STATE OF CONNECTICUT *v.* STEPHEN J. R.*
(SC 18748)

Rogers, C. J., and Palmer, Zarella, McDonald, Espinosa and Vertefeuille, Js.

Argued April 17—officially released August 6, 2013

Heather M. Wood, assistant public defender, for the appellant (defendant).

Denise B. Smoker, senior assistant state's attorney, with whom, on the brief, were *Brian Preleski*, state's attorney, and *Paul Rotiroti*, senior assistant state's attorney, for the appellee (state).

Opinion

McDONALD, J. This case requires us to consider the sufficiency of what other courts have referred to as "generic" or "nonspecific" testimony in a case in which the defendant is charged with sexual abuse of a child. Such testimony typically arises in cases in which an alleged abuser either lives with the child victim or has ongoing access to the child and, as a result, the victim testifies to repeated acts of abuse occurring over a period of time but, "lacking any meaningful point of reference, is unable to furnish many specific details, dates or distinguishing characteristics as to individual acts or assaults." *People* v. *Jones*, 51 Cal. 3d 294, 299, 792 P.2d 643, 270 Cal. Rptr. 611 (1990).

Pursuant to General Statutes § 51-199 (b) (3), the defendant, Stephen J. R., directly appeals from the judgment of conviction, rendered after a jury trial, of eight counts of sexual assault in the first degree in violation of General Statutes § 53a-70 (a) (2)[1] and eight counts of risk of injury to a child in violation of General Statutes § 53-21 (a) (2).[2] The defendant's principal claim is that the evidence regarding the number and distinguishing features of each incident in which these acts occurred was insufficient to prove beyond a reasonable doubt each of the charges. In addition, the defendant contends that the trial court improperly failed to order disclosure of all of the records of the Department of Children and Families (department) relating to the complainant, J, following an in camera review of those records, and that improper remarks of the prosecutor to the jury in closing argument deprived him of his constitutional right to a fair trial. We disagree with the defendant's claims and affirm the judgment of conviction.

The record reveals that the defendant was charged with the aforementioned sixteen counts predicated on four separate incidents.[3] With respect to each of the four incidents, the state contended that the defendant had committed two counts of sexual assault in the first degree—an act of fellatio and an act of cunnilingus as the acts of sexual intercourse—and two counts of risk of injury to a child, one for each act of sexual assault.

The jury reasonably could have found the following facts in connection with these charges. During all relevant periods of time, the defendant was a long haul truck driver from Georgia, whose job took him through Connecticut at various times throughout the year. In the spring of 2002, the defendant and J's mother, A, met and later began a dating relationship. This relationship lasted from approximately April, 2002 to April, 2003, when J was approximately seven years old. During that period of time, the defendant stayed with A and J in their one bedroom apartment in Bristol four or five times, in stays ranging from overnight to three or four days, in addition to a multiweek stay on one occasion

while A recuperated from an accident. When the defendant stayed overnight, he routinely would drive A to work at 8:30 a.m. and pick her up at approximately 5:30 p.m. At approximately 3 p.m., the defendant would pick J up from school. As a result, the defendant and J were alone in the apartment each afternoon for approximately one and one-half hours.

One day between April and June, 2002, when J was at home after school, she went from the living room into the bedroom that she shared with her mother to play with her dollhouse. When J entered the bedroom, she found the defendant undressed on the bed. The defendant told her to put his penis in her mouth, and she did. The defendant then pulled down her clothing from the waist down and put his tongue on her vagina.[4] Afterward, the defendant instructed J not to tell her mother about what had happened.

Several months into A's relationship with the defendant, she noticed a change in J's attitude toward the defendant. J seemed afraid of the defendant and uncomfortable around him. On one occasion, when the defendant asked J to go somewhere with him, she ran to her mother and said, "Mommy, I don't want to go with him anymore." In April, 2003, A broke off her relationship with the defendant.

In January or February, 2006, the defendant's sister called A and asked her if the defendant had done anything sexually to J. A then posed that question to J. J denied the abuse to her mother because she thought that if she "broke that secret that something bad would happen." Several more times during the next two years J denied to her mother that the defendant had sexually assaulted her. In November or December, 2007, however, J admitted to a friend that the defendant had "raped" her. In February, 2008, J finally admitted to her mother that the defendant had sexually assaulted her. Soon after, A contacted the police, which led to the defendant's arrest.

