STATE OF CONNECTICUT *v.* DONALD GALLO
(SC 18992)

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

Argued October 30—officially released November 26, 2013

Norman A. Pattis, for the appellant (defendant).

Bruce R. Lockwood, senior assistant state's attorney, with whom, on the brief, were *David I. Cohen*, state's attorney, and *Mary A. SanAngelo*, senior assistant state's attorney, for the appellee (state).

Opinion

PER CURIAM. The defendant, Donald Gallo, was convicted, after a jury trial, of assault of public safety personnel in violation of General Statutes § 53a-167c (a) (1),[1] assault of public safety personnel in violation of § 53a-167c (a) (2) and interfering with a peace officer in violation of General Statutes § 53a-167a.[2] The trial court rendered judgment in accordance with the verdict, and the defendant appealed to the Appellate Court, which affirmed the judgment of the trial court. *State* v. *Gallo*, 135 Conn. App. 438, 41 A.3d 1183 (2012). We granted the defendant's petition for certification to appeal from the judgment of the Appellate Court limited to the following issue: "Did the Appellate Court properly determine that the admission of a protective order issued against the defendant, as impeachment evidence, constituted harmless error?" *State* v. *Gallo*, 305 Conn. 915, 46 A.3d 172 (2012). We conclude that certification was improvidently granted and dismiss the appeal.

The factual background of this case is set forth in the Appellate Court's opinion. *State* v. *Gallo*, supra, 135 Conn. App. 441–43. During a domestic dispute, the defendant threw a glass and the police were summoned. Id., 442. "The officers entered the residence and repeatedly ordered the defendant to come out of the bedroom. The defendant did not comply, but shouted expletives at the officers. . . . Ignoring repeated police commands, the defendant shouted expletives at the officers and, with his right hand, threw a key ring that held approximately sixteen metal keys in the direction of [the face of one of the officers], causing him injury." Id.

"[Two of the officers] attempted physically to restrain the defendant, who continued to disobey police commands. While the officers tried to handcuff the defendant, he kept his hands in the area of his waistband, as if he were attempting to retrieve an object therefrom. The officers used physical force and, ultimately, removed the defendant from the bedroom and, despite his physical and verbal efforts to resist, from the residence itself.

"A jury found the defendant guilty of interfering with a peace officer and two counts of assault of public safety personnel." Id., 442–43. The defendant then appealed to the Appellate Court claiming, inter alia, that the trial court had improperly permitted the state to impeach him by admitting into evidence a full protective order against him issued following his arrest. Id., 456.

The Appellate Court concluded that the admission into evidence of the protective order constituted harmless error. Id., 462. In reaching its decision, the Appellate Court made the following subordinate conclusions. First, the Appellate Court concluded that "the evidence did not relate to any essential element of the crimes of which the defendant was convicted, but to a collateral

issue raised for the purpose of impeaching the defendant." Id., 460–61. Second, the Appellate Court concluded that "the [trial] court did not restrict the defendant's ability to present additional evidence to rebut the improperly admitted evidence." Id., 461. Third, the Appellate Court concluded that "insofar as the defendant asserts that the protective order unfairly portrayed him as an unusually violent person who posed a danger to [members of his household] following his arrest, the record does not reflect that it had any detrimental impact on the jury's deliberations . . . [because the] jury returned a not guilty verdict with regard to the only charges, namely, assault in the second degree and risk of injury to a child, which arose from the defendant's alleged violent conduct toward a member in his household . . . ." Id. Fourth, the Appellate Court concluded that "the state presented strong evidence against the defendant . . . [including] the testimony of multiple witnesses who observed the defendant's conduct during the events at issue." Id., 462. Fifth, the Appellate Court concluded that "in evaluating the likely impact of the evidence on the trier of fact and result of the trial . . . we conclude that it was not likely that the improperly admitted evidence was very damaging to the defense." (Citation omitted; internal quotation marks omitted.) Id.

This certified appeal followed. On appeal to this court, the defendant claims that the Appellate Court improperly affirmed the judgment of the trial court because the admission into evidence of the protective order was improper and not harmless. After examining the entire record on appeal and considering the briefs and oral arguments of the parties, we have determined that the appeal in this case should be dismissed on the ground that certification was improvidently granted.

The appeal is dismissed.

[1] Although § 53a-167c has been amended by the legislature several times since the events underlying the present case; see, e.g., Public Acts 2011, No. 11-175, § 4; those amendments have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

[2] We also note that § 53a-167a has been amended by the legislature several times since the events underlying the present case. See, e.g., Public Acts 2010, No. 10-110, § 51. Those amendments, however, have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.