STATE OF CONNECTICUT *v.* JENNIFER HELMEDACH
(SC 18744)

Rogers, C. J., and Norcott, Palmer, Zarella, McLachlan, Eveleigh and Harper, Js.*

Argued April 25—officially released August 14, 2012

Lauren Weisfeld, senior assistant public defender, for the appellant (defendant).

Robert J. Scheinblum, senior assistant state's attorney, with whom, on the brief, were *Michael Dearington*, state's attorney, and *Gary Nicholson*, senior assistant state's attorney, for the appellee (state).

Hope C. Seeley filed a brief for the National Clearinghouse for the Defense of Battered Women as amicus curiae.

Opinion

ROGERS, C. J. The issue in this certified appeal is whether the trial court properly instructed the jury on the statutory exception to the duress defense set forth in General Statutes § 53a-14, when the state claimed that the defendant had "intentionally or recklessly place[d] [herself] in a situation in which it is probable that [she] will be subjected to duress" by voluntarily resuming her relationship with an abusive boyfriend.[1] The defendant, Jennifer Helmedach, was convicted, after a jury trial, of felony murder in violation of General Statutes § 53a-54c,[2] conspiracy to commit robbery in the third degree in violation of General Statutes §§ 53a-48[3] and 53a-136,[4] and robbery in the first degree in violation of General Statutes § 53a-134 (a) (1).[5] The defendant appealed from the judgment of conviction to the Appellate Court, which affirmed the judgment. *State* v. *Helmedach*, 125 Conn. App. 125, 140, 8 A.3d 514 (2010). We then granted the defendant's petition for certification to appeal, limited to the following issue: "Did the Appellate Court properly conclude that the trial court had correctly charged the jury on the duress defense pursuant to . . . § 53a-14?" *State* v. *Helmedach*, 300 Conn. 908, 909, 12 A.3d 1002 (2011). We affirm the judgment of the Appellate Court on the ground that it is not reasonably possible that the trial court's instruction could have misled the jury, even if it was improper.

The jury reasonably could have found the following facts. In 2002, the defendant, who was then eighteen years old, met David Bell, who was sixteen. They began an intimate relationship and, shortly thereafter, the defendant left her family's home in Middlefield and moved into the apartment of Bell's mother on Grove Street in Middletown. At about the same time, the defendant discovered that she was pregnant and mistakenly believed that Bell was the father.[6] During this time, Bell also was involved in an intimate relationship with another woman, Xaimayra Sevilla-Cruz, who also was pregnant by another man. The defendant knew about this ongoing relationship. Both the defendant and Sevilla-Cruz also were aware of and involved in Bell's drug business.

Bell repeatedly abused the defendant and Sevilla-Cruz, both verbally and physically. He would occasionally punish the defendant for perceived wrongs by depriving her of food and cigarettes; he would occasionally hit her, pull her hair, grab her forcefully, shove her and threaten her with violence;[7] he would call her offensive names; he would ignore her frustration and complaints about his ongoing relationship with Sevilla-Cruz; he would occasionally try to prevent her from seeing friends and family and become angry if she paid attention to other people; and his anger was unpredictable. The defendant referred to Bell by his nickname, "the God."

In May, 2003, when Sevilla-Cruz was seven and one-half months pregnant, Bell subjected her to a beating during which he repeatedly hit her, kicked her and stomped on her. Sevilla-Cruz was hospitalized for treatment of her injuries. Bell was arrested, convicted of assault and incarcerated for one year. During his incarceration, Bell and the defendant wrote dozens of letters to each other. In a number of Bell's letters to the defendant, he threatened and criticized her and instructed her on how to behave. In many of the letters, however, the defendant and Bell expressed love and appreciation for each other and a hope that they would be able to live together as a family after Bell was released from prison.

In August of 2003, while Bell was still in prison, the defendant gave birth to a daughter, Ayanna, and, thereafter, moved into the home of her aunt, Virginia Farnsworth, in Middlefield. In June, 2004, Bell was released from prison and the defendant resumed her relationship with him. The defendant and Ayanna left Farnsworth's house and, together with Bell, embarked on a nomadic existence, staying for short periods at locations in Middletown and Hartford. Bell initially treated the defendant relatively well, but, within weeks of his release from prison, he resumed his physical and emotional abuse of her and his drug dealing.

