STATE OF CONNECTICUT *v.* RAFAEL MEDRANO
(SC 18895)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh, McDonald and Vertefeuille, Js.

Argued February 6—officially released May 21, 2013

James B. Streeto, assistant public defender, for the appellant (defendant).

Timothy J. Sugrue, assistant state's attorney, with whom, on the brief, were *Gail P. Hardy*, state's attorney, and *Anne Mahoney*, senior assistant state's attorney, for the appellee (state).

Opinion

EVELEIGH, J. In this certified appeal, the defendant, Rafael Medrano, appeals from the judgment of the Appellate Court, which affirmed the judgment of conviction, rendered after a jury trial, of manslaughter in the first degree in violation of General Statutes §§ 53a-55 (a) (1) and 53a-8 and carrying a dangerous weapon in violation of General Statutes § 53-206.[1] *State* v. *Medrano*, 131 Conn. App. 528, 530, 27 A.3d 52 (2011). On appeal, the defendant claims that: (1) the prosecutor committed prosecutorial improprieties that deprived him of a fair trial; and (2) the trial court's instruction regarding the defendant's interest in the outcome of the trial in relation to the jury's credibility assessment of his testimony deprived him of his right to a fair trial. Upon a consideration of the entire record, we conclude that neither the instances of prosecutorial impropriety identified by the defendant, nor the trial court's instruction to the jury, affected the fairness of the trial or prejudiced the defendant. Accordingly, we affirm the judgment of the Appellate Court. Nevertheless, in the exercise of our supervisory authority over the administration of justice, we direct our trial courts in the future to refrain from instructing jurors, when a defendant testifies, that they may specifically consider his interest in the outcome of the case and the importance to him of the outcome of the trial.

The opinion of the Appellate Court appropriately sets forth the relevant facts and procedural history, which the jury reasonably could have found. "On June 22, 2007, the defendant attended a high school graduation party at a multifamily house on New Britain Avenue in Hartford hosted by Catherine Perez. Accompanying the defendant to the party were several friends or acquaintances, including his roommate, Angelley Torres, his friend, Omar Sosa, and Edwin Candelario. The celebration devolved into turmoil when a dispute erupted amongst the partygoers. This occurred when Torres began arguing with another guest at the party after that guest pushed him. That verbal altercation escalated when Joel Quinones began yelling at and aggressively confronting Torres. In response to this display of aggression, Torres pushed Quinones. The defendant, who was standing nearby, tried in vain to stop the disagreement from escalating further. Quinones however, drew a knife, cut the defendant on the right arm, then chased Torres out of the house and into the front yard where he stabbed Torres in the back.

"After witnessing Quinones stab Torres, the defendant pushed Quinones away from Torres. At this point a female partygoer hit the defendant in the shoulder with a stick. Quinones then threw his knife at the defendant, who was successfully able to dodge the oncoming weapon. Agitated by the blow to his shoulder with a stick and the knife thrown at him, the defendant chased

the fleeing Quinones into the street. Quinones tripped on the corner of the sidewalk and fell to the ground as the defendant gave chase. The defendant came upon Quinones, and they struggled with each other briefly. The melee ended when the defendant stabbed Quinones twice in the side with a pocketknife he had been carrying. The blade of the pocketknife was less than four inches long and was carried habitually by the defendant in order to perform his duties at the automotive garage at which he was employed. An associate medical examiner testified at trial that these stab wounds were the cause of Quinones' death.

"After he stabbed Quinones, the defendant proceeded back up the street toward the house party where his car was parked. The defendant then fled the scene with Sosa and Torres and convened in the basement at Sosa's home. There, the defendant used alcohol to clean blood off his knife. He cleaned Torres' knife, which also was bloodstained. The defendant and Torres then placed the knives in the trunk of the defendant's car under a spare tire. During that time, the defendant telephoned his girlfriend, Mary DeJesus. He told her: 'I stabbed a boy. Don't say nothing. I'll talk to you later . . . .'

"The defendant was subsequently arrested and charged with the crime of murder, in count one, and carrying a dangerous weapon, in count two. After a full hearing, the case was committed to the jury, which returned a verdict of not guilty on count one but guilty of the lesser included offense of intentional manslaughter in the first degree and guilty on count two. The court rendered judgment in accordance with this finding, sentencing the defendant to incarceration for twenty years for intentional manslaughter in the first degree and for three consecutive years thereafter on the count of carrying a dangerous weapon." Id., 531–32. The defendant appealed to the Appellate Court.

