? I went back to sleep. Then we hear that the cousin—cousin's husband comes banging on the door. What are you go[ing] [to] do? What are you go[ing] [to] do about this? I'm go[ing] [to] go back to sleeping. Is that, ladies and

gentlemen, the reaction of a normal person falsely accused of this kind of horrific crime? No. That's the reaction . . . of someone who is in serious denial, who can't admit to anyone, their family, including themselves, you, ladies and gentlemen, that I did. No. I'm go[ing] [to] ignore this. It's going to go away. Everything will all be better tomorrow.

"Now, I also asked the defendant why would [S] come in here and say that you kissed her if it wasn't true. I don't know. I have no idea. Why would [S] say you touched her chest, put your finger in her vagina, put your finger in her rectum, touched her privates . . . with your privates, put her hand on your privates? I don't know. I don't know. I don't know. Has no idea. . . . Doesn't it take you back here and you just want to scratch your head, because I gave him every reason in the book. I said, there must've been a time when you were mean to the kid, mean to mom. Did you hit the kid? Did you deprive the kid of something? [Did you not] give her some food? . . . Did you hit the mom? [Were you] mean to the brothers? You know, he couldn't give us a reason. *He couldn't give us a reason why that kid would lie, and why is that? Because there isn't one*; that's why. You know, I guess *he wants you to believe* that pure evil, Satan's daughter, appeared here on Friday morning in this courtroom; that *the child* just one . . . day *decided to tell* her mother, some police officers, some doctors and eight strangers in a courtroom *one big fat lie*, and for what? What has that kid gained? The acceptance of her mother? She told her mother what she wanted to hear, or maybe [the defendant] wasn't listening to her, to [S], on Friday. He didn't take a lesson from [S]. *I asked* [*S*] . . . *what happens when you tell a lie*? I just didn't ask her about, you know, [what] the color of my suit was or the shirt or whatever it was. *I asked what happens when you tell a lie.* The clerk just told you something. Now, *what's going to happen if you tell a lie*? God punishes you. Well, I would submit that the defendant is not concerned about what God is going to do to him, not now anyways. He's worried about what you people are going to do, and that's why he had to say what he said yesterday. I rarely saw the kid, only at Christmas parties. Ask yourselves, before you come out of that deliberating room, who's got the greatest interest in this case to deceive you? Who's got a motive not to tell the truth here? I submit *it's the defendant who's got the greatest interest here to lie to you*.

"[The court] will tell you that you can take into consideration the defendant's interest in this case when you're thinking about his credibility. On the other hand, *if* [*S*] *has fabricated this, lied, manipulated you*, before you come out of that deliberating room, you've got to ask yourselves what, for what? What has she gotten out of this? The opportunity to come in here and be vilified? The opportunity to tell you what happened to the intimate parts of her body? Some opportunity, huh? The opportunity to be examined by some doctors? The opportunity to meet with [police detectives] until late at night telling [them] what happened? That's an opportunity I'd really like to live through. What is that kid getting out of it? If you ask yourselves that question . . . before returning that verdict, I'm sure you're go[ing] [to] be returning a verdict that is consistent with the information that's been filed in this case, guilty on sexual assault in the first degree, guilty on risk of injury to a [child]. Thank you. Thank you, Your Honor." (Emphasis added.)

[9] The court instructed the jury in relevant part: "I want to discuss this subject of credibility, by which I mean believability of testimony. You have observed the witnesses. *The credibility, the believability of the witnesses and the weight to be given their testimony are matters entirely within your hands. It is for you alone to determine their credibility*. Whether or not you find a fact proven is not to be determined by the number of witnesses testifying for or against it. It is the quality and not the quantity of testimony which should be controlling. Nor is it necessarily so that because a witness testifies to a fact and no one contradicts it, you are bound to accept that fact as true.

"The credibility of the witness and the truth of the fact *is for you to determine*. In weighing the testimony of witnesses, you should consider the probability or improbability of their testimony. You should consider their appearance, conduct and demeanor while testifying and in court, and any interest, bias, prejudice, sympathy, which a witness may apparently have for or against the state or the accused, or in the outcome of the trial. With each witness you should consider his or her ability to observe facts correctly, recall them and relate them to you truly and accurately. You should consider whether and to what extent witnesses needed their memories refreshed while testifying. You should, in short, size up the witnesses and *make your own judgment* as to their credibility, and decide what portion, all, some, or none of any particular witness' testimony you will believe based on these principles.

"You should harmonize the evidence as far as it can reasonably be done.

You should use all your experience, your knowledge of human nature, and the motives that influence and control human conduct, and you should test the evidence against that knowledge. In short, you should bring to bear upon the testimony of the witnesses the same considerations, and use the same sound judgment, you apply to questions of truth and veracity as they present themselves to you in every day life.

"*You are entitled to accept any testimony which you believe to be true and to reject either wholly or in part the testimony of any witness you believe has testified untruthfully or erroneously*. The credit that you will give the—the testimony offered is, as I've told you, something which you alone must determine. Where a witness testifies inaccurately and you either do or do not think that that inaccuracy was consciously dishonest, you should keep that in mind and scrutinize the whole testimony of that witness. The significance you attach to it may vary more or less with the particular fact as to which the inaccuracy existed or with the surrounding circumstances. You should bear in mind that people sometimes forget things. On the other hand, if a witness has intentionally testified falsely, you may disregard the witness' entire testimony, but you are not required to do so. It is up to you to accept or reject all or any part of any witness' testimony. If you find that a witness has been inaccurate in one respect, remember it in judging the rest of his or her testimony. Give to it that weight which your own mind leads you to think it ought to have and what you—what you would attach to it in the ordinary affairs of life where someone came to you in a matter and you found that in some particular he or she was inaccurate." (Emphasis added.)