At some point in late August, 2004, the defendant told Bell that Greg Richard, who was dating Bell's sister, had tried to rape her. Bell became upset, tracked Richard down in Hartford and assaulted him with a knife.[8] At around the same time, Bell's brother stole the defendant's car, along with her purse.

On September 1, 2004, Sevilla-Cruz drove the defendant, Ayanna and Bell to the apartment of Sarah Tarini in Meriden. Tarini lived in the apartment with her ten year old daughter, Summer, and she had been allowing Michael Fontanella and Shanna Kropp to stay in one of the apartment's two bedrooms for several weeks. The defendant and Bell asked Tarini if they could spend the night there and told her that they would be going to New York the next day. Tarini agreed to let the defendant, Ayanna and Bell stay in the bedroom where Fontanella and Kropp usually stayed.

On September 2, 2004, Kropp told the defendant that she and Bell would have to leave Tarini's apartment. The defendant appeared to Kropp to be aggravated and annoyed at this request.[9] At about 6 p.m., the defendant left the apartment with Ayanna, stating that she was going to call someone on a pay telephone to get a ride. The defendant called the victim, Faye Bennett, who was a good friend of the defendant and someone she had known since childhood, and asked her to come to the location of the pay telephone to pick her up.[10] The victim, who was approximately six or seven months pregnant, arrived in her Chevrolet Blazer a short time

later. The defendant repaid the victim $20 that she previously had borrowed from her and the victim gave the defendant a pair of sneakers as a birthday gift for Ayanna. At about 7 p.m., the victim called her boyfriend, told him that she and the defendant were going to Tarini's apartment, and asked if he wanted to join them. He declined.

At approximately 7:30 p.m. that same evening, Tarini, Summer, Fontanella and Kropp left the apartment and walked to a nearby store to purchase cell phone minutes and ice cream.[11] At approximately 7:45 p.m., Scott Baustien, who lived in the first floor apartment directly below Tarini's apartment, saw the defendant and the victim walk by his window and heard them walk up to the second floor and enter Tarini's apartment. He then heard thumping noises. Baustien also noticed that the victim's Blazer, which was parked in the driveway, was blocking his car and a car belonging to Clarence Labbe, who lived above Tarini in the building's third floor apartment. Baustien telephoned Labbe to tell him about the Blazer. Labbe told Baustien that he also had heard banging noises coming from Tarini's apartment, which he assumed were caused by children playing.

Baustien then went outside to check the Blazer that was blocking the driveway and saw the defendant seated behind the steering wheel and Ayanna in the passenger seat. He told the defendant that she could not park there. The defendant, who appeared to Baustien to be extremely nervous and as "white as a ghost," said, "I'm sorry, I'm sorry, I'm sorry," and backed the Blazer quickly down the driveway toward the road, hitting the corner of the apartment building in the process. After Baustien returned to his apartment, he heard footsteps going down the front stairs of the apartment and a car horn beeping several times.[12]

At approximately 8:15 p.m., Tarini, Summer, Fontanella and Kropp returned to the apartment. Tarini knocked on the door of the bedroom where the defendant and Bell had been staying. When she received no response, she opened the door and saw that the room was covered with blood and that there was a body in a garbage bag on the bed. Tarini immediately asked Fontanella to take Summer upstairs to Labbe's apartment and called 911. A short time later, Captain Timothy Topulos and Officer Justin Hancort of the Meriden police department arrived at the scene. They met Tarini and Fontanella, who were visibly shaken, outside the building. They then entered Tarini's apartment and observed the bloody crime scene and the victim's body on the bed. They also saw a baby bottle on the bedroom floor. Topulos summoned medical personnel, who determined that the victim was dead.