On appeal to the Appellate Court, the defendant claimed that: his conviction of both manslaughter in the first degree and carrying a dangerous weapon violated the fifth amendment prohibition against double jeopardy, and that the prosecutor committed prosecutorial impropriety that deprived him of his right to a fair trial. Id., 530. The Appellate Court concluded that the defendant's conviction of manslaughter in the first degree and carrying a dangerous weapon does not violate the constitutional protection against double jeopardy and that the defendant was not deprived of a fair trial as a result of prosecutorial impropriety. Id., 530–31. The Appellate Court did not reach two additional claims made by the defendant in his appellate brief regarding the trial court's jury instruction, namely, that "the [trial] court erred in its instructions on the credibility of witnesses by unduly emphasizing his interest in the outcome of the trial" and "that the [trial] court erred in its instructions to the jury on the state's burden of proof

beyond a reasonable doubt." Id., 530 n.1. Particularly with respect to his objection to the "defendant's interest" charge, the defendant acknowledged that these additional claims were governed by precedent from this court, including *State* v. *Williams*, 220 Conn. 385, 396–97, 599 A.2d 1053 (1991), in which this court previously had deemed such an instruction not to be per se improper. This appeal followed.[2] Additional facts will be set forth as necessary.

I

The defendant first claims that the Appellate Court improperly concluded that the defendant was not deprived of a fair trial as the result of prosecutorial impropriety and, therefore, improperly affirmed the judgment of the trial court. Specifically, the defendant asserts that the prosecutor engaged in vitriolic and improper questioning of the defendant and that, during closing argument, she engaged in a vicious attack on the defendant, argued facts not in evidence, appealed to the jury's emotions and denigrated the defendant's credibility. The defendant claims that, despite finding that the prosecutor engaged in improprieties, the Appellate Court improperly concluded that these actions by the prosecutor did not deprive him of a fair trial. In response, the state asserts that only one of the challenged acts rises to the level of prosecutorial impropriety, and that, even if all of the remarks raised by the defendant were improper, the Appellate Court properly concluded that the defendant failed to meet his burden of establishing that they were so egregious as to deprive him of a fair trial. We agree with the state that the Appellate Court properly concluded that the defendant failed to meet his burden of establishing that the remarks were so egregious as to deprive him of a fair trial.

Before we address the merits of the defendant's claims, we set forth the standard of review and the law governing claims of prosecutorial impropriety. "In determining whether the defendant was denied a fair trial we must view the prosecutor's comments in the context of the entire trial." (Internal quotation marks omitted.) *State* v. *Williams*, 204 Conn. 523, 538, 529 A.2d 653 (1987).

" '[I]n analyzing claims of prosecutorial [impropriety], we engage in a two step analytical process. The two steps are separate and distinct: (1) whether [impropriety] occurred in the first instance; and (2) whether that [impropriety] deprived a defendant of his due process right to a fair trial.' . . . *State* v. *Angel T.*, 292 Conn. 262, 275, 973 A.2d 1207 (2009). '[W]hen a defendant raises on appeal a claim that improper remarks by the prosecutor deprived the defendant of his constitutional right to a fair trial, the burden is on the defendant to show . . . that the remarks were improper . . . .' " *State* v. *Taft*, 306 Conn. 749, 761–62, 51 A.3d

988 (2012).

In the present case, the defendant claims the prosecutorial impropriety occurred during cross-examination of the defendant and closing argument. "Prosecutorial [impropriety] . . . may occur in the course of cross-examination of witnesses . . . and may be so clearly inflammatory as to be incapable of correction by action of the court. . . . In such instances there is a reasonable possibility that the improprieties in the cross-examination either contributed to the jury's verdict of guilty or, negatively, foreclosed the jury from ever considering the possibility of acquittal." (Citations omitted; internal quotation marks omitted.) *State* v. *Reynolds*, 264 Conn. 1, 164, 836 A.2d 224 (2003), cert. denied, 541 U.S. 908, 124 S. Ct. 1614, 158 L. Ed. 2d 254 (2004).

"As we previously have recognized, prosecutorial [impropriety] of a constitutional magnitude can occur in the course of closing arguments. . . . When making closing arguments to the jury, [however] [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. . . .

"Nevertheless, the prosecutor has a heightened duty to avoid argument that strays from the evidence or diverts the jury's attention from the facts of the case. [The prosecutor] is not only an officer of the court, like every attorney, but is also a high public officer, representing the people of the [s]tate, who seek impartial justice for the guilty as much as for the innocent. . . . By reason of his office, he usually exercises great influence upon jurors. His conduct and language in the trial of cases in which human life or liberty [is] at stake should be forceful, but fair, because he represents the public interest, which demands no victim and asks no conviction through the aid of passion, prejudice, or resentment. If the accused [is] guilty, he should [nonetheless] be convicted only after a fair trial, conducted strictly according to the sound and well-established rules which the laws prescribe. While the privilege of counsel in addressing the jury should not be too closely narrowed or unduly hampered, it must never be used as a license to state, or to comment upon, or to suggest an inference from, facts not in evidence, or to present matters which the jury ha[s] no right to consider." (Internal quotation marks omitted.) *State* v. *Luster*, 279 Conn. 414, 428–29, 902 A.2d 636 (2006).

"Finally, we note that 'the defendant's failure to object at trial to each of the occurrences that he now raises as instances of prosecutorial impropriety, though relevant to our inquiry, is not fatal to review of his claims. . . . This does not mean, however, that the absence of an objection at trial does not play a significant role in the determination of whether the challenged statements were, in fact, improper. . . . To the contrary, we continue to adhere to the well established maxim that defense counsel's failure to object to the prosecutor's argument when it was made suggests that defense counsel did not believe that it was [improper] in light of the record of the case at the time. . . . With this maxim in mind, we proceed with our review of the defendant's claim[s].' . . . *State* v. *Otto*, 305 Conn. 51, 75 n.18, 43 A.3d 629 (2012)." *State* v. *Taft*, supra, 306 Conn. 762.

