Westlaw.

888 A.2d 985 276 Conn. 633, 888 A.2d 985 Page 1

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Supreme Court of Connecticut.
STATE of Connecticut
v.
Michael SKAKEL.

Michael SKAKEL.
No. 16844.

Argued Jan. 14, 2005. Decided Jan. 24, 2006.

Background: Defendant was charged with murder while a juvenile twenty-five years earlier. The Superior Court for Juvenile Matters, Dennis, J., transferred case to criminal docket. Defendant was then convicted in the Superior Court, <u>Kavanewsky</u>, J. Defendant appealed, and case was transferred.

Holdings: The Supreme Court, <u>Palmer</u>, J., held that: (1) failure to conduct a complete investigation into forty-year-old defendant's personal and family background did not preclude transfer;

(2) statutory amendment which excepted all class A felonies, including murder, from five-year statute of limitations applied retroactively, abrogating <u>State v. Paradise</u>, 189 Conn. 346, 456 A.2d 305, <u>State v. Crowell</u>, 228 Conn. 393, 636 A.2d 804;

(3) defendant had a duty to request composite drawing of pedestrian near crime scene on night of murder because it was potentially exculpatory;

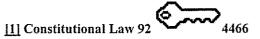
(4) defendant's opportunity to cross-examine witness at probable cause hearing satisfied confrontation clause requirements for admitting the unavailable witness's testimony;

(5) out-of-court statement by defendant's father was admissible hearsay under the residual exception; and (6) prosecutor's closing arguments were permissible.

Affirmed.

Katz, J., concurred in part and filed opinion.

West Headnotes



92 Constitutional Law

92XXVII Due Process

92XXVII(G) Particular Issues and Applications

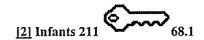
92XXVII(G)24 Juvenile Justice

92k4466 k. Transfer to and from Adult

Court. Most Cited Cases

(Formerly 92k255(4))

A juvenile in whom a liberty interest in juvenile status has vested has a substantial due process liberty interest in the continuation of that juvenile status, and the juvenile cannot and should not be deprived of that status without proper procedural protections. U.S.C.A. Const.Amend. 14.



211 Infants

211VI Crimes

211k68 Rights and Privileges as to Prosecutions

211k68.1 k. In General. Most Cited Cases
Any special treatment accorded to a juvenile because
of his or her age with respect to proceedings relative
to a criminal offense results from statutory authority,
rather than from any inherent or constitutional right.

[3] Constitutional Law 92 4466

92 Constitutional Law

92XXVII Due Process

92XXVII(G) Particular Issues and Applications

92XXVII(G)24 Juvenile Justice

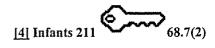
92k4466 k. Transfer to and from Adult

Court. Most Cited Cases

(Formerly 92k255(4))

Any due process liberty interest of defendant in his juvenile status derives from, and is limited by, the

statutory provisions governing the transfer, adjudication, and commitment of juveniles. <u>U.S.C.A.</u> <u>Const.Amend. 14; C.G.S.A. §§ 17-60a, 17-66</u> (1977).



211 Infants

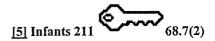
211VI Crimes

211k68 Rights and Privileges as to Prosecutions

211k68.7 Waiver of Juvenile Court Jurisdiction; Transfer to Adult Court

211k68.7(2) k. Grounds, Objections, and Matters Considered; Discretion. Most Cited Cases

Failure to conduct a complete investigation into forty-year-old defendant's personal and family background did not preclude transfer to regular criminal docket to prosecute defendant for murder when he was juvenile twenty-five years earlier; state regulations prohibited the Department of Children and Families from accepting for placement anyone over the age of eighteen, and, thus, the juvenile court necessarily would have concluded, irrespective of the results of a complete investigation, that the defendant's age mandated the transfer of his case to the regular criminal docket. C.G.S.A. §§ 17-60a, 17-66 (1977); Regs. Conn. State Agencies § 17a-145-48(e).



211 Infants

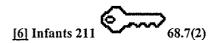
211VI Crimes

211k68 Rights and Privileges as to Prosecutions

211k68.7 Waiver of Juvenile Court Jurisdiction; Transfer to Adult Court

211k68.7(2) k. Grounds, Objections, and Matters Considered; Discretion. Most Cited Cases

Normally, a failure to satisfy statutory requirement to conduct a complete investigation into the defendant's personal and family background render invalid the transfer of any case from juvenile court to the regular criminal docket. C.G.S.A. §§ 17-60a, 17-66 (1977).



211 Infants

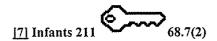
211VI Crimes

211k68 Rights and Privileges as to Prosecutions

211k68.7 Waiver of Juvenile Court Jurisdiction; Transfer to Adult Court

211k68.7(2) k. Grounds, Objections, and Matters Considered; Discretion. Most Cited Cases

Juvenile court ruling on transfer of forty-year-old defendant to regular criminal docket properly considered regulations prohibiting the juvenile placement of anyone over the age of eighteen, and not the commitment options available at time of murder in 1975 before the regulations were effective; the commitment alternatives available to the juvenile court were those alternatives available at the time of the transfer hearing. C.G.S.A. § 17-60a (1977); Regs. Conn. State Agencies § 17a-145-48(e).



211 Infants

211VI Crimes

<u>211k68</u> Rights and Privileges as to Prosecutions

211k68.7 Waiver of Juvenile Court Jurisdiction; Transfer to Adult Court

211k68.7(2) k. Grounds, Objections, and Matters Considered; Discretion. Most Cited Cases

211 Infants

211VI Crimes

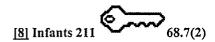
211k68 Rights and Privileges as to Prosecutions

211k68.7 Waiver of Juvenile Court Jurisdiction; Transfer to Adult Court

211k68.7(3) k. Hearing, Evidence, and Determination. Most Cited Cases

Under former statute prohibiting transfer to criminal docket unless the juvenile court finds there is no state institution designed for the care and treatment of

children to which the court may commit such child, the commitment alternatives available to the juvenile court are those alternatives available at the time of the transfer hearing; the statute narrowly focuses on the availability and suitability of state institutions designed for the care and treatment of children to which the juvenile court has authority to commit the child. C.G.S.A. § 17-60a (1977).