Initially, the police misidentified the victim as the defendant. It was not until the next day, during the victim's autopsy, that the victim was correctly identified

as Bennett. The chief medical examiner determined that the cause of the victim's death was multiple stab wounds and strangulation.

The defendant and Bell were apprehended in the Bronx, New York, approximately eight days after the victim's murder. The defendant was charged with felony murder, conspiracy to commit robbery in the third degree and robbery in the first degree.[13] The state's theory was that the defendant had lured the victim to Tarini's apartment so that she and Bell, who feared that Bell would be arrested in connection with the assault on Richard, could steal the victim's car and money and escape to New York. The defendant claimed that the evidence did not support a finding that she had lured the victim to the apartment so that she and Bell could rob her, and that her participation in the robbery after Bell's assault on the victim and his threat to kill her if she did not get the victim's car and wait for him in front of the building was the result of duress.

In support of her duress claim, the defendant testified at trial that, after she and the victim returned to Tarini's apartment on the evening of September 2, 2004, they went into the bedroom to smoke marijuana. The defendant then heard banging and Bell entered the bedroom yelling, "[B]itch, give me my fucking daughter now . . . ." Bell drew his hand back and the defendant thought that he was going to hit her. Instead, he stabbed the victim in the neck. The defendant testified that she was shocked and terrified. She grabbed Ayanna and ran to the front door, which she was unable to open immediately because it had a chain lock on it, and she was very upset. The defendant testified that her memory of the events surrounding the murder was not clear because the incident was "really bad" and she was shocked and confused, but that at some point Bell handed her the keys to the victim's Blazer and told her that if she did not get the car and drive it to the front of the building, he would kill her.[14] The defendant went down to the Blazer, encountered Baustien and apologized for blocking his car, and tried to back the car out of the driveway. Because she had never driven the car before, and because she was in a state of shock, she had difficulty driving and hit the house. It took her three to four minutes to reach the street. As soon as she was able to put the car in drive, Bell opened the passenger door and jumped in, saying, "[d]rive, bitch . . . ."[15] The defendant testified that she did not recall beeping the horn of the Blazer. She also testified that, if she had had any idea that Bell was going to rob the victim, she would not have brought her back to the apartment.[16]

The defendant and Bell drove the Blazer to New Jersey and ultimately went to the Bronx, where they were apprehended by Meriden police on September 8, 2004. The defendant testified that, during this odyssey, she had no cell phone and no money, and felt completely

lost. Bell continually warned her "not to do or say anything stupid" and, although she occasionally was able to go to the store and to make telephone calls without him, she testified that she was afraid that he was watching her and would hurt her if she tried to get away.

The defendant also presented testimony by Evan Stark, an expert on domestic violence, in support of her duress claim. Defense counsel asked Stark a series of hypothetical questions based on the defendant's behavior after Bell had killed the victim. Stark testified that it would be consistent with "the dynamics in an abusive relationship" for an abused woman who has witnessed her abuser stab a friend to follow the abuser's orders when the orders are accompanied by a threat to kill the abused woman. Stark explained that, in an abused woman's mind, the abuser "is a giant. He has powers to see and hear things around corners, even when they are not together. . . . [I]n her mind, he is all powerful . . . ." Stark also explained that it would be consistent with the behavior of an abused woman in these circumstances to fail to take advantage of opportunities to report or to escape from the abuser because an abused woman would believe that "the only way that [she] could survive is to keep the secret and to keep the world closed from outsiders getting involved." Stark further testified that memory loss could result if an abused woman were subjected to these circumstances because severe trauma can result in repression of memory.

During closing arguments, defense counsel argued that the state had failed to prove that the defendant had conspired with Bell or had lured the victim to Tarini's apartment with the intent of robbing her. He further argued that, with respect to the defendant's conduct *after* Bell stabbed the victim, the evidence showed that the defendant had acted under duress from Bell. Specifically, defense counsel argued that Bell had been armed with a knife and had stabbed the victim in the defendant's presence, that Bell weighed fifty pounds more than the defendant and was a foot taller, and that he had threatened to kill her if she failed to comply with his demand. Finally, defense counsel argued that, if the defendant had planned the robbery, Bell would not have had to threaten to kill her to gain her cooperation after he stabbed the victim. In other words, defense counsel argued that the very fact that Bell had threatened the defendant tended to prove that she had not lured the victim to the apartment with the intent of robbing her and, therefore, the exception to the duress defense for defendants who have recklessly placed themselves in a situation in which it is probable that they will be subject to duress did not apply.