With respect to the three additional incidents, the state offered the following evidence. J testified that the incident she had described occurred "[three] or four times"[5] before her mother broke off her relationship with the defendant in April, 2003. J stated that "[i]t was always the same thing" and in "the same place."[6] When the defendant was engaging in these acts, he would entice J with promises of taking her out for ice cream or to play miniature golf. He fulfilled those promises by taking her out to have ice cream numerous times at a restaurant that was formerly called "Sam's" and to play miniature golf once at Hidden Valley. Further, the defendant told her to keep the sexual acts a secret from her mother "every other time it would happen."

The state also presented the DVD of J's April 11, 2008 diagnostic interview with Lisa Murphy-Cipolla, a

clinical child interview supervisor at the Aetna Foundation Children's Center at Saint Francis Hospital and Medical Center. During the interview, J told Murphy-Cipolla that the defendant would put his mouth on her vagina and he would make her put her mouth on his penis. J also identified on diagrams of male and female anatomy where she had touched the defendant and where he had touched her, consistent with her statements. When asked how many times this conduct occurred, J answered "five to six times."[7] Murphy-Cipolla testified that delayed disclosure is common in cases of reported child abuse.

At the end of the state's case, the defendant moved for a judgment of acquittal on all charges. The court denied the defendant's oral motion, and the jury thereafter returned a verdict of guilty on all sixteen counts. The trial court rendered judgment in accordance with the jury's verdict, and this direct appeal followed.

I

We first address whether there was sufficient evidence to support the defendant's conviction of eight counts of sexual assault in the first degree in violation of § 53a-70 (a) (2) and eight counts of risk of injury to a child in violation of § 53-21 (a) (2). The defendant argues that there was insufficient evidence to prove beyond a reasonable doubt that he abused J on four separate and distinct occasions. Specifically, the defendant argues that J's testimony was vague insofar as she referred to the "[three] or four incidents" and what the defendant "would" do in the course of these incidents. He further argues that her testimony lacked facts to distinguish the four incidents from each other and was unsupported by corroborative evidence. We disagree that the evidence was insufficient to support the defendant's conviction.

We begin with the well established principles that guide our review. In reviewing a sufficiency of the evidence claim, we apply a two part test. "First, we construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the [jury] reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt . . . . This court cannot substitute its own judgment for that of the jury if there is sufficient evidence to support the jury's verdict. . . .

"While the jury must find every element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense, each of the basic and inferred facts underlying those conclusions need not be proved beyond a reasonable doubt. . . . If it is reasonable and logical for the jury to conclude that a basic fact or an inferred fact is true, the jury is permitted

to consider the fact proven and may consider it in combination with other proven facts in determining whether the cumulative effect of all the evidence proves the defendant guilty of all the elements of the crime charged beyond a reasonable doubt. . . .

"On appeal, we do not ask whether there is a reasonable view of the evidence that would support a reasonable hypothesis of innocence. We ask, instead, whether there is a reasonable view of the evidence that supports the jury's verdict of guilty." (Internal quotation marks omitted.) *State* v. *Michael H.*, 291 Conn. 754, 759, 970 A.2d 113 (2009).