211 Infants

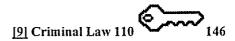
211VI Crimes

211k68 Rights and Privileges as to Prosecutions

211k68.7 Waiver of Juvenile Court Jurisdiction; Transfer to Adult Court

211k68.7(2) k. Grounds, Objections, and Matters Considered; Discretion. Most Cited Cases

Juvenile court ruling on transfer of forty-year-old defendant to regular criminal docket was not required to explore the suitability of placing the defendant in an out-of-state institution; former statute permitted Commissioner of Children and Families to transfer any person committed, admitted, or transferred to the Department to an institution out of state, and, thus, a necessary prerequisite to the out-of-state transfer of a delinquent juvenile was that the juvenile first be committed, admitted, or transferred to the care and custody of the Department. C.G.S.A. § 17-420 (1977).



110 Criminal Law

110X Limitation of Prosecutions

110k146 k. Constitutional and Statutory Provisions. Most Cited Cases

Statutory amendment which excepted all class A felonies, including murder, from five-year statute of limitations applied retroactively to murder committed within year before amendment took effect; the limitations period in effect at time of offense had not expired, and the legislature did not evince an intent to have the amendment apply prospectively only; abrogating <u>State v. Paradise</u>, 189 Conn. 346, 456 A.2d 305, <u>State v. Crowell</u>, 228 Conn. 393, 636 A.2d

804. C.G.S.A. § 54-193.

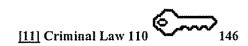
[10] Criminal Law 110

110 Criminal Law

110X Limitation of Prosecutions

110k146 k. Constitutional and Statutory Provisions. Most Cited Cases

The rule of strict construction of a statute of limitations does not bar the presumption of retroactivity otherwise applicable to amendments to statutes of limitation.

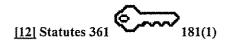


110 Criminal Law

110X Limitation of Prosecutions

110k146 k. Constitutional and Statutory Provisions. Most Cited Cases

With respect to those criminal offenses for which the applicable pre-amendment statute of limitations period has not yet expired, an amendment to that statute of limitations is presumptively retroactive.



361 Statutes

361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(1) k. In General. Most

Cited Cases

A court's ultimate objective in construing statutes is to discern and effectuate the apparent intent of the legislature.

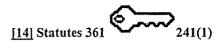
[13] Statutes 361

361 Statutes

361VI Construction and Operation
361VI(B) Particular Classes of Statutes
361k241 Penal Statutes
361k241(1) k. In General. Most Cited

Cases

Unless a contrary interpretation would frustrate an evident legislative intent, criminal statutes are governed by the fundamental principle that such statutes are strictly construed against the state.

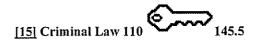


361 Statutes

361VI Construction and Operation
361VI(B) Particular Classes of Statutes
361k241 Penal Statutes
361k241(1) k. In General. Most Cited

Cases

The requirement that criminal statutes shall be strictly construed is predicated on two fundamental principles: (1) the public is entitled to fair notice of what the law forbids, and (2) legislatures and not courts are responsible for defining criminal activity.

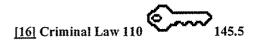


110 Criminal Law

110X Limitation of Prosecutions

110k145.5 k. Nature and Scope of Limitations. Most Cited Cases

Because criminal statutes of limitation do not define criminal conduct, establish the punishment to be imposed or otherwise burden defendants, such statutes are not truly penal at all, but represent an expression of legislative grace.

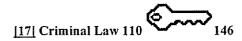


110 Criminal Law

110X Limitation of Prosecutions

110k145.5 k. Nature and Scope of Limitations. Most Cited Cases

Because statutes of limitations inure to the benefit of criminal defendants, it is illogical to characterize those statutes as penal for purposes of determining the proper approach to their construction.

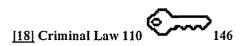


110 Criminal Law

110X Limitation of Prosecutions

110k146 k. Constitutional and Statutory Provisions. Most Cited Cases

Like all remedial statutes, a criminal statute of limitation must be construed liberally to effectuate the legislature's intent.

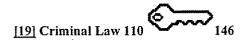


110 Criminal Law

110X Limitation of Prosecutions

110k146 k. Constitutional and Statutory Provisions. Most Cited Cases

Because the remedial purpose of a criminal statute of limitation is to provide for repose after the expiration of a specified period of time, the statute must be construed liberally to effectuate that purpose.

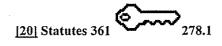


110 Criminal Law

110X Limitation of Prosecutions

110k146 k. Constitutional and Statutory Provisions. Most Cited Cases

Until applicable statute of limitations is identified, the doctrine of liberal construction has no applicability.

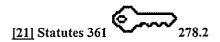


361 Statutes

361VI Construction and Operation 361VI(D) Retroactivity

361k278.1 k. In General. Most Cited Cases (Formerly 361k263)

The decision to apply a statute retroactively or prospectively depends upon the intent of the legislature in enacting the statute.



361 Statutes

361VI Construction and Operation
361VI(D) Retroactivity
361k278.2 k. Nature and Scope. Most Cited

Cases

(Formerly 361k261)

The retroactive application of a law occurs only if the new or revised law was not yet in effect on the date that the relevant events underlying its application occurred.

[22] Constitutional Law 92

92 Constitutional Law

92XXIII Ex Post Facto Prohibitions

92XXIII(B) Particular Issues and Applications

92k2809 Criminal Proceedings

92k2811 k. Statutes of Limitations.