The prosecutor argued that "it was [the defendant's] conscious decision to go back with [Bell]. She can't blame that on anybody except herself." He also argued

that the conduct of the defendant and Bell after the murder showed that the robbery had been planned. Specifically, the prosecutor argued that Bell must have known that the defendant would wait for him with the victim's car because he had tried to wrap the victim's body in a garbage bag, thereby indicating that he had intended to dispose of it. In addition, a witness had seen the car stop in front of the apartment building and multiple witnesses had heard the sound of the horn.

After closing arguments, the trial court instructed the jury on the statutory duress defense and on the exception to the defense for a person who "intentionally or recklessly places himself in a situation in which it is probable that he will be subjected to duress."[17] General Statutes § 53a-14. The defendant objected to the instruction on the exception, arguing that it was "confusing . . . [and] misleading" and that it was "not part of this case, either by facts or by theory."

After the jury began its deliberations, it sent a note to the trial court containing the following question: "Question on 'Duress'? A [further] explanation, in [layman's] terms. Concerning the willingness to re-enter the 'negative situation.' " The trial court discussed the note with counsel for the defendant and the prosecutor off the record and then stated on the record that it would tell the jury, "as we've discussed, that we're limited to what they have already been instructed." Thereafter, the trial court instructed the jury that it could not provide any additional information about the duress defense because "[t]he rules do not permit me to go on in that instruction."

The next day, the defendant requested that the trial court instruct the jury that, if it rejected the defendant's duress defense, it still was required "to find that [the defendant] acted with a specific intent to wrongfully deprive [the victim] of her property . . . ." In support of the request, defense counsel argued that "there is no evidence in the record that suggests that one who is a partner in crime, a conspirator, a coconspirator with . . . Bell intentionally or recklessly subjects themselves to any likelihood of duress. . . . There is not one shred of evidence that when . . . Bell has a partner in crime, as the state alleges in this case, that he ever lashes out physically or verbally at that person."[18] Defense counsel further argued that the jury charge as given would allow the jury to conclude that a battered woman who committed a crime because she was subject to a specific threat of physical harm cannot raise a duress defense.[19] The trial court denied the defendant's request for an additional jury charge on duress.

The next day, the defendant again requested that the trial court give a supplemental jury charge instructing the jury that the state must prove the exception to the duress defense beyond a reasonable doubt. The defendant also requested the trial court to instruct the

jury that it could not reject the duress defense merely because the defendant returned to the abusive relationship with Bell. The state objected to the requests to charge, arguing that "what the defendant wants to do is to simply tell the jury you could only consider the situation as being the night of the killing, although we have heard evidence ad nauseam concerning this battered woman's syndrome which [started] for at least a year prior to the murder. Apparently, it's okay to enlarge the scope of the evidence concerning battered woman's syndrome for at least a year prior to the incident, but whether or not to determine whether she, as a battered woman, is entitled to duress, suddenly now we could only look at September 2 [2004]." The trial court granted the defendant's request to instruct the jury that it was the state's burden to prove the exception to the duress defense beyond a reasonable doubt, but denied her second request.

After the jury returned its verdict, the defendant moved for a new trial on the ground that the jury had not been properly instructed on the duress defense. Defense counsel for the defendant argued that the word "situation" as used in § 53a-14 "is the situation with which the defendant is confronted at the time she commits acts which constitute a crime, it's not the situation, the long-term situation of the relationship, it's the situation on September 2, 2004, that's clearly what situation it is referring to in the first prong. . . . I don't think that we or anyone else could come into a court in this state and argue . . . [that] threats were made three months earlier, and, therefore, the defendant was acting under duress in this situation, that is not a duress defense that would fly. And so, in order to construe the defense itself, one looks at the imminence of the threat or the use of force, and the same is true in evaluating the situation."[20] The trial court denied the motion.