With respect to the first alleged incident, we conclude that the defendant's claim is wholly without merit that there was insufficient evidence to establish all the elements of sexual assault in the first degree for the two counts relating to the two different acts of sexual intercourse; see footnote 1 of this opinion; and the two related counts of risk of injury to a child. See footnote 2 of this opinion. J testified that one day she found the defendant undressed on the bed and he told her to put his penis in her mouth, which she did. J further testified that the defendant then pulled down her clothing and put his tongue on her vagina. Under General Statutes § 53a-65 (2), " '[s]exual intercourse' means . . . fellatio or cunnilingus between persons regardless of sex." By virtue of committing those acts, it is clear that the defendant was also guilty of risk of injury to a child. See *State* v. *Barksdale*, 79 Conn. App. 126, 136–37, 829 A.2d 911 (2003) (holding state need only prove that contact with intimate parts of child in sexual and indecent manner was *likely* to impair health or morals of child); see also *State* v. *Cansler*, 54 Conn. App. 819, 839, 738 A.2d 1095 (1999) (holding deliberate touching of private parts of child under age of sixteen in sexual and indecent manner violates statute governing risk of injury to child). J's testimony not only established that the acts occurred at the location and within the 2002 to 2003 time period specified in the information, her testimony also went further and provided the time of day, range of months and context in which these acts occurred. Furthermore, it is well established that a victim's testimony need not be corroborated to be sufficient evidence to support a conviction.[8] See *State* v. *Michael H.*, supra, 291 Conn. 760–61 (holding victim's testimony alone was sufficient evidence that defendant had contact with intimate parts of victim for purposes of sexual gratification); cf. *State* v. *Myers*, 129 Conn. App. 499, 514, 21 A.3d 499 (holding victim's testimony alone is sufficient to prove all elements of abduction), cert. denied, 302 Conn. 918, 27 A.3d 370 (2011). In addition, there was corroboration of J's account in the form of A's testimony about the change in her daughter's attitude toward the defendant during this same period.

We now must consider whether there was sufficient

evidence to demonstrate that the defendant sexually assaulted J in three additional incidents. The crux of our review relates to whether "generic testimony" about largely undifferentiated, but distinct, occurrences can provide sufficient evidence to support separate and distinct charges by the state. This is an issue of substantial significance because, as other jurisdictions have noted, two interests may be in tension. See *United States* v. *Hawpetoss*, 388 F. Supp. 2d 952, 960 (E.D. Wis. 2005), aff'd, 478 F.3d 820 (7th Cir. 2007); *People* v. *Jones*, supra, 51 Cal. 3d 300; *People* v. *Letcher*, 386 Ill. App. 3d 327, 333, 899 N.E.2d 315 (2008), appeal denied, 231 Ill. 2d 644, 902 N.E.2d 1088 (2009). On the one hand, prosecutions based on generic testimony could deprive a defendant of his due process right to fair notice in order to effectively defend himself. On the other hand, testimony from a child victim describing a series of indistinguishable acts by an abuser who has ongoing access to the child is often the only evidence that the child is able to provide. Indeed, our Appellate Court repeatedly has recognized as a general matter that, "[i]n a case involving the sexual abuse of a very young child, that child's capacity to recall specifics, and the state's concomitant ability to provide exactitude in an information, are very limited. The state can only provide what it has. This court will not impose a degree of certitude as to date, time and place that will render prosecutions of those who sexually abuse children impossible. To do so would have us establish, by judicial fiat, a class of crimes committable with impunity. *State* v. *Saraceno*, [15 Conn. App. 222, 237, 545 A.2d 1116, cert. denied, 209 Conn. 823, 824, 552 A.2d 431, 432 (1988)]; see also *State* v. *Osborn*, 41 Conn. App. 287, 293 n.4, 676 A.2d 399 (1996)." (Internal quotation marks omitted.) *State* v. *Marcelino S.*, 118 Conn. App. 589, 597, 984 A.2d 1148 (2009), cert. denied, 295 Conn. 904, 988 A.2d 879 (2010). Accordingly, we must consider what evidence is sufficient for a reasonable jury to find a defendant guilty of separate and distinct charges by the state when such undifferentiated testimony is given.

Beyond the general principles articulated by the Appellate Court, this court has not had the opportunity to address this particular situation. Therefore, we look to the jurisprudence of our sister state courts for guidance. The most cited case on this subject is *People* v. *Jones*, supra, 51 Cal. 3d 294, an opinion of the California Supreme Court. In *Jones*, the court considered whether a victim's testimony that the defendant first molested him about one month after he moved into the defendant's home and once or twice each month thereafter during a two year period when the victim was under the age of eleven was sufficient to support the defendant's conviction. Id., 302–303. In affirming the defendant's conviction of all six counts, the court emphasized that "even generic testimony (e.g., an act of intercourse 'once a month for three years') outlines a series of

specific, albeit undifferentiated, incidents *each* of which amounts to a separate offense, and *each* of which could support a separate criminal sanction." (Emphasis in original.) Id., 314. The court further noted that, "in determining the sufficiency of generic testimony, we must focus on factors other than the youth of the victim/witness. Does the victim's failure to specify precise date, time, place or circumstance render generic testimony insufficient? Clearly not. As many of the cases make clear, the particular details surrounding a child molestation charge are not elements of the offense and are unnecessary to sustain a conviction." Id., 315.