On appeal to the Appellate Court, the defendant claimed "that at least nine of the prosecutor's statements or questions—variations of which were repeated more than once—were improper." *State* v. *Medrano*, supra, 131 Conn. App. 540. The Appellate Court divided the defendant's claim of prosecutorial impropriety into three categories: "the prosecutor's statements that might be improper because they (1) were based on unreasonable inferences from the facts of the case, (2) unreasonably appeal to the emotions, passions and prejudices of the jurors or (3) express the prosecutor's opinion that the defendant was not credible." Id. We examine each of these categories separately.

A

The defendant first claims that the prosecutor made several statements that were based on unreasonable inferences from the facts of the case. In examining this claim, we are mindful that "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. . . . Nevertheless, the prosecutor has a heightened duty to avoid argument that strays from the evidence or diverts the jury's attention from the facts of the case." (Internal quotation marks omitted.) *State* v. *Taft*, supra, 306 Conn. 766.

The defendant points to the fact that "the prosecutor twice during cross-examination of the defendant accused him of 'bragging about stabbing [the victim] . . . .' " *State* v. *Medrano*, supra, 131 Conn. App. 543. After a thorough examination, we find nothing in the record that supports this statement by the prosecutor. The defendant also points out that the prosecutor improperly "suggested [three times] that the reason why the defendant carried a pocketknife was in case he got into 'fights' or had 'to settle some scores like [he] did with [the victim] . . . .' " Id. This statement by the pros-

ecutor is also not supported by the record. Instead, the evidence presented at trial demonstrated that the defendant carried the knife for his work in an automotive center where he occasionally had to use it to cut carpets. Nothing in the evidence presented at trial made it reasonable to infer that the defendant carried the knife to settle scores, or otherwise fight. The defendant also claims that the prosecutor improperly "insinuated that the defendant had started the fight that led to the victim's death when she stated on cross-examination, 'and your friends walked in and started pushing those kids around and started a fight, right?' A variation on this last comment was repeated by the prosecutor three times." Id. A review of the evidence admitted at trial indicates that there was no support for this statement by the prosecutor. Instead, both the defendant and Sosa testified that the events that led to the killing of the victim began when another partygoer pushed Torres—not because the defendant and his friends "started pushing . . . kids around . . . ." Accordingly, after a thorough examination of the record, we agree with the Appellate Court that these statements were improper because "they were not based on reasonable inferences from the facts in the record." Id., 545.

The defendant also claims that, while he was testifying, the prosecutor improperly remarked during cross-examination that the defendant stabbed the victim "over and over again." We agree with the Appellate Court that, "[t]estimony from multiple sources, including Susan Williams, an associate medical examiner, is clear that the defendant stabbed the victim at least twice. This statement is therefore not improper." Id.

B

The defendant additionally claims that statements made by the prosecutor were improper because they unreasonably appealed to the emotions, passions and prejudices of the jurors. "[A] prosecutor may not appeal to the emotions, passions and prejudices of the jurors. . . . [S]uch appeals should be avoided because they have the effect of diverting the [jurors'] attention from their duty to decide the case on the evidence." (Internal quotation marks omitted.) *State* v. *Darryl W.*, 303 Conn. 353, 376, 33 A.3d 239 (2012).

In the present case, the defendant claims that the prosecutor's statement during closing argument to the jury, describing the defendant as "hunting down his prey . . . and stabbing him to death" was improper because it unreasonably appealed to the emotions of the jurors. First, it is important to note that the second clause of the statement can be inferred from the evidence. Therefore, we must examine whether the first clause was so egregious as to appeal to the emotions of the jurors.

In *State* v. *Williams*, supra, 204 Conn. 545–46, this

court recognized that "[a]lthough a state's attorney may argue that the evidence proves the defendant guilty, he may not stigmatize the defendant by the use of epithets which characterize him as guilty before an adjudication of guilt." In *Williams*, this court concluded that the prosecutor engaged in prosecutorial impropriety by repeatedly engaging "in character assassination and personal attacks on both the defendant and his key witness . . . ." Id., 546. Specifically, "[d]uring cross-examination of the defendant, the [prosecutor] repeatedly and directly called the defendant a 'coward,' and characterized him as 'hiding like a dog' when the police discovered him lying in the grass. In his closing argument, the [prosecutor], at various times, referred to the defendant as a 'child-beater,' 'baby-beater' and 'infant-thrasher.' . . . Additionally, he referred to the defendant as a 'liar,' 'drunken drug-user, convicted felon, child beater,' 'stupid,' 'savage child beater,' 'drunken bum,' 'evil man,' and 'a drunk who uses cocaine and smokes marijuana and beats children.' " (Citation omitted.) Id., 546–47. In concluding that the prosecutor's statements in *Williams* were improper, this court relied on the fact that they were repeated numerous times. Id., 547. In the present case, the use of the phrase "hunting down his prey" once during closing argument does not rise to the level of "continuous use of invective [that] would have the improper effect of appealing to the emotions and prejudices of the jury." Id.