Most Cited Cases

(Formerly 92k199)



110 Criminal Law

110X Limitation of Prosecutions

110k146 k. Constitutional and Statutory

Provisions. Most Cited Cases

(Formerly 92k199)

The ex post facto clause does not prevent the state from extending time limits for prosecutions not yet time barred. U.S.C.A. Const. Art. 1, § 10, cl. 1.

1231 Constitutional Law 92 2811

92 Constitutional Law

92XXIII Ex Post Facto Prohibitions

92XXIII(B) Particular Issues and

Applications

92k2809 Criminal Proceedings

92k2811 k. Statutes of Limitations.

Most Cited Cases

(Formerly 92k199)

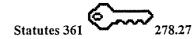


110 Criminal Law

110X Limitation of Prosecutions

110k146 k. Constitutional and Statutory

Provisions. Most Cited Cases



361 Statutes

361VI Construction and Operation

361VI(D) Retroactivity

361k278.24 Validity of Particular

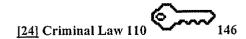
Retroactive Statutes

361k278.27 k. Statutes of Limitations.

Most Cited Cases

(Formerly 92k199)

Subject to the limitations of the ex post facto clause, criminal statutes of limitation should be accorded a presumption of retroactivity. <u>U.S.C.A. Const. Art. 1</u>, § 10, cl. 1.



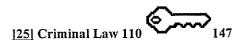
110 Criminal Law

110X Limitation of Prosecutions

110k146 k. Constitutional and Statutory

Provisions. Most Cited Cases

A statute of limitations is generally considered to be procedural, and therefore presumptively retroactive especially when the statute contains only a limitation as to time with respect to a right of action and does not itself create the right of action.



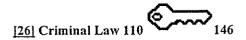
110 Criminal Law

110X Limitation of Prosecutions

110k147 k. Limitations Applicable. Most

Cited Case

Unless the statute of limitations that was in effect when a crime was committed has expired with respect to that crime, a defendant accused of that crime has no right to have that limitation period applied to his conduct.



110 Criminal Law 110X Limitation of Prosecutions 110k146 k. Constitutional and Statutory Provisions. Most Cited Cases

Statutes of limitations are measures of public policy only; they are entirely subject to the will of the legislature and may be changed or repealed altogether in any case in which a right to acquittal has not been absolutely acquired by the completion of the original period of limitation.



106 Courts

<u>106II</u> Establishment, Organization, and Procedure <u>106II(G)</u> Rules of Decision

106k88 Previous Decisions as Controlling or as Precedents

106k89 k. In General. Most Cited Cases
The "stare decisis" doctrine counsels that a court should not overrule its earlier decisions unless the most cogent reasons and inescapable logic require it.

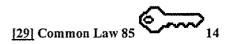


106 Courts

<u>106II</u> Establishment, Organization, and Procedure <u>106II(G)</u> Rules of Decision

106k88 Previous Decisions as Controlling or as Precedents

106k89 k. In General. Most Cited Cases Stare decisis is not an end in itself; experience can and often does demonstrate that a rule, once believed sound, needs modification to serve justice better.



85 Common Law

85k14 k. Application and Operation. Most Cited Cases

The flexibility and capacity of the common law is its genius for growth and adaptation.



106 Courts

106II Establishment, Organization, and Procedure

106II(G) Rules of Decision

106k88 Previous Decisions as Controlling or as Precedents

106k89 k. In General. Most Cited Cases If law is to have current relevance, courts must have and exert the capacity to change a rule of law when reason so requires.

[31] Criminal Law 110

110 Criminal Law

110X Limitation of Prosecutions

110k146 k. Constitutional and Statutory Provisions. Most Cited Cases

An amendment to a criminal statute of limitations applies to a crime committed prior to the enactment of the amendment, in the absence of a clear expression of legislative intent to the contrary, as long as the pre-amendment limitation period had not yet expired when the amendment became effective.

[32] Criminal Law 110

110 Criminal Law

110XXIV Review

110XXIV(L) Scope of Review in General 110XXIV(L)4 Scope of Inquiry 110k1134.54 k. Motion for New Trial.

Most Cited Cases

(Formerly 110k1134(4))

Appellate review of a trial court's decision granting or denying a motion for a new trial must take into account the trial judge's superior opportunity to assess the proceedings over which he or she has personally presided.

[33] Criminal Law 110

110 Criminal Law

110XXI Motions for New Trial

110k911 k. Discretion of Court as to New Trial. Most Cited Cases

Criminal Law 110 913(1)

110 Criminal Law

110XXI Motions for New Trial

110k913 Grounds for New Trial in General 110k913(1) k. In General. Most Cited

Cases

A motion for a new trial is addressed to the sound discretion of the trial court and is not to be granted except on substantial grounds.

[34] Criminal Law 110

110 Criminal Law

110XXIV Review

110XXIV(N) Discretion of Lower Court 110k1156 New Trial

110k1156(1) k. In General. Most Cited

Cases

The decision to deny a new trial motion is reversible on appeal only if there has been an abuse of discretion.



110 Criminal Law

110XX Trial

110XX(A) Preliminary Proceedings 110k627.5 Discovery Prior to and Incident

to Trial

110k627.6 Information or Things,

Disclosure of

110k627.6(3) k. Particular

Documents or Tangible Objects. Most Cited Cases
Police officer's failure to testify about composite
sketch of person seen near murder scene had no
bearing either on the admissibility or materiality of
the drawing allegedly withheld by the state; the
defendant presumably would have placed the
drawing into evidence, through the officer or
otherwise, if the defendant had been provided with a
copy of the drawing in advance of trial.