The defendant appealed from the judgment of conviction to the Appellate Court, which affirmed the judgment. *State* v. *Helmedach*, supra, 125 Conn. App. 140. The Appellate Court concluded that there was sufficient evidence to support a jury charge on the statutory exception to the defense of duress. Id., 139. Specifically, the Appellate Court pointed to evidence that Bell had abused the defendant, the defendant had resumed her relationship with Bell, and the defendant had been aware of Bell's criminal activities and his proclivity for violence. Id., 139–40. The court concluded that "the jury reasonably could have concluded that the defendant reentered the relationship with Bell, and, in so doing, recklessly placed herself in a situation in which it was probable that she would be subject to duress to commit a crime in which Bell would cause serious physical injury to another person." Id., 140 n.12.

This certified appeal followed. The defendant claims on appeal that the Appellate Court improperly deter-

mined that the trial court properly charged the jury on the statutory exception to the duress defense. After oral argument before this court, we ordered the parties to submit supplemental briefs on the following questions: "Did the defendant raise at trial the defense of duress with respect to any charged conduct that occurred before . . . Bell threatened to kill her if she did not get the victim's car and drive it to the front of the building? If the defendant raised no such claim, would findings that the defendant had agreed with Bell to rob the victim and had brought the victim to . . . Tarini's apartment for that purpose be sufficient to support the convictions on charges of conspiracy to commit robbery, felony murder and robbery in the first degree, even if it is assumed that the defendant acted under duress after Bell threatened to kill her? Is it reasonably possible that the trial court's instruction on the statutory exception to the duress defense misled the jury to believe that it could convict the defendant of these charges without finding that she had agreed with Bell to rob the victim and had brought her to the apartment for that purpose?" In her supplemental brief, the defendant conceded that she had not raised the duress defense with respect to any conduct that occurred before Bell threatened to kill her, but argued that the jury could have convicted her of all three charges on the basis of conduct that occurred after that time. The state argued that, if the jury found that the defendant conspired to rob the victim, that finding would be sufficient to convict the defendant of all of the charges even if it is assumed that she acted under duress after Bell threatened to kill her. It further argued that the trial court's instructions could not have misled the jury to believe that it could convict the defendant of conspiracy and felony murder unless it found that the defendant lured the victim to the apartment.

We begin our analysis with the standard of review. "It is well established that . . . § 53a-14 provides that duress is a defense to a crime. . . . The right of a defendant charged with a crime to establish a defense is a fundamental element of due process. . . . This fundamental constitutional right includes proper jury instructions on the burden of proof on the defense of duress so that the jury may ascertain whether, under all the circumstances, the state has met its burden of proving beyond a reasonable doubt that the crimes charged were not committed under duress." (Citations omitted; internal quotation marks omitted.) *State* v. *Heinemann*, 282 Conn. 281, 298–99, 920 A.2d 278 (2007).

"[I]n reviewing a constitutional challenge to the trial court's instruction, we must consider the jury charge as a whole to determine whether it is reasonably possible that the instruction misled the jury. . . . In other words, we must consider whether the instructions [in totality] are sufficiently correct in law, adapted to the issues and ample for the guidance of the jury." (Citation

omitted; internal quotation marks omitted.) *State* v. *Peeler*, 271 Conn. 338, 361, 857 A.2d 808 (2004), cert. denied, 546 U.S. 845, 126 S. Ct. 94, 163 L. Ed. 2d 110 (2005).

We conclude that it is not reasonably possible that the jury was misled by the trial court's instruction on the statutory exception to the duress defense because the defendant concedes that she raised no duress defense with respect to any of the conduct that the state had charged her with committing *before* Bell threatened to kill her. With respect to that conduct, her sole defense was that the state had failed to prove that she had planned the robbery with Bell and had lured the victim to Tarini's apartment as part of that plan. The defendant's duress defense related only to the acts that she admitted committing *after* Bell threatened to kill her, namely, stealing the victim's car and absconding with Bell.[21] Thus, the duress defense would come into play only if the jury agreed with the defendant that the state had not met its burden of proving that she had planned the robbery and participated in it by luring the victim to the apartment.