The court then outlined a three factor approach to determine whether such evidence is sufficient in order to accommodate both the realities of child victims of repeated abuse and the due process interests of the defendant: "The victim, of course, must describe *the kind of act or acts committed* with sufficient specificity, both to assure that unlawful conduct indeed has occurred and to differentiate between the various types of proscribed conduct (e.g., lewd conduct, intercourse, oral copulation or sodomy). Moreover, the victim must describe the *number of acts* committed with sufficient certainty to support each of the counts alleged in the information or indictment (e.g., 'twice a month' or 'every time we went camping'). Finally, the victim must be able to describe *the general time period* in which these acts occurred (e.g., 'the summer before my fourth grade,' or 'during each Sunday morning after he came to live with us'), to assure the acts were committed within the applicable limitation period. Additional details regarding the time, place or circumstance of the various assaults may assist in assessing the credibility or substantiality of the victim's testimony, but are not essential to sustain a conviction." (Emphasis in original.) Id., 316.

Relying on *Jones*, the Illinois Appellate Court in *People* v. *Letcher*, supra, 386 Ill. App. 3d 333, examined whether testimony by a victim, who was abused starting when she was six years old, that various incidents happened " 'too many times to remember' " and more than five times, without pointing to a specific number of incidents, was sufficient to convict a defendant on eight counts of predatory criminal sexual assault of a child. Id., 328–29. The court affirmed the defendant's conviction of six of those counts and reversed his conviction as to two counts. Id., 336. Because the statute of limitations was not at issue, the court noted that the lack of specificity of the dates on which the abuse occurred did not render the evidence insufficient. Id., 332. The court first noted that there was sufficient evidence to support two counts of oral penetration because the defendant had admitted to such occurrences. Id., 335. With respect to the six remaining counts of penile penetration, the court held that there was sufficient evidence to support only four counts: two counts supported by the victim's

description of two specific incidents in one home, involving anal and vaginal penetration, and two counts supported by the victim's testimony that the defendant had abused her at her new home *in the same manner* as he did in the first home. Id., 336. With regard to the victim's testimony that sexual abuse happened " 'too many times to remember' " in both homes and "more than five times," the court held this to be insufficient proof of the two remaining counts of penile penetration because the victim did not specifically indicate whether she was referring to penile penetration or other forms of proscribed sexual contact. Id. Other jurisdictions similarly have held that a child victim need not specify the exact number of times that the incidents occurred so long as there were " 'some reliable indicia that the number of charged acts actually occurred.' " *Rose* v. *State*, 123 Nev. 194, 203, 163 P.3d 408 (2007), cert. denied, 555 U.S. 847, 129 S. Ct. 95, 172 L. Ed. 2d 79 (2008); see, e.g., id., 202, 204 (sustaining conviction of twenty counts of sexual assault when evidence established that victim spent nearly every weekend with defendant for several years and victim testified that abuse occurred almost every night she was there and further specified that defendant touched her vagina with his finger more than ten times and with his tongue more than ten times); *State* v. *Hayes*, 81 Wn. App. 425, 427, 435, 914 P.2d 788 (1996) (holding victim's testimony that defendant "put his private part in mine at least four times and some [t]wo or three times a week between July 1, 1990 and May 31, 1992" was sufficient to support conviction of four counts of rape of child [internal quotation marks omitted]).