[36] Criminal Law 110 627.5(1

110 Criminal Law 110XX Trial 110XX(A) Preliminary Proceedings 110k627.5 Discovery Prior to and Incident

to Trial

110k627.5(1) k. In General; Examination of Victim or Witness. Most Cited Cases

Criminal Law 110

110 Criminal Law

110XXXI Counsel

110XXXI(D) Duties and Obligations of Prosecuting Attorneys

110XXXI(D)2 Disclosure of Information 110k1991 k. Constitutional Obligations

Regarding Disclosure. Most Cited Cases

(Formerly 110k700(2.1))

Although open file policies are encouraged and may increase the efficiency and the fairness of the criminal process, the parties should not consider implementation of an open file policy as satisfaction of the defendant's discovery requests or the state's constitutional obligation under <u>Brady</u> to disclose exculpatory materials.

[37] Criminal Law 110 2000

110 Criminal Law

110XXXI Counsel

<u>110XXXI(D)</u> Duties and Obligations of Prosecuting Attorneys

110XXXI(D)2 Disclosure of Information 110k1993 Particular Types of

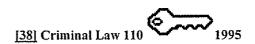
Information Subject to Disclosure

110k2000 k. Test Results;

Demonstrative Evidence. Most Cited Cases

(Formerly 110k700(3))

Defendant had a duty to request composite drawing of pedestrian near crime scene on night of murder because it was potentially exculpatory, irrespective of what the state may have thought about the drawing's import; even though the defendant claimed an inability to know the exculpatory value of the drawing until he compared it to a photograph and even though police report indicated belief that the pedestrian was not suspect, defendant could not wait until the completion of the trial to ascertain the value of the drawing to his defense, but was obligated to obtain that evidence and to evaluate its utility prior to trial.



110 Criminal Law

110XXXI Counsel

<u>110XXXI(D)</u> Duties and Obligations of Prosecuting Attorneys

110XXXI(D)2 Disclosure of Information 110k1993 Particular Types of

Information Subject to Disclosure

110k1995 k. Diligence on Part of Accused; Availability of Information. Most Cited Cases

(Formerly 110k700(3))

Defendant and trial counsel who had actual notice of potentially exculpatory drawing of pedestrian near crime scene on night of murder had no excuse for failure to take reasonable steps to obtain it; thus, state did not suppress alleged *Brady* material.

[39] Criminal Law 110 1995

110 Criminal Law

110XXXI Counsel

110XXXI(D) Duties and Obligations of Prosecuting Attorneys

110XXXI(D)2 Disclosure of Information

110k1993 Particular Types of

Information Subject to Disclosure

110k1995 k. Diligence on Part of Accused; Availability of Information. Most Cited Cases

(Formerly 110k700(2.1))

When a defendant is on notice of the existence of <u>Brady</u> material that the state has failed to turn over, the defendant is required to make reasonable efforts to obtain the exculpatory evidence.

[40] Criminal Law 110 627.5(6)

110 Criminal Law

110XX Trial

110XX(A) Preliminary Proceedings

110k627.5 Discovery Prior to and Incident

to Trial

110k627.5(6) k. Work Product or Other

Privileged Information. Most Cited Cases

The "work product rule" protects an attorney's interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible items; work product can be defined as the result of an attorney's activities when those activities have been conducted with a view to pending or anticipated litigation.

[41] Criminal Law 110 2006

110 Criminal Law

110XXXI Counsel

110XXXI(D) Duties and Obligations of Prosecuting Attorneys

110XXXI(D)2 Disclosure of Information 110k2006 k. Request for Disclosure;

Procedure. Most Cited Cases

(Formerly 110k700(3))

Defendant's <u>Brady</u> challenge to the state's failure to provide investigator's reports was untimely filed two and one-half months after expiration of the five-day limitation period for a new trial motion; the defendant became aware of the two reports during trial, but provided the trial court with no reason for the delay. <u>Practice Book 1998, § 42-54.</u>

[42] Criminal Law 110 419(1)

110 Criminal Law

110XVII Evidence

110XVII(N) Hearsay

110k419 Hearsay in General

110k419(1) k. In General. Most Cited

Cases

An out-of-court statement offered to establish the truth of the matter asserted is "hearsay." Code of Evidence, § 8-1.

[43] Criminal Law 110 419(1)

110 Criminal Law

110XVII Evidence

110XVII(N) Hearsay

110k419 Hearsay in General

110k419(1) k. In General. Most Cited

Cases

Criminal Law 110 419(1.10)

110 Criminal Law

110XVII Evidence

110XVII(N) Hearsay

110k419 Hearsay in General

110k419(1.10) k. Exceptions to Hearsay Rule, and Non-Hearsay Distinguished in General. Most Cited Cases

As a general rule, hearsay statements are inadmissible unless they fall within a recognized exception to the hearsay rule. Code of Evidence, § 8-2.

[44] Criminal Law 110 662.7

110 Criminal Law 110XX Trial

110XX(C) Reception of Evidence

110k662 Right of Accused to Confront

Witnesses

110k662.7 k. Cross-Examination and

Impeachment. Most Cited Cases

The primary interest secured by confrontation is the right of cross-examination. <u>U.S.C.A. Const.Amend.</u> <u>6</u>.

[45] Criminal Law 110 662.9

110 Criminal Law

110XX Trial

110XX(C) Reception of Evidence

110k662 Right of Accused to Confront

Witnesses

110k662.9 k. Availability of Declarant.

Most Cited Cases

Criminal Law 110

110 Criminal Law

<u>110XX</u> Trial

110XX(C) Reception of Evidence

110k662 Right of Accused to Confront

Witnesses

110k662.60 k. Testimony at Preliminary Examination, Former Trial, or Other

Proceeding, Most Cited Cases

Witness' testimony at prior probable cause hearing was "testimonial evidence," and, thus, the confrontation clause barred the state's use of that testimony unless witness was unavailable to testify at trial and the defendant had a full and fair opportunity to cross-examine witness at the probable cause hearing. U.S.C.A. Const.Amend. 6.