It is clear, therefore, that, even if the trial court improperly instructed the jury on the statutory exception to the duress defense, there is no reasonable possibility that the jury could have found the defendant guilty of conspiracy and felony murder merely because it found that the duress "situation"—i.e., Bell's threat to kill her if she refused to cooperate with him after he stabbed the victim—was a likely result of the defendant's decision to resume her relationship with Bell. Rather, to convict the defendant of those crimes, the jury had to have found that the state had proved beyond a reasonable doubt that she planned the robbery and lured the victim to the apartment for that purpose, thereby rejecting the defendant's only defense with respect to that conduct.[22] By finding that she had engaged in that conduct, the jury necessarily found that the defendant had committed all of the elements of the crimes of conspiracy to commit robbery in the third degree, felony murder and robbery in the first degree *before* Bell threatened to kill her. Accordingly, even if Bell subjected the defendant to duress after the murder, that would not be a defense to her criminal conduct. See *State* v. *Rouleau*, 204 Conn. 240, 258–59, 528 A.2d 343 (1987) (erroneous instruction on duress defense did not require new trial on conspiracy charge when duress occurred after conspiracy was alleged to have occurred). We conclude, therefore, that, even if the trial court's instruction on the statutory exception to the duress defense was improper, any impropriety was harmless.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

* The listing of the justices reflects their seniority status on this court as

of the date of oral argument.

[1] General Statutes § 53a-14 provides: "In any prosecution for an offense, it shall be a defense that the defendant engaged in the proscribed conduct because he was coerced by the use or threatened imminent use of physical force upon him or a third person, which force or threatened force a person of reasonable firmness in his situation would have been unable to resist. The defense of duress as defined in this section shall not be available to a person who intentionally or recklessly places himself in a situation in which it is probable that he will be subjected to duress."

[2] General Statutes § 53a-54c provides in relevant part: "A person is guilty of murder when, acting either alone or with one or more persons, he commits or attempts to commit robbery . . . and, in the course of and in furtherance of such crime . . . he, or another participant . . . causes the death of a person other than one of the participants . . . ."

[3] General Statutes § 53a-48 (a) provides: "A person is guilty of conspiracy when, with intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them commits an overt act in pursuance of such conspiracy."

[4] General Statutes § 53a-136 (a) provides: "A person is guilty of robbery in the third degree when he commits robbery as defined in section 53a-133."

General Statutes § 53a-133 provides: "A person commits robbery when, in the course of committing a larceny, he uses or threatens the immediate use of physical force upon another person for the purpose of: (1) Preventing or overcoming resistance to the taking of the property or to the retention thereof immediately after the taking; or (2) compelling the owner of such property or another person to deliver up the property or to engage in other conduct which aids in the commission of the larceny."

[5] General Statutes § 53a-134 (a) provides in relevant part: "A person is guilty of robbery in the first degree when, in the course of the commission of the crime of robbery as defined in section 53a-133 or of immediate flight therefrom, he or another participant in the crime: (1) Causes serious physical injury to any person who is not a participant in the crime . . . ." See footnote 4 of this opinion for the text of § 53a-133.

[6] The identity of the father of the defendant's child was not ascertained until after the defendant was charged with the offenses in the present case.

[7] Sevilla-Cruz testified at trial that Bell beat her more frequently than he beat the defendant because the defendant was "too fragile" and Bell "would [have] hurt her." Sevilla-Cruz also testified that there were occasions when Bell attempted to hit the defendant and Sevilla-Cruz would "jump in the middle" to protect her.

[8] There was conflicting evidence at trial as to whether the defendant knew about Bell's assault of Richard. The defendant testified that she had not learned about the assault until after the killing in the present case occurred, but she also testified that she had overheard a conversation about the assault on Richard before that time.

[9] There was evidence that the defendant and Bell had an argument on the morning of September 2, 2004. The defendant, however, could not remember at trial what the argument was about.