Applying the considerations articulated in *Jones* to the present case, we conclude that the evidence was sufficient to support the conviction of the two counts of sexual assault in the first degree and two counts of risk of injury to a child in each of the four incidents. J described both sexual acts that occurred—fellatio and cunnilingus—with sufficient certainty so to assure that unlawful conduct did indeed occur and to differentiate between the types of proscribed conduct under §§ 53a-70 (a) (2) and 53-21 (a) (2). J also described the number of acts with sufficient certainty to support each of the counts alleged. She testified that these same acts occurred three to four times, and, in the DVD of her interview with Murphy-Cipolla introduced into evidence at trial, J indicated that these same acts occurred five to six times, perhaps as many as ten times. See footnotes 6 and 7 of this opinion. Although J gave the lower range of numbers when testifying under oath, the jury reasonably could have found the recorded statement more credible because the interview was conducted closer in time to the events at issue, when J's recollection would have been fresher. See *Stewart* v. *Cendant Mobility Services Corp.*, 267 Conn. 96, 114, 837 A.2d 736 (2003) ("it was within the province of

the jury to resolve any possible inconsistencies in the plaintiff's testimony in a manner favorable to the plaintiff''); *State* v. *Meehan*, 260 Conn. 372, 381, 796 A.2d 1191 (2002) (''[i]t is axiomatic that evidentiary inconsistencies are for the jury to resolve, and it is within the province of the jury to believe all or only part of a witness' testimony''); *Parker* v. *Slosberg*, 73 Conn. App. 254, 265, 808 A.2d 351 (2002) (''jury [is] free to credit one version of events over the other, even from the same witnesses''). In addition to stating generally that the same acts were repeated, J described what acts occurred during each incident. She also stated where the acts would occur—the bedroom she shared with her mother—and the time they would occur—during the one and one-half hours J was left home alone with the defendant while her mother was at work. J distinguished these events insofar as she testified that, as inducements for her performing the acts and keeping them secret, the defendant took her out for ice cream on several occasions and for miniature golf once. Accordingly, the cumulative evidence, read in the light most favorable to sustaining the verdict, established that the defendant forced J to perform fellatio on him and that he performed cunnilingus on her on at least four occasions.

Finally, although under *Jones*, the state would not need to prove the time period during which each incident occurred because there was no statute of limitations concern implicated in the present case; see *People* v. *Jones*, supra, 51 Cal. 3d 316; the evidence in fact did establish a general time period in which these acts occurred—between April, 2002 and April, 2003. Any additional details, or lack thereof, might be relevant to assessing the credibility of J's testimony; id.; but would not be essential for a conviction. To require J, who was approximately seven years old at the time of the abuse, to recall specific dates or additional distinguishing features of each incident would unfairly favor the defendant for the commission of repetitive crimes against a child victim. See id., 300 (''[t]o hold that such testimony, however credible and substantial, is inadequate to support [abuse] charges would anomalously favor the offender who subjects his victim to repeated or continuous assaults'').

Moreover, the defendant's reliance on *People* v. *Letcher*, supra, 386 Ill. App. 3d 327, for a contrary conclusion is misplaced. Unlike in *Letcher*, in the present case there was no confusion as to which offenses J was referring to for each incident because she indicated that the acts occurred in the same manner as previously described and described the acts again. It was clear that J was referring to the acts of fellatio and cunnilingus, each of which constituted separate counts for the sexual assault charges and the basis for the two risk of injury charges for each incident. Accordingly, the evidence was sufficient to support the defendant's con-

viction of each of the sixteen counts.

II

We next address the defendant's claim that the trial court improperly failed to order full disclosure of the department's records for J following an in camera review. The defendant claims that, in the course of this court's in camera inspection of the records, we will discover that the undisclosed portion of the records contains material evidence regarding J's mental stability at the time she disclosed the abuse by the defendant in 2008. Upon review of the records, we conclude that the trial court properly used its discretion in precluding further disclosure of J's confidential records.