146] Criminal Law 110 662.5

110 Criminal Law

110XX Trial

110XX(C) Reception of Evidence

110k662 Right of Accused to Confront

Witnesses

110k662.9 k. Availability of Declarant.

Most Cited Cases

Criminal Law 110 662.60

110 Criminal Law

<u>110XX</u> Trial

110XX(C) Reception of Evidence

110k662 Right of Accused to Confront

Witnesses

110k662.60 k. Testimony at

Preliminary Examination, Former Trial, or Other

Proceeding. Most Cited Cases

Defendant's opportunity to cross-examine witness at probable cause hearing satisfied confrontation clause requirements for admitting the unavailable witness's testimony in murder prosecution, even if the testimony was inherently unreliable. <u>U.S.C.A.</u> Const.Amend. 6.

[47] Criminal Law 110 662.7

110 Criminal Law

110XX Trial

110XX(C) Reception of Evidence

110k662 Right of Accused to Confront

Witnesses

110k662.7 k. Cross-Examination and Impeachment. Most Cited Cases

The confrontation clause commands that reliability of evidence be assessed in a particular manner, i.e., by testing in the crucible of cross-examination, not that evidence be reliable; the clause thus reflects a judgment, not only about the desirability of reliable evidence, but about how reliability can best be determined. U.S.C.A. Const.Amend. 6.

[48] Criminal Law 110

110 Criminal Law

110XXIV Review

110XXIV(L) Scope of Review in General 110XXIV(L)11 Parties Entitled to Allege

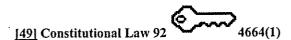
Error

110k1137 Estoppel

110k1137(5) k. Admission of

Evidence. Most Cited Cases

Because the defendant could not complain about evidence that he himself adduced, he was not entitled to appellate review of his claim that such evidence was introduced in violation of his due process rights. U.S.C.A. Const. Amend. 14; C.G.S.A. Const. Art. 1. § 8.



92 Constitutional Law

92XXVII Due Process

92XXVII(H) Criminal Law

92XXVII(H)5 Evidence and Witnesses

92k4661 Statements, Confessions, and

Admissions

92k4664 Circumstances Under

Which Made; Interrogation

92k4664(1) k. In General. Most

Cited Cases

(Formerly 92k266.1(1))

Any use in a criminal trial of an involuntary confession is a denial of due process; in order to be voluntary, a confession must be the product of an essentially free and unconstrained choice by the maker. U.S.C.A. Const. Amend. 14.

[50] Criminal Law 110 519(1)

110 Criminal Law

110XVII Evidence

110XVII(T) Confessions

110k519 Voluntary Character in General 110k519(1) k. What Confessions Are

Voluntary. Most Cited Cases

The determination of whether a confession is voluntary must be based on a consideration of the totality of circumstances surrounding it, including both the characteristics of the accused and the details of the interrogation.

[51] Constitutional Law 92 4664(1)

92 Constitutional Law

92XXVII Due Process

92XXVII(H) Criminal Law

92XXVII(H)5 Evidence and Witnesses

92k4661 Statements, Confessions, and

Admissions

92k4664 Circumstances Under

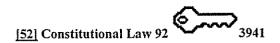
Which Made; Interrogation

92k4664(1) k. In General. Most

Cited Cases

(Formerly 92k266.1(1))

Under the due process clause, in order for a confession to be deemed involuntary and thus inadmissible at trial, there must be police conduct, or official coercion, causally related to the confession. U.S.C.A. Const.Amend. 14.



92 Constitutional Law

92XXVII Due Process

92XXVII(D) Applicability to Governmental or Private Conduct; State Action

92k3941 k. Non-Government Entities and Individuals, Actions Of. Most Cited Cases

(Formerly 92k266.1(1))

The most outrageous behavior by a private party seeking to secure evidence against a defendant does not make that evidence inadmissible under the Due Process Clause, because suppressing such statements would serve absolutely no purpose in enforcing constitutional guarantees. <u>U.S.C.A. Const.Amend.</u> 14.

[53] Constitutional Law 92 4664(2)

92 Constitutional Law

92XXVII Due Process

92XXVII(H) Criminal Law

92XXVII(H)5 Evidence and Witnesses

92k4661 Statements, Confessions, and

Admissions

92k4664 Circumstances Under

Which Made; Interrogation

92k4664(2) k. Particular Cases.

Most Cited Cases

(Formerly 92k266.1(1))

Criminal Law 110 412.1(2)

110 Criminal Law

110XVII Evidence

110XVII(M) Declarations

110k411 Declarations by Accused

110k412.1 Voluntary Character of

Statement

110k412.1(2) k. Statements While in

Custody; Persons to Whom Made. <u>Most Cited Cases</u> Admitting defendant's allegedly involuntary statements at residential facility for troubled adolescents did not violate federal Due Process Clause; the defendant did not claim that his inculpatory statements were procured, either directly or indirectly, by any state official or any person acting on behalf of the state. <u>U.S.C.A. Const.Amend.</u> 14.

[54] Criminal Law 110

110 Criminal Law

110XXIV Review

110XXIV(O) Questions of Fact and Findings

110k1158.8 Evidence

110k1158.13 k. Admission, Statements,

and Confessions. Most Cited Cases

(Formerly 110k1158(4))

The trial court's findings as to the circumstances surrounding the defendant's interrogation and confession are findings of fact which will not be overturned unless they are clearly erroneous.