[10] Kropp testified that the defendant left the house to make a telephone call to get a ride at about 6 p.m. and returned without the victim about twenty minutes later. Tarini also testified that the defendant left the apartment late in the afternoon and returned about thirty minutes later and said that someone was coming to pick them up. The defendant testified that she left the house to call the victim at 6 p.m., drove around with the victim for a short time and then returned to the apartment with the victim. She also testified that she left the apartment at about 4 p.m. to buy cigarettes and returned about one-half hour later.

[11] Fontanella and Tarini testified that they believed that the defendant was with Bell and Ayanna in the second bedroom of the apartment when they left to go to the store. Neither Fontanella nor Tarini, however, actually saw the defendant in the apartment at that time.

[12] Labbe and another neighbor who lived across the street from the apartment building also heard the Blazer's horn beeping.

[13] Bell was convicted of murder, robbery in the first degree and assault of a pregnant woman resulting in the termination of the pregnancy, and his conviction was upheld on appeal. See *State* v. *Bell*, 113 Conn. App. 25, 52, 964 A.2d 568, cert. denied, 291 Conn. 914, 969 A.2d 175 (2009).

[14] The defendant testified at trial that Bell did not have a driver's license.

[15] A neighbor who lived across the street from the apartment building testified that the Blazer stopped and waited in front of the house.

[16] To rebut the defendant's testimony that she did not lure the victim to

the apartment with the intent of robbing her, the state presented testimony by Sevilla-Cruz that the defendant previously had been involved in a robbery that Bell had committed on Lincoln Street in Meriden. Sevilla-Cruz had asked the defendant to give a friend a ride to Lincoln Street, and the defendant had stated that that location was too close to a robbery that she and Bell had committed. Sevilla-Cruz then confronted Bell with the defendant's statement. Bell became angry and, in turn, confronted the defendant, resulting in an argument. During the argument, Sevilla-Cruz heard the defendant tell Bell that her only involvement in the Lincoln Street robbery had been to park the car down the street. Sevilla-Cruz also testified that, in late August, 2004, she had had a conversation with the defendant and Bell during which the defendant asked her if she would be interested in making some money. When Sevilla-Cruz said that she would, the defendant said that they would have to rob the victim. Sevilla-Cruz then said that she was not interested.

On cross-examination, Sevilla-Cruz testified that, a few days after the murder, she went to the Meriden police department to give information about Bell's possible whereabouts. When she learned that the victim was Bennett, and not the defendant, she told the police that Bell had asked her if she would be interested in setting up the victim for a robbery. She did not mention at that time that the defendant also had been involved. Sevilla-Cruz also testified that, at the time of the defendant's trial, she was serving a prison sentence for a felony conviction and that she did not tell anyone that the defendant had been involved in the plan to rob the victim until the police questioned her shortly before trial.

[17] The trial court instructed the jury that, "[i]n this case, the defense maintains that [the defendant] is not guilty of robbery in the first degree or felony murder because she acted as she did only under duress. This defense does not apply to the second count alleging conspiracy.

"Duress is defined in [§ 53a-14] . . . which provides in relevant part:

"In any prosecution for an offense, it shall be a defense that the defendant engaged in the prescribed conduct because she was coerced by the use or threatened imminent use of physical force upon her or a third person, which force or threatened force a person . . . of reasonable firmness in her situation would have been unable to resist.

"It is the state's burden to prove beyond a reasonable doubt that [the defendant] did not act under duress. The defense of duress is not available to a person who intentionally or recklessly places herself in a situation in which it is probable that she will be subjected to duress."

[18] In other words, defense counsel argued that, if the defendant had planned the robbery with Bell, she could not have known that Bell would threaten to kill her during the course of the robbery. As we discuss more fully later in this opinion, however, if the jury found that the defendant had planned the robbery and lured the victim to Tarini's apartment for that purpose, then it reasonably could have found that she committed the offenses for which she was convicted *before* she was subject to any duress.