"In *State* v. *Esposito*, [192 Conn. 166, 179–80, 471 A.2d 949 (1984)], we set forth the following procedure for the disclosure of confidential records. If . . . the claimed impeaching information is privileged there must be a showing that there is reasonable ground to believe that the failure to produce the information is likely to impair the defendant's right of confrontation such that the witness' direct testimony should be stricken. Upon such a showing the court may then afford the state an opportunity to secure the consent of the witness for the court to conduct an in camera inspection of the claimed information and, if necessary, to turn over to the defendant any relevant material for the purposes of cross-examination. If the defendant does make such showing and such consent is not forthcoming then the court may be obliged to strike the testimony of the witness. If the consent is limited to an in camera inspection and such inspection, in the opinion of the trial judge, does not disclose relevant material then the resealed record is to be made available for inspection on appellate review. If the in camera inspection does reveal relevant material then the witness should be given an opportunity to decide whether to consent to release of such material to the defendant or to face having her testimony stricken in the event of refusal." (Internal quotation marks omitted.) *State* v. *Kemah*, 289 Conn. 411, 425–26, 957 A.2d 852 (2008).

"[T]he linchpin of the determination of the defendant's access to the records is whether they sufficiently disclose material especially probative of the ability to comprehend, know and correctly relate the truth . . . so as to justify breach of their confidentiality and disclosing them to the defendant in order to protect his right of confrontation." (Internal quotation marks omitted.) *State* v. *Slimskey*, 257 Conn. 842, 856–57, 779 A.2d 723 (2001). "Moreover, we have held that [t]he determination of materiality . . . [is] inevitably fact-bound and like other factual issues is committed to the trial court in the first instance." (Internal quotation marks omitted.) *State* v. *Cecil J.*, 291 Conn. 813, 829 n.12, 970 A.2d 710 (2009). "Once the trial court has made its inspection, the court's determination of a defendant's access to the

witness' records lies in the court's sound discretion, which we will not disturb unless abused." (Internal quotation marks omitted.) *State* v. *Slimskey*, supra, 856; accord *State* v. *Cecil J.*, supra, 829 n.12.

The record reveals that, prior to trial, the defendant moved for an in camera review of J's mental health records from Wheeler Clinic and the department. The defendant argued that he had reason to believe that J's mental stability was a concern at the time she reported the defendant's abuse in 2008. The state did not object to the court reviewing the records in camera to determine if there was any exculpatory material and A consented to the review. Upon the trial court's review of the records, it determined that it was appropriate to allow defense counsel to review the Wheeler Clinic records in full and only certain portions of the department's records.

After reviewing J's confidential department records, we conclude that the trial court did not abuse its discretion in withholding certain portions of J's records. The undisclosed information was not probative of her ability to comprehend, know, and correctly relate the truth, or the information pertained to persons other than J.

III

The defendant also claims that the prosecutor engaged in improper argument by making comments intended to inflame the jurors' passions and evoke their sympathy by asking the jury to put itself in the position of J. As a result, the defendant argues, the impropriety denied him of his right to a fair trial. Essentially what the defendant claims is that the prosecutor's remarks violated the prohibition against "golden rule" arguments.[9] We disagree.

The record reveals the following additional facts that are relevant to our analysis of this claim. During closing arguments, defense counsel argued that J's testimony was not credible because it was inconsistent and incomplete. He argued specifically that her testimony was inconsistent because "we've heard at least potentially three, maybe four stories from one witness" and it was incomplete because it lacked "the sensory details of someone who experienced the type of trauma that we're talking about in this case." Defense counsel further argued that J's testimony lacked emotion and appropriate detail. During his rebuttal argument, the prosecutor made the following remarks, which the defendant challenges: "I ask you, ladies and gentlemen, when seeking to recall, not for purposes of sympathy. No one is asking for sympathy here. When seeking to recall, place yourself in the position of a six to eight year old child, testifying about it seven and a half years later. Discussing it on a diagnostic video five years later. Place yourself in that child's position. Is that child supposed to remember every detail as if I'm an adult who wrote

something down and is called to testify about it three days later? Would that be realistic? I submit to you it's not particularly when a child has gone through the trauma that [J] described." Later, the prosecutor remarked: "But when . . . Murphy-Cipolla says to [J] what do you think—she says how does this make you feel. [J] says it kind of hurt me because I treated him like a father and he does this stuff to me. It kind of scares me. If that's not sensory detail, I don't know what is. And furthermore, ladies and gentlemen, isn't that the kind of emotion, the kind of feeling that you would only have if you experienced this? It's not what you would have if you invented it, fabricated it or came up with it."