[55] Criminal Law 110 (1036.1(5)

110 Criminal Law

110XXIV Review

110XXIV(E) Presentation and Reservation in

Lower Court of Grounds of Review

110XXIV(E)1 In General

110k1036 Evidence

110k1036.1 In General

110k1036.1(3) Particular

Evidence

110k1036.1(5) k. Confessions,

Declarations, and Admissions. Most Cited Cases
Defendant could not prevail on unpreserved claim of
constitutional error in admitting allegedly involuntary
statements at residential facility for trouble
adolescents, even if state constitution barred use of
involuntary statements procured without police
coercion and even though the scope of plenary on
ultimate question of voluntariness; the defendant
failed to raise a challenge in the trial court on state
constitutional grounds, the trial court thus never
made any inquiry as to the voluntariness of the
statements, and the Supreme Court did not know the
precise circumstances under which the defendant's
statements were made or the defendant's state of
mind when he made them. C.G.S.A. Const. Art. 1, §

156| Criminal Law 110

110 Criminal Law

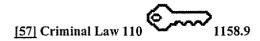
110XXIV Review

110XXIV(U) Determination and Disposition of Cause

110k1181.5 Remand in General; Vacation 110k1181.5(2) k. Remand for

Amplification of Record. Most Cited Cases

A remand to the trial court is inappropriate when record is inadequate to review unpreserved claim of constitutional error; the first prong of *Golding* test for defendant to prevail on unpreserved constitutional claim is designed to avoid remands for the purpose of supplementing the record.



110 Criminal Law

110XXIV Review

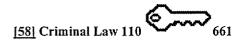
110XXIV(O) Questions of Fact and Findings 110k1158.8 Evidence

110k1158.9 k. In General. Most Cited

Cases

(Formerly 110k1158(4))

The trial court's ruling on the admissibility of evidence is entitled to great deference.



110 Criminal Law

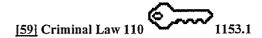
110XX Trial

110XX(C) Reception of Evidence

110k661 k. Necessity and Scope of Proof.

Most Cited Cases

The trial court is vested with wide discretion in determining the admissibility of evidence.



110 Criminal Law

110XXIV Review

110XXIV(N) Discretion of Lower Court 110k1153 Reception and Admissibility of

Evidence

110k1153.1 k. In General. Most Cited

Cases

(Formerly 110k1153(1))

The trial court's ruling on evidentiary matters will be overturned only upon a showing of a clear abuse of the court's discretion.



110 Criminal Law

110XXIV Review

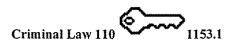
110XXIV(M) Presumptions

110k1144 Facts or Proceedings Not Shown

by Record

110k1144.12 k. Reception of Evidence.

Most Cited Cases



110 Criminal Law

110XXIV Review

110XXIV(N) Discretion of Lower Court

110k1153 Reception and Admissibility of

Evidence

110k1153.1 k. In General. Most Cited

Cases

(Formerly 110k1153(1))

In determining whether there has been an abuse of discretion, the Supreme Court makes every reasonable presumption in favor of the correctness of the trial court's ruling and will upset that ruling only for a manifest abuse of discretion.



110 Criminal Law

110XXIV Review

110XXIV(M) Presumptions

110k1141 In General

110k1141(2) k. Burden of Showing

Error. Most Cited Cases

If error in evidentiary ruling is not of constitutional dimensions, an appellant has the burden of establishing that there has been an erroneous ruling which was probably harmful to him.



110 Criminal Law

110XVII Evidence

110XVII(N) Hearsay

110k419 Hearsay in General

110k419(2.5) k. "Catch-All" or

Residual Exception. Most Cited Cases

Out-of-court statement by defendant's father telling his neighbor about defendant's statement that he was drunk and could have murdered the neighbor's friend was admissible hearsay under the residual exception on state's examination of the neighbor; admitting the statement was reasonably necessary since neither neighbor nor father could recall the statement, and it bore the requisite indicia of trustworthiness and

reliability since the father had a personal relationship with the neighbor, had spoken to her about issues involving the children, made the challenged statement in confidence and on his own initiative, and would not likely implicate his child falsely in a serious crime. Code of Evidence. § 8-9.



110 Criminal Law
110XVII Evidence
110XVII(N) Hearsay

110k419 Hearsay in General

110k419(2.5) k. "Catch-All"

Residual Exception. Most Cited Cases

A hearsay statement that does not fall within one of the traditional exceptions to the hearsay rule nevertheless may be admissible under the residual exception to the hearsay rule provided that the proponent's use of the statement is reasonably necessary and the statement itself is supported by equivalent guarantees of trustworthiness and reliability that are essential to other evidence admitted under traditional exceptions to the hearsay rule. Code of Evidence, § 8-9.



110 Criminal Law
110XVII Evidence
110XVII(N) Hearsay
110k419 Hearsay is

110k419 Hearsay in General 110k419(2.5) k. "Catch-All"

Residual Exception. Most Cited Cases

The requirement of "reasonable necessity" for admitting hearsay under residual exception is met when, unless the hearsay statement is admitted, the facts it contains may be lost, either because the declarant is dead or otherwise unavailable, or because the assertion is of such a nature that evidence of the same value cannot be obtained from the same or other sources. Code of Evidence, § 8-9.



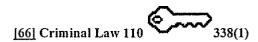
110 Criminal Law

110XVII Evidence

110XVII(D) Facts in Issue and Relevance 110k338 Relevancy in General 110k338(1) k. In General. Most Cited

Cases

"Relevant evidence" is evidence that has a logical tendency to aid the trier in the determination of an issue. Code of Evidence, § 4-1.



110 Criminal Law

110XVII Evidence

110XVII(D) Facts in Issue and Relevance 110k338 Relevancy in General 110k338(1) k. In General. Most Cited

Cases

One fact is relevant to another if, in the common course of events, the existence of one, alone or with other facts, renders the existence of the other either more certain or more probable. Code of Evidence, § 4-1.



110 Criminal Law

110XVII Evidence

110XVII(D) Facts in Issue and Relevance 110k338 Relevancy in General 110k338(1) k. In General. Most Cited

Cases

Evidence is irrelevant or too remote if there is such a want of open and visible connection between the evidentiary and principal facts that, all things considered, the former is not worth or safe to be admitted in the proof of the latter. Code of Evidence, § 4-1.

