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STATE v. AARON L-CONCURRENCE

BORDEN, J., with whom ZARELLA, J., joins, concurring. I agree with and join the majority opinion in all respects. I write separately as to part I of the majority opinion, however, to highlight the point that, in a future case such as this one, in which we are asked to apply the residual exception to the hearsay rule to the statement of a very young child, this court would benefit greatly from some expert learning about how such children typically recall and relate what happens to them.

I first reiterate that, on the basis of the applicable law and the facts of this case, the resolution of the admissibility of the victim's statement to her mother is properly resolved as coming within the parameters of the residual exception to the hearsay rule. Furthermore, this record does not contain, either by way of evidence presented to the trial court or by way of reference to any studies in scientific literature, any information about how reliable very young but verbal children may be. My concern, however, arises from the fact that the factors specified in Idaho v. Wright, 497 U.S. 805, 821-22, 110 S. Ct. 3139, 111 L. Ed. 2d 638 (1990), and adopted by this court in State v. Merriam, 264 Conn. 617, 635, 639-40, 835 A.2d 895 (2003), and applied in the present case, appear to be based, not on any scientific evidence about how very young children, at an age when they are just beginning to be verbal, perceive and relate things, but on notions of general experience and intuition. Those notions may well be perfectly accurate; but they also may not be accurate. Although I am a father and grandfather, I simply do not know whether what are regarded in the case law as hallmarks of reliability of young children's statements are valid. Some science may help to resolve those doubts.

I do not think that such material is unavailable. Indeed, some of it apparently was in the record of the state proceedings in *Idaho* v. *Wright*, supra, 497 U.S. 813; see id. ("[n]oting that expert testimony and child psychology texts indicated that children are susceptible to suggestions and are therefore likely to be misled by leading questions," state court determined that child's statements were inadmissible under residual exception to hearsay rule). Perhaps the next time we are asked to determine whether a statement of a child of such a young age is reliable enough to be admitted without cross-examination, we will be able to do so on the basis of more than general notions of experience and our intuition.