"In analyzing claims of prosecutorial impropriety, we engage in a two step analytical process. . . . The two steps are separate and distinct. . . . We first examine whether prosecutorial impropriety occurred. . . . Second, if an impropriety exists, we then examine whether it deprived the defendant of his due process right to a fair trial. . . . In other words, an impropriety is an impropriety, regardless of its ultimate effect on the fairness of the trial. Whether that impropriety was harmful and thus caused or contributed to a due process violation involves a separate and distinct inquiry." (Citations omitted; internal quotation marks omitted.) *State* v. *Long*, 293 Conn. 31, 36–37, 975 A.2d 660 (2009).

In *State* v. *Bell*, 283 Conn. 748, 771, 931 A.2d 198 (2007), this court first defined golden rule arguments and explained the reasoning behind their prohibition. "A golden rule argument is one that urges jurors to put themselves in a particular party's place . . . or into a particular party's shoes. . . . Such arguments are improper because they encourage the jury to depart from neutrality and to decide the case on the basis of personal interest and bias rather than on the evidence. . . . They have also been equated to a request for sympathy." (Internal quotation marks omitted.) Id. We noted that golden rule claims arise in the criminal context "when the prosecutor ask[s] the jury to put itself in the place of the victim, the victim's family, or a potential victim of the defendant." Id., 772. "The danger of these types of arguments lies in their [tendency] to pressure the jury to decide the issue of guilt or innocence on considerations apart from the evidence of the defendant's culpability." (Internal quotation marks omitted.) Id., 773.

Two years later, we revisited this prohibition in *State* v. *Long*, supra, 293 Conn. 31, in the context of remarks made by a prosecutor that urged the jurors to put themselves in the position of the victim of alleged sexual assault. We recognized that, although the danger of inciting the jury to act out of passion or sympathy "is most acute when the prosecutor asks the jurors to put themselves in the position of the *victim* rather than the

defendant or another witness, as in *Bell* . . . the principle barring the use of such arguments is the same regardless of which individual is the subject of the prosecutor's emotional appeal." (Emphasis in original.) Id., 58. With this concern in mind, we concluded in *Long* that the prosecutor's remarks were not intended to arouse the jurors' emotions or request their sympathy but, rather, "were intended to encourage the jurors to draw inferences from the evidence of [the victim's] actions that were presented at trial on the basis of the jurors' views as to how a reasonable fourteen year old would act under the circumstances."[10] Id. Further, we concluded that the prosecutor was properly responding to defense counsel's strategy and the underlying theme of his closing argument that the victim had fabricated her story. Id. By asking the jurors to place themselves in the victim's position to evaluate her actions and statements made during and after the alleged sexual assault, the prosecutor was arguing that the victim's conduct was consistent with that of a truthful witness and not appealing to the emotions of the jury. Id. As such, the prosecutor's statements did not violate the prohibition on golden rule arguments. Id.

In the present case, as in *Long*, the prosecutor's remarks on rebuttal were in response to defense counsel's arguments that J's testimony was not credible. Both sets of remarks were intended to encourage the jury to draw inferences from the evidence presented at trial regarding the detail of the incidents that J had provided, based on the jurors' judgment of how a child would remember a traumatic event that occurred more than five years earlier. Therefore, the prosecutor was arguing that J's description of the incidents was entirely consistent with that of a truthful witness who was a young child at the time the incidents occurred. Similarly, the prosecutor attempted to rebut the defense's argument that J lacked the emotion and the sensory details of someone who had experienced such trauma by having the jurors put themselves in J's place to evaluate her description of the incidents. In doing so, the prosecutor was arguing that J's statements and description of how the assaults made her feel were consistent with how a reasonable child her age would react under the specific circumstances. Therefore, these arguments did not improperly appeal to the jurors' emotions or attempt to request their sympathy in violation of the prohibition on golden rule arguments.

The judgment is affirmed.

In this opinion the other justices concurred.

* In accordance with our policy of protecting the privacy interests of the victims of sexual abuse and the crime of risk of injury to a child, we decline to identify the victim or others through whom the victim's identity may be ascertained. See General Statutes § 54-86e.