In its brief to this court, the state concedes that the prosecutor's statement that the defendant acted as the victim's "judge, jury and executioner" was improper. Although it does not do so in its brief to this court, at oral argument in the Appellate Court, the state also conceded the impropriety of the following statement: "Do you really believe that after [the defendant] stabbed the victim this many times he thought [the victim] was fine? Because if you do, I have a bog in Ireland I'd like to sell to you." (Internal quotation marks omitted.) *State* v. *Medrano*, supra, 131 Conn. App. 547. Accordingly, we consider those statements improper without analysis.

C

The defendant also claims that the prosecutor improperly expressed her personal opinion on the defendant's credibility in her closing argument. Specifically, the prosecutor stated the following: "Why should you not believe this defendant? Why not just take his word that he intended to seriously physically injure him and, in fact, he died, but he didn't intend to kill him? Well, quite frankly, because he's not a credible person, is he? He's already told you that he'll lie when he wants to get something. He lied on that job application. He's a convicted felon." The prosecutor continued: "He doesn't want you to believe that he intended to kill him. He wants you to believe that when he left [the victim] after repeatedly stabbing him, [the victim] was fine.

That's the story he's telling you now. You have to find it beyond a reasonable doubt. The trial is a search for truth, and the physical evidence and the photographs from the medical examiner's autopsy are what you should rely on here. You shouldn't rely on the defendant's story because, as you know, he's proven himself not to be a credible person."

A majority of the Appellate Court concluded that the foregoing was improper because she was expressing her personal opinion regarding the defendant's credibility.[3] *State* v. *Medrano*, supra, 131 Conn. App. 550. We disagree. We are not persuaded that any of the foregoing remarks are an improper expression of the prosecutor's opinion of the defendant's credibility. To the contrary, the prosecutor's remarks clearly were intended to appeal to the jurors' common sense and to elicit a particular conclusion about the veracity of the defendant's testimony by inviting the jurors to draw reasonable inferences from the evidence presented to them. It is well established that a prosecutor may argue about the credibility of witnesses, as long as her assertions are based on evidence presented at trial and reasonable inferences that jurors might draw therefrom. See, e.g., *State* v. *Fauci*, 282 Conn. 23, 36, 917 A.2d 978 (2007). Moreover, "[i]n deciding cases . . . [j]urors are not expected to lay aside matters of common knowledge or their own observations and experiences, but rather, to apply them to the facts as presented to arrive at an intelligent and correct conclusion. . . . Therefore, it is entirely proper for counsel to appeal to [the jurors'] common sense in closing remarks." (Internal quotation marks omitted.) *State* v. *Stevenson*, 269 Conn. 563, 588–89 n.17, 849 A.2d 626 (2004).

In the present case, the prosecutor's comments clearly were referring to the fact that the defendant testified that he previously had been convicted of larceny in the second degree in February, 2001, but had failed to disclose this felony conviction on a subsequent employment application. The prosecutor's remarks suggested that the jurors should rely on their common sense and infer from this fact that the defendant was not credible. We conclude that such a remark is proper.

Similarly, the defendant challenges the prosecutor's comment during closing argument "[d]on't let him pull the wool over your eyes." We conclude that this statement is a reasonable inference from the evidence. Specifically, the prosecutor made this statement in the context of relaying the facts as follows: "This is a defendant who went out of his way to avoid detection. He fled from the scene. He told his girlfriend not to tell anyone, to talk to them about what had happened. He washed off the knife and he hid it under the wheel of the trunk of his car. Finally, when he's caught, he goes into the police station, tries to shift the blame to the victim and minimize his role in this and minimize what

he did. Don't let him pull the wool over your eyes. Find him guilty of the murder and find him guilty of the carrying a dangerous weapon [charge]." On the basis of the foregoing, we agree with the Appellate Court and conclude that the prosecutor's statement "[d]on't let him pull the wool over your eyes" was not improper, but was a reasonable inference based on the facts in evidence detailing what the defendant did after the incident.

Similarly, the defendant also challenges the following statement: "He doesn't say anything about having been stabbed by the victim in his prior statement. Isn't that because that never happened? It's something he needed to add to the story to give himself the justification for you people as to why he was so belligerent in hunting down his prey, [the victim], and stabbing him to death. If he had honestly been stabbed by [the victim] that night, why on earth would he forget to tell the police that as he's telling them everything else? He's adding to his story. That's why he's not to be believed." This court has previously concluded that "[i]t is not improper for a prosecutor to remark on the motives that a witness may have to lie." *State* v. *Thompson*, 266 Conn. 440, 466, 832 A.2d 626 (2003). In the present case, we conclude that this statement by the prosecutor is merely a comment on the defendant's motive to lie about being stabbed by the victim. Accordingly, we agree with the Appellate Court that this statement was not improper.