110 Criminal Law
110XVII Evidence
110XVII(D) Facts in Issue and Relevance
110k338 Relevancy in General

110k338(1) k. In General. Most Cited

Cases

Criminal Law 110

110 Criminal Law

110XVII Evidence

110XVII(D) Facts in Issue and Relevance 110k338 Relevancy in General

110k338(7) k. Evidence Calculated to Create Prejudice Against or Sympathy for Accused.

Most Cited Cases

Criminal Law 110 675

110 Criminal Law

110XX Trial

110XX(C) Reception of Evidence

110k675 k. Cumulative Evidence in

General. Most Cited Cases

Evidence is not rendered inadmissible because it is not conclusive; all that is required is that the evidence tend to support a relevant fact even to a slight degree, so long as it is not unfairly prejudicial or merely cumulative. Code of Evidence, §§ 4-1, 4-3.



410 Witnesses

410IV Credibility and Impeachment

410IV(E) Contradiction

410k406 k. Competency of Contradictory

Evidence. Most Cited Cases

Newspaper articles were relevant in murder prosecution to impeach statement by state's witness on cross-examination that her information about the murder came from newspapers, not defendant; in light of witness' testimony on cross-examination, the fact that most of the information was not contained in the articles provided a proper avenue of impeachment for the state.

170] Criminal Law 110

110 Criminal Law
110XXIV Review
110XXIV(M) Presumptions

110k1144 Facts or Proceedings Not Shown by Record

110k1144.12 k. Reception of Evidence. Most Cited Cases

Criminal Law 110

110 Criminal Law

110XXIV Review

110XXIV(N) Discretion of Lower Court 110k1153 Reception and Admissibility of

Evidence

110k1153.3 k. Relevance. Most Cited

<u>Cases</u>

(Formerly 110k1153(1))

The trial court's discretionary determination that the probative value of evidence is outweighed by its prejudicial effect will not be disturbed on appeal unless a clear abuse of discretion is shown; because of the difficulties inherent in this balancing process, every reasonable presumption should be given in favor of the trial court's ruling. Code of Evidence, § 4-3.

[71] Criminal Law 110 338(7)

110 Criminal Law

110XVII Evidence

110XVII(D) Facts in Issue and Relevance 110k338 Relevancy in General

110k338(7) k. Evidence Calculated to

Create Prejudice Against or Sympathy for Accused. Most Cited Cases

Adverse evidence is inadmissible only if it creates undue prejudice so that it threatens an injustice were it to be admitted. Code of Evidence, § 4-3.

[72] Criminal Law 110 338(7)

110 Criminal Law

110XVII Evidence

110XVII(D) Facts in Issue and Relevance

110k338 Relevancy in General 110k338(7) k. Evidence Calculated to

Create Prejudice Against or Sympathy for Accused.

Most Cited Cases

The test for determining whether evidence is unduly prejudicial is not whether it is damaging to the party against whom the evidence is offered; the test is whether it will improperly arouse the emotions of the jurors. Code of Evidence, § 4-3.

[73] Criminal Law 110 921

110 Criminal Law

110XXI Motions for New Trial

110k921 k. Rulings on Evidence. Most Cited

Cases

Any prejudice to defendant from admitting newspaper articles to impeach statement by state's witness on cross-examination that her information about the murder came from newspapers did not entitle defendant to new trial, despite sensational nature and tone; although the articles mentioned the defendant's abuse of drugs and alcohol, ample evidence of that abuse was admitted into evidence, the brief references to the murder involved facts already properly before the jury, and the trial court gave limiting instructions.

174] Witnesses 410 345(2)

410 Witnesses

410IV Credibility and Impeachment

410IV(B) Character and Conduct of Witness 410k345 Accusation or Conviction of

Crime

410k345(2) k. Particular Offenses.

Most Cited Cases

Prior convictions of prosecution witness for burglary could be excluded to impeach witness in murder prosecution, where they were twenty-five years old. Code of Evidence, § 6-7(a).

[75] Witnesses 410 345(1)

410 Witnesses

410IV Credibility and Impeachment

410IV(B) Character and Conduct of Witness 410k345 Accusation or Conviction of

Crime

410k345(1) k. In General. Most Cited

Cases

Generally, evidence that a witness has been convicted of a crime is admissible to impeach his credibility if the crime was punishable by imprisonment for more than one year. <u>C.G.S.A.</u> § 52-145(b); <u>Code of Evidence</u>, § 6-7(a).



110 Criminal Law

110XXIV Review

110XXIV(M) Presumptions

110k1144 Facts or Proceedings Not Shown

by Record

110k1144.12 k. Reception of Evidence.

Most Cited Cases

Criminal Law 110

110 Criminal Law

110XXIV Review

110XXIV(N) Discretion of Lower Court

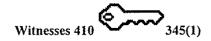
110k1153 Reception and Admissibility of

Evidence

110k1153.19 k. Credibility and

Impeachment. Most Cited Cases

(Formerly 110k1153(1))



410 Witnesses

410IV Credibility and Impeachment

410IV(B) Character and Conduct of Witness

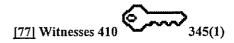
410k345 Accusation or Conviction of

Crime

410k345(1) k. In General. Most Cited

Cases

The trial court has wide discretion in balancing factors for admitting evidence of felony conviction to impeach witness, and every reasonable presumption should be given in favor of the correctness of the court's ruling; reversal is required only when an abuse of discretion is manifest or when injustice appears to have been done. Code of Evidence, § 6-7(a).