[1] General Statutes § 53a-70 (a) (2) provides in relevant part: "A person is guilty of sexual assault in the first degree when such person . . . engages in sexual intercourse with another person and such other person is under thirteen years of age and the actor is more than two years older than such

person . . . ."

[2] General Statutes § 53-21 (a) (2) provides in relevant part: "Any person who . . . has contact with the intimate parts, as defined in section 53a-65, of a child under the age of sixteen years or subjects a child under sixteen years of age to contact with the intimate parts of such person, in a sexual and indecent manner likely to impair the health or morals of such child . . . shall be guilty of . . . a class B felony . . . ."

We note that the incidents that led to the charges in this case occurred between 2002 and 2003. Although § 53-21 had been amended in 2002; see Public Acts 2002, No. 02-138, § 4; and in 2007; see Public Acts 2007, No. 07-143, § 4; those amendments have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of § 53-21.

[3] The long form information does not indicate that the sixteen counts occurred in the course of four incidents, specifying only that these acts occurred "on or about 2002 to 2003." Nonetheless, the defendant and the state agree that the state's theory at trial was predicated on the sixteen counts occurring during the course of four incidents.

[4] At trial, J also testified that the defendant "put [his tongue] in my vagina" in addition to "on my vagina."

[5] Although J's statement was transcribed as "*there* or four times"; (emphasis added); the term "there" obviously is a transcription error, as the broader context of this exchange plainly indicates. See footnote 6 of this opinion.

[6] The state elicited the following testimony from J on direct examination:

"Q. In all the times [the defendant] stayed at your house, on how many occasions did you and he do the acts you just described?

"A. It just happened [three] or four times.

"Q. And it happened three or four times. Now when it would happen three or four times—I know you went through some. But when it would happen three or four times, could you describe was it always the same thing that happened or was it different?

"A. It was always the same thing.

"Q. And what would happen?

"A. He would put his penis in my mouth, and then he'd put his mouth on my vagina.

"Q. Did this happen, would it—would these acts happen the same or a different place?

"A. The same place. In my—in the bedroom my mom and I shared."

[7] The DVD of the diagnostic interview between Murphy-Cipolla and J includes the following exchange:

"Q. I know that you said that it happened more than one time, like, do you know about how many times something happened or how often something happened?

"A. (Inaudible) About like, I don't know, like about five to six times.

"Q. A week? Or oh—

"A. No, like, throughout the months.

"Q. Oh during—during—five or six times all together?

"A. Yeah, like an estimation of ten times."

[8] The defendant's reliance on *State* v. *Thomas H.*, 101 Conn. App. 363, 922 A.2d 214 (2007), for a contrary rule is misplaced. Although the evidence deemed sufficient in that case included a bloodstain on the victim's underwear; id., 367; nothing in the opinion indicates that the Appellate Court deemed this evidence relevant to its conclusion or that such evidence would be necessary in every case.

[9] As this court previously has explained, "[t]o the extent that the prohibition on golden rule arguments is merely a subset of [the general proscription on prosecutorial appeals to jurors' emotions], we need not separately analyze these statements under the prohibition against golden rule arguments *and* the prohibition against appealing to jurors' emotions." (Emphasis in original.) *State* v. *Long*, 293 Conn. 31, 56 n.21, 975 A.2d 660 (2009).

[10] In *Long*, the defendant contended that the following remarks by the prosecutor were improper: "Would you be able to sit down with a group of people you don't know, talk about the last sexual experience you had in detail, or would that be uncomfortable, something you don't like to talk about, something that you prefer to keep private? . . . Don't do that from an adult perspective. Do it from the perspective that [the victim] would have had, a teenager, a young teen, just barely turned fourteen. . . . When you stay focused on what the true issue is, look at it from the perspective of that fourteen year old girl, that young girl, as to what happened. . . . After you have sex, do you run to the emergency room? Are you battered, bruised and bleeding . . . ? . . . Again, view this from [the victim's] point

of view, a young teenager, a man that size confronting her, nobody around, sister perhaps is upstairs. She tried to push him. She explained [that] he had a hold of her arm and was holding her. . . .” (Emphasis omitted; footnote omitted; internal quotation marks omitted.) *State* v. *Long*, supra, 293 Conn. 55–56.