D

"[O]ur determination of whether any improper conduct by the state's attorney violated the defendant's fair trial rights is predicated on the factors set forth in *State* v. *Williams*, supra, 204 Conn. 540, with due consideration of whether that misconduct was objected to at trial." (Internal quotation marks omitted.) *State* v. *Warholic*, 278 Conn. 354, 362, 897 A.2d 569 (2006). These factors include: "the extent to which the [impropriety] was invited by defense conduct or argument . . . the severity of the [impropriety] . . . the frequency of the [impropriety] . . . the centrality of the [impropriety] to the critical issues in the case . . . the strength of the curative measures adopted . . . and the strength of the state's case." (Internal quotation marks omitted.) *State* v. *Fauci*, supra, 282 Conn. 34.

We recently clarified that "when a defendant raises on appeal a claim that improper remarks by the prosecutor deprived the defendant of his constitutional right to a fair trial, the burden is on the defendant to show, not only that the remarks were improper, but also that, considered in light of the whole trial, the improprieties were so egregious that they amounted to a denial of due process." *State* v. *Payne*, 303 Conn. 538, 562–63, 34 A.3d 370 (2012).

Having determined that several of the prosecutor's

statements were improper, we now turn to whether the defendant has proven that the improprieties, cumulatively, "so infected the trial with unfairness as to make the conviction[s] a denial of due process." (Internal quotation marks omitted.) *State* v. *Singh*, 259 Conn. 693, 723, 793 A.2d 226 (2002). We conclude that he has not.

The state does not claim, and we do not find any basis for concluding, that the defendant invited any of the improper comments made by the prosecutor. With respect to the frequency and severity of the impropriety, it is significant to note that the statements that we find improper occurred a total of ten times in the midst of a five day trial with hundreds of pages of transcript. We also find it important that not one of the improprieties was so glaring that it was objected to at trial by defense counsel. When no objection is raised at trial, we infer that defense counsel did not regard the remarks as seriously prejudicial at the time the statements were made. See *State* v. *Stevenson*, supra, 269 Conn. 575 ("[T]he determination of whether a new trial or proceeding is warranted depends, in part, on whether defense counsel has made a timely objection to any [incident] of the prosecutor's improper [conduct]. When defense counsel does not object, request a curative instruction or move for a mistrial, he presumably does not view the alleged impropriety as prejudicial enough to jeopardize seriously the defendant's right to a fair trial." [Internal quotation marks omitted.]).

The defendant asserts that there were no curative measures for these prosecutorial improprieties. This court has repeatedly recognized that, "when a defendant, as here, fails to object at trial, he bears much of the responsibility for the fact that these claimed improprieties went uncured, especially because defense counsel's failure to object to the prosecutor's argument . . . when [they were] made suggests that defense counsel did not believe that [they were] unfair in light of the record of the case at the time. . . . Moreover . . . defense counsel may elect not to object to arguments . . . that he or she deems marginally objectionable for tactical reasons, namely, because he or she does not want to draw the jury's attention to [them] or because he or she wants to later refute that argument . . . . The same principles hold true in regard to requests for special instructions. The failure by the defendant to request specific curative instructions frequently indicates on appellate review that the challenged instruction did not deprive the defendant of a fair trial." (Internal quotation marks omitted.) *State* v. *Tomas D.*, 296 Conn. 476, 515–16, 995 A.2d 583 (2010), overruled in part on other grounds by *State* v. *Payne*, supra, 303 Conn. 562–64.

With respect to the sixth factor, the strength of the state's case, our review of the record indicates that the

state had a strong case against the defendant. There was no dispute that the defendant killed the victim with a pocketknife he was carrying. The only issue with regard to the first degree manslaughter conviction was intent—namely, whether the defendant had the requisite intent to be convicted of murder, first degree manslaughter or some lesser offense. Furthermore, the prosecutorial improprieties were not central to the critical issue in this case—intent. Indeed, none of the prosecutorial improprieties had any relation to the defendant's intent. The defendant claims that the prosecutorial improprieties affected the jury's view of his credibility. We agree with the Appellate Court, however, that "it is *precisely because* the jury believed the defendant's repeated claims that he only meant to cut the victim that he was convicted of first degree manslaughter instead of murder." (Emphasis in original.) *State* v. *Medrano*, supra, 131 Conn. App. 556.

Accordingly, based on our review of the factors set forth in *State* v. *Williams*, supra, 204 Conn. 540, and the record in the present case, we conclude that the Appellate Court properly concluded that the prosecutorial improprieties did not deprive the defendant of his right to a fair trial.

II

The defendant also claims that the trial court improperly instructed the jury on the credibility of witnesses by indicating that the defendant's interest in the outcome of the case could be considered in evaluating his testimony. The defendant claims that this instruction undermined the presumption of innocence and his rights under the federal and state constitutions to a fair trial and to testify in his own defense. We disagree.