[19] Defense counsel also stated that it was the defendant's position that she was "not guilty of robbery [in the first degree] or felony murder because she acted as she did only under duress." As we previously have indicated, however, defense counsel had argued to the jury that the defendant was raising the duress defense only with respect to her conduct *after* Bell threatened to kill her, not with respect to the conspiracy charge, which was the predicate for the felony murder charge. As we discuss later in this opinion, the defendant repeated this argument after the verdict in support of her request for a new trial.

[20] Thus, in essence, defense counsel argued that the defendant had not introduced evidence of her abusive relationship with Bell to prove that she had been subject to duress, but to show why she reacted as she did to the duress situation, i.e., Bell's threat to kill her if she refused to participate in the robbery. The prosecutor argued that, because the defendant had introduced evidence about her relationship with Bell and the effects of repeated abuse, the jury could consider that evidence in determining whether the defendant had knowingly placed herself in a situation where she was likely to be subject to duress by resuming the relationship when Bell was released from prison. In rebuttal, defense counsel again argued that it was improper to instruct the jury that, merely because the defendant remained in an abusive relationship, she could not avail herself of a duress defense "even if in the situation the person is holding a knife to her throat and saying go do this or else . . . ."

[21] We recognize that the trial court instructed the jury that the defendant was raising the duress defense with respect to both the robbery and the

felony murder charges. See footnote 17 of this opinion. As we have indicated, the defendant has conceded that she made no claim at trial that she was under duress *before* Bell threatened to kill her. The defendant does not dispute that any duress that she was subjected to after the murder would not excuse criminal conduct that she engaged in before the murder. See *State* v. *Rouleau*, 204 Conn. 240, 258–59, 528 A.2d 343 (1987) (erroneous instruction on duress defense did not require new trial on conspiracy charge when duress occurred after conspiracy was alleged to have occurred). The defendant does claim, however, that the jury could have believed that it could convict her of conspiracy and felony murder even if it concluded that the state had failed to prove that she had engaged in any criminal conduct before Bell threatened to kill her, and that duress would therefore be a defense to those charges. We are not persuaded. Although the state may have argued that the victim's conduct after Bell threatened her was *probative* on the question of whether the defendant had previously engaged in criminal conduct because it showed her continued participation in the crime and consciousness of guilt, the state made no claim and presented no evidence that the defendant had conspired to rob the victim *after* she was murdered. Rather, as the defendant acknowledged at trial, the state's entire theory of the case was that she had lured the victim to Tarini's apartment in order to rob her. Accordingly, any conspiracy necessarily occurred *before* she engaged in this conduct, and it is not reasonably possible that the jury could have believed otherwise.

The defendant also has not explained, and we cannot conceive, under what theory the jury could have believed that it could convict her of felony murder if it found that she had not participated in the robbery until *after* Bell killed the victim. Accordingly, we must conclude that the trial court's instruction that duress could be a defense to the felony murder charge was improper. Moreover, even if the jury somehow could have been misled by the trial court's improper instruction to have this erroneous belief, because the jury necessarily found that the defendant had participated in the robbery before Bell murdered the victim when it found her guilty of conspiracy on the basis of the state's theory that she had lured the victim to the apartment in order to rob her, any possible misunderstanding was harmless. Finally, if the defendant believed that the jury could have been misled to convict her of felony murder on the basis of conduct that occurred after the murder, the proper remedy would have been for her to request that the trial court give a curative instruction to the effect that the jury could not convict her of felony murder unless it found that she had participated in the robbery before the murder and that the court clarify to the jury that the duress defense did not apply to criminal conduct that occurred prior to any duress. The remedy was not to instruct the jury that the statutory exception to the duress defense did not apply under these circumstances, which was the only curative instruction that the defendant requested.

[22] While we do not rule out the possibility that a defendant who has been subject to domestic violence can raise a "battered woman" duress defense even in the absence of a claim that the defendant was coerced by the threatened use of physical force at the time of the offense, we need not decide the issue in the present case because the defendant has expressly disavowed any claim that she was raising such a defense to the conduct that occurred before Bell threatened her.