Because the defendant did not preserve this issue in the trial court by raising an objection to the relevant jury instructions, he seeks to prevail pursuant to the doctrine of *State* v. *Golding*, 213 Conn. 233, 567 A.2d 823 (1989). A defendant can prevail on an unpreserved constitutional claim under *Golding* "only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation clearly exists and clearly deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt." (Emphasis in original.) Id., 239–40. "The first two [prongs of *Golding*] involve a determination of whether the claim is reviewable; the second two . . . involve a determination of whether the defendant may prevail." *State* v. *George B.*, 258 Conn. 779, 784, 785 A.2d 573 (2001). We conclude that the record is adequate to review the defendant's claim and that the claim, which alleges an improper instruction relating to the defen-

dant's right to testify, is of constitutional magnitude. See *State* v. *DeJesus*, 260 Conn. 466, 472–73, 797 A.2d 1101 (2002).

We review the defendant's claim of instructional impropriety pursuant to the following standard of review. "The pertinent test is whether the charge, read in its entirety, fairly presents the case to the jury in such a way that injustice is not done to either party under the established rules of law. . . . Thus, [t]he whole charge must be considered from the standpoint of its effect on the [jurors] in guiding them to the proper verdict . . . and not critically dissected in a microscopic search for possible error. . . . Accordingly, [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." (Internal quotation marks omitted.) *State* v. *Apodaca*, 303 Conn. 378, 390–91, 33 A.3d 224 (2012).

In the present case, the trial court instructed the jury as follows: "You may believe all, none or any part of any witness' testimony. In making that decision, you may take into account a number of factors including the following: (1) Was the witness able to see or hear or know the things about which that witness testified? (2) How well was the witness able to recall and describe those things? (3) What was the witness' manner while testifying? (4) *Did the witness have an interest in the outcome of this case or any bias or prejudice concerning any party or any matter involved in the case?* (5) How reasonable was the witness' testimony considered in the light of all the evidence in the case? And (6) was the witness' testimony contradicted by what that witness has said or done at another time or by the testimony of other witnesses or by other evidence?"

The trial court also instructed the jury as follows: "The accused in this case took the [witness] stand and testified. In weighing the testimony of an accused person, you should apply the same principles by which the testimony of other witnesses is tested. And that necessarily involves a consideration of [the defendant's] interest in the outcome of the case. You may consider the importance to him of the outcome of the trial. An accused person, having taken the witness stand, stands before you, then, just like any other witness and is entitled to the same consideration and must have his testimony measured in the same way as any other witness, including his interest in the verdict, which you are about to render."

The defendant claims that the trial court's instructions regarding the defendant's interest in the case were improper because it singled out the defendant by stress-

ing his interest in the outcome of the case. The defendant asserts that it was particularly harmful in the present case because he was the most important defense witness and his explanation of what happened on the night in question was the crux of his defense. Therefore, the defendant claims that these instructions deprived him of his defense. Furthermore, the defendant claims that the trial court's instruction is inconsistent with the requirement that instructions on the defendant's credibility must be balanced and fair. In response, the state asserts that the trial court's instruction regarding the defendant's interest in the outcome of the case did not deprive the defendant of his due process right to a fair trial. Specifically, the state asserts that the defendant's claim is controlled by *State* v. *Williams*, supra, 220 Conn. 396–97, in which this court rejected a claim that a similar charge violated due process because it unduly emphasized the defendant's interest in the outcome of the case. Furthermore, the state claims that, even if the instruction was improper, any error was harmless because the record demonstrates that the jury credited the defendant's testimony and believed his account of the incident. Namely, the fact that the jury convicted the defendant of first degree manslaughter instead of murder demonstrates that the jury believed the defendant's version of events—that he only meant to cut the victim and not kill him. We agree with the state.

In *State* v. *Williams*, supra, 220 Conn. 396–97, this court considered a claim by a defendant that his right to due process was violated because the trial court unduly emphasized his interest in the outcome of the case by mentioning it on three separate occasions in the charge to the jury. In examining his claim, this court stated that "[w]e have treated the basic claim that specific mention of the defendant's interest infringes upon his right to a fair trial as falling within the claimed deprivation of a fundamental constitutional right . . . [and] [w]e must, therefore, examine the nuances of language, belatedly relied upon by the defendant, only for the purpose of determining whether they are significant enough to have affected the fairness of his trial." (Internal quotation marks omitted.) Id. In *Williams*, the defendant claimed "that the trial court's three references to the defendant's interest in the outcome of the case were not [evenhanded] in referring to the defendant's interest as compared with that of other witnesses." Id., 397. This court disagreed, stating: "This simply is not so. In each instance the trial court prefaced its remarks concerning the defendant's interest in the outcome with comments such as: (1) '[Y]ou should apply the same principles by which the testimony of other witnesses are tested'; (2) the accused 'is entitled to the same consideration and must have his testimony measured in the same way as any other witness . . .'; and (3) 'you should apply the same test to it as you did

with the other witnesses . . . .' The continual emphasis was that the jury was to evaluate the defendant's testimony in the same fashion as the testimony of the other witnesses. We have repeatedly approved the use of similar language and we do not find its use here unduly repetitive or transcending the bounds of evenhandedness." Id.

Similarly, in the present case, the trial court's charge regarding the defendant's interest in the outcome of the case, explicitly instructed the jury that "[a]n accused person, having taken the witness stand, stands before you, then, just like any other witness and is entitled to the same consideration and must have his testimony measured in the same way as any other witness . . . ." Furthermore, the trial court also instructed the jury that, for all witnesses, the jury should consider, "[d]id the witness have an interest in the outcome of this case or any bias or prejudice concerning any party or any matter involved in the case?" Accordingly, we conclude that, like the instruction in *State* v. *Williams*, supra, 220 Conn. 396–97, the instruction in the present case was not unduly repetitive nor did it transcend the bounds of evenhandedness.

The defendant further claims that *State* v. *Williams*, supra, 220 Conn. 396–97, is no longer good law in light of recent decisions by the United States Court of Appeals for the Second Circuit addressing the defendant's interest instruction. Specifically, the defendant asserts that this court should follow the Second Circuit's decisions in *United States* v. *Gaines*, 457 F.3d 238 (2d Cir. 2006), and *United States* v. *Brutus*, 505 F.3d 80 (2d Cir. 2007). The defendant asserts that these cases are particularly persuasive because this court's analysis in *State* v. *Williams*, supra, 396–97, was based on an analysis of federal constitutional law. We disagree.

In *Gaines*, the Second Circuit reviewed a defendant's interest instruction that stated as follows: "Obviously, the defendant has a deep personal interest in the result of his prosecution. This interest creates a motive for false testimony and, therefore, the defendants' testimony should be scrutinized and weighed with care." (Internal quotation marks omitted.) *United States* v. *Gaines*, supra, 457 F.3d 242. The Second Circuit concluded that "[t]he critical defect in a jury instruction that says the defendant has a motive to lie is its assumption that the defendant is guilty." Id., 247. In order to "prevent [this] needless threat of dilution of the presumption of innocence, [the court in *Gaines*] . . . direct[ed] [D]istrict [C]ourts in the circuit not to charge juries that a testifying defendant's interest in the outcome of the case creates a motive to testify falsely." Id. The Second Circuit further concluded that "[D]istrict [C]ourts should not instruct juries to the effect that a testifying defendant has a deep personal interest in the

case. Rather, a [witness'] interest in the outcome of the case ought to be addressed in the court's general charge concerning witness credibility. If the defendant has testified, that charge can easily be modified to tell the jury to evaluate the defendant's testimony in the same way it judges the testimony of other witnesses." Id., 249. That court did not, however, "purport to micromanage such charges," and allowed a trial court to exercise its discretion to use an "an additional free-standing charge on the defendant's testimony [if it was] deemed appropriate . . . ." Id.

The defendant also points to another decision by the Second Circuit addressing the defendant's interest instruction, *United States* v. *Brutus*, supra, 505 F.3d 80. In *Brutus*, the trial court charged as follows: "A defendant who does testify on her own behalf obviously has a deep personal interest in the outcome of her prosecution. It's fair to say that the interest which a defendant has in the outcome of the case is an interest which is possessed by no other witness . . . [a]nd such an interest creates a motive to testify falsely." (Internal quotation marks omitted.) Id., 85. The court concluded that "an instruction that the defendant's interest in the outcome of the case creates a motive to testify falsely impermissibly undermines the presumption of innocence because it presupposes the defendant's guilt." Id., 87. The court clarified that, "with *Gaines* we established a prophylactic rule that it is error to instruct the jury that a defendant's interest in the outcome of the case creates a motive to testify falsely; it follows that the charge at issue [in *Brutus*] was error, the prejudice from which was exacerbated by the [D]istrict [C]ourt's reference to the defendant's 'deep personal interest.' " Id.

The defendant asserts that this court should rely on *Gaines* and *Brutus* to overrule this court's conclusion in *Williams* and conclude that the defendant's interest charge in this case, which we have explained previously herein is substantially similar to the charge in *Williams*, deprived the defendant of his constitutional right to the presumption of innocence. We disagree. The charge given in the present case, like the charge in *Williams*, is distinguishable from the charge used in *Gaines* and *Brutus*. The charge in *Gaines* and *Brutus* explicitly stated that the defendant's interest in the case gave him a motivation to testify falsely. *United States* v. *Brutus*, supra, 505 F.3d 85; *United States* v. *Gaines*, supra, 457 F.3d 242. Indeed, it is this portion of the charge that the Second Circuit relied on to conclude that the charges in *Gaines* and *Brutus* were improper. In the present case, like in *Williams*, the trial court did not instruct the jury that the defendant's interest in the case gave him a motivation to lie. In addition, the charges in *Gaines* and *Brutus* singled out the defendant from all other witnesses and were not evenhanded, unlike the charges in *Williams* and the present case. Therefore, we do

not find the Second Circuit's reasoning in *Gaines* and *Brutus* to undermine the conclusion this court reached in *Williams*. Thus, we decline the defendant's invitation to overrule the conclusion this court reached in *Williams* regarding such instructions.

Moreover, as the state contends, the fact that the defendant was convicted of first degree manslaughter instead of murder demonstrates that the trial court's instruction did not violate his right to due process. Indeed, it is clear that the jury found the defendant to be credible. The defendant testified that he only intended to cut the victim and not kill him. The fact that the jury acquitted the defendant of murder and found him guilty of manslaughter in the first degree demonstrates that the jury believed the defendant's testimony, regardless of the court's instruction regarding his interest in the outcome of the trial.

Nevertheless, it has become apparent to us, after further consideration of the issue, that instructions regarding the defendant's interest in the outcome of a case, when viewed in isolation from the qualifying language concerning evaluating the defendant's credibility in the same manner as the testimony of other witnesses, could give rise to a danger of juror misunderstanding. "It is well settled that [a]ppellate courts possess an inherent supervisory authority over the administration of justice. . . . Supervisory powers are exercised to direct trial courts to adopt judicial procedures that will address matters that are of utmost seriousness, not only for the integrity of a particular trial but also for the perceived fairness of the judicial system as a whole. . . . Under our supervisory authority, we have adopted rules intended to guide the lower courts in the administration of justice in all aspects of the criminal process." (Internal quotation marks omitted.) *State* v. *Rose*, 305 Conn. 594, 607, 46 A.3d 146 (2012). "We ordinarily invoke our supervisory powers to enunciate a rule that is not constitutionally required but that we think is preferable as a matter of policy." (Internal quotation marks omitted.) *State* v. *Marquez*, 291 Conn. 122, 166, 967 A.2d 56 (2009); see, e.g., *State* v. *Aponte*, 259 Conn. 512, 522, 790 A.2d 457 (2002) (exercising supervisory authority to prohibit use of jury instruction that "one who uses dangerous weapon on the vital part of another 'will be deemed to have intended' the probable result of that act and that from such a circumstance the intent to kill properly may be inferred"); *State* v. *Delvalle*, 250 Conn. 466, 475–76, 736 A.2d 125 (1999) (exercising supervisory authority to prohibit use of jury instruction that reasonable doubt is no doubt suggested by " 'ingenuity of counsel' "); *State* v. *Schiappa*, 248 Conn. 132, 168, 175, 728 A.2d 466 (exercising supervisory authority to prohibit use of jury instruction that requirement of proof beyond reasonable doubt is rule designed to "protect the innocent and not the guilty"), cert. denied, 528 U.S. 862, 120 S. Ct. 152, 145

L. Ed. 2d 129 (1999). Because of the risk of juror misunderstanding, "[w]e believe that the time has come for us to ensure that the challenged language is not included in any future jury instructions." (Internal quotation marks omitted.) *State* v. *Aponte*, supra, 522. Accordingly, in the exercise of our supervisory authority over the administration of justice, we direct our trial courts in the future to refrain from instructing jurors, when a defendant testifies, that they may specifically consider the defendant's interest in the outcome of the case and the importance to him of the outcome of the trial. Instead, we instruct the trial courts to use the general credibility instruction to apply to a criminal defendant who testifies. See Connecticut Criminal Jury Instructions § 2.4-7 (4th Ed. 2010), available at http://www.jud.ct.gov/ji/Criminal/part2/2.4-7.htm (last visited May 8, 2013) ("In this case, the defendant testified. An accused person, having testified, stands before you just like any other witness. [He/she] is entitled to the same considerations and must have [his/her] testimony tested and measured by you by the same factors and standards as you would judge the testimony of any other witness. You have no right to disregard the defendant's testimony or to disbelieve the defendant's testimony merely because [he/she] is accused of a crime. Consider my earlier instructions on the general subject matter of credibility and apply them to the defendant's testimony.").

The judgment of the Appellate Court is affirmed.

In this opinion ROGERS, C. J., and PALMER and McDONALD, Js., concurred.

[1] We note that certain technical changes, not relevant to this appeal, were made to § 53-206 in 2010. See Public Acts 2010, No. 10-32, § 148.

[2] We granted the defendant's petition for certification to appeal, limited to the following issues: "1. Did the Appellate Court properly determine that the defendant was not deprived of his due process right to a fair trial as a result of prosecutorial improprieties?

"2. Was the defendant deprived of his due process right to a fair trial by the trial court's 'defendant's interest' charge to the jury?

"3. If the answer to question two is in the negative, should the court overrule the holding in *State* v. *Williams*, [supra, 220 Conn. 397], as it relates to the 'defendant's interest' charge to the jury?" *State* v. *Medrano*, 303 Conn. 912, 32 A.3d 965 (2011). Because, in the exercise of our supervisory authority over the administration of justice, we direct our trial courts in the future to refrain from using "the defendant's interest" instruction, we do not reach the third certified question.

[3] Chief Judge DiPentima authored a concurring opinion in which she concluded that "[t]he prosecutor's comments during closing argument regarding the credibility of the defendant constituted comment on the evidence and argument regarding inferences that the jury could draw therefrom. I conclude, therefore, that the prosecutor's comments regarding the credibility of the defendant, as set forth in . . . the majority opinion, were not improper." *State* v. *Medrano*, supra, 131 Conn. App. 558.