410 Witnesses

410IV Credibility and Impeachment

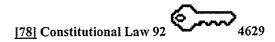
410IV(B) Character and Conduct of Witness 410k345 Accusation or Conviction of

Crime

410k345(1) k. In General. Most Cited

Cases

The ten-year benchmark for remoteness of felony conviction offered to impeach witness is not an absolute bar to the use of a conviction that is more than ten years old, but serves merely as a guide to assist the trial judge in evaluating the conviction's remoteness. Code of Evidence, \S 6-7(a).



92 Constitutional Law

92XXVII Due Process

92XXVII(H) Criminal Law

92XXVII(H)4 Proceedings and Trial

92k4627 Conduct and Comments of

Counsel; Argument

92k4629 k. Prosecutor. Most Cited

Cases

(Formerly 92k268(8))

The object of inquiry before a reviewing court in due process claims involving prosecutorial misconduct is always and only the fairness of the entire trial, and not the specific incidents of misconduct themselves. U.S.C.A. Const.Amend. 14.



110 Criminal Law

110XXIV Review

110XXIV(E) Presentation and Reservation in Lower Court of Grounds of Review

110XXIV(E)1 In General

110k1037 Arguments and Conduct of

Counsel

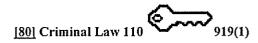
110k1037.1 In General

110k1037.1(1) k. Arguments and

Conduct in General. Most Cited Cases

Following a determination that prosecutorial misconduct has occurred, regardless of whether it

was objected to, an appellate court must apply to the entire trial the <u>Williams</u> factors involving the extent to which the misconduct was invited by defense conduct or argument, the severity of the misconduct, the frequency of the misconduct, the centrality of the misconduct to the critical issues in the case, the strength of the curative measures adopted, and the strength of the state's case.

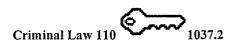


110 Criminal Law

110XXI Motions for New Trial

110k919 Misconduct of Counsel for Prosecution

110k919(1) k. In General. Most Cited



110 Criminal Law

110XXIV Review

110XXIV(E) Presentation and Reservation in Lower Court of Grounds of Review

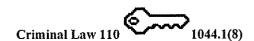
110XXIV(E)1 In General

110k1037 Arguments and Conduct of

Counsel

Cases

110k1037.2 k. Requests for Correction by Court. Most Cited Cases



110 Criminal Law

110XXIV Review

110XXIV(E) Presentation and Reservation in Lower Court of Grounds of Review

110XXIV(E)1 In General

110k1044 Motion Presenting Objection 110k1044.1 In General; Necessity of

Motion

110k1044.1(8) k. Arguments and

Conduct of Counsel. Most Cited Cases

The determination of whether prosecutorial misconduct warrants a new trial or proceeding 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 seriously jeopardize the defendant's right to a fair trial.

[81] Criminal Law 110 (1037.1(1)

110 Criminal Law

110XXIV Review

110XXIV(E) Presentation and Reservation in Lower Court of Grounds of Review

110XXIV(E)1 In General

110k1037 Arguments and Conduct of

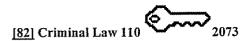
Counsel

110k1037.1 In General

110k1037.1(1) k. Arguments and

Conduct in General. Most Cited Cases

The fact that defense counsel did not object to one or more incidents of prosecutorial misconduct must be considered in determining whether and to what extent the misconduct contributed to depriving the defendant of a fair trial and whether, therefore, reversal is warranted.



110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by Counsel

110k2071 Scope of and Effect of Summing

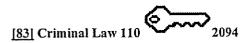
Up

110k2073 k. For Prosecution. Most

Cited Cases

(Formerly 110k709)

In determining whether prosecutorial misconduct of a constitutional magnitude has occurred during closing argument, the reviewing court must give due deference to the fact that counsel 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.



110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by Counsel

110k2093 Comments on Evidence or Witnesses

110k2094 k. In General. Most Cited

Cases

(Formerly 110k720(1))



110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by Counsel

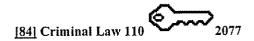
110k2102 Inferences from and Effect of Evidence

110k2103 k. In General. Most Cited

Cases

(Formerly 110k720(6))

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.



110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by Counsel

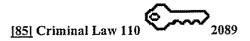
 $\underline{110k2076}$ Statements as to Facts and Arguments

110k2077 k. In General. Most Cited

Cases

(Formerly 110k713)

The occasional use of rhetorical devices is simply fair argument.



110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by

Counsel

110k2088 Matters Not Sustained by

Evidence

110k2089 k. In General. Most Cited

<u>Cases</u>

(Formerly 110k719(1))

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; this heightened duty derives from long recognition of the special role played by the state's attorney in a criminal trial.

[86] District and Prosecuting Attorneys 131

131 District and Prosecuting Attorneys

131k8 k. Powers and Proceedings in General. Most Cited Cases

(Formerly 110k700(1))

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 state, who seek impartial justice for the guilty as much as for the innocent.

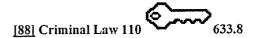
[87] District and Prosecuting Attorneys 131

131 District and Prosecuting Attorneys

131k8 k. Powers and Proceedings in General. Most Cited Cases

(Formerly 110k700(1))

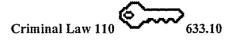
The prosecutor's conduct and language in the trial of cases in which human life or liberty is at stake should be forceful, but fair, because the prosecutor represents the public interest, which demands no victim and asks no conviction through the aid of passion, prejudice, or resentment.



110 Criminal Law 110XX Trial

110XX(B) Course and Conduct of Trial in General

110k633.8 k. Right of Defendant to Fair Trial in General. Most Cited Cases (Formerly 110k633(1))



110 Criminal Law

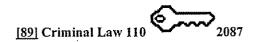
110XX Trial

110XX(B) Course and Conduct of Trial in General

110k633.10 k. Requisites of Fair Trial. Most Cited Cases

(Formerly 110k633(1))

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.



110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by Counsel

110k2087 k. Matters Not Within Issues. Most Cited Cases

(Formerly 110k718)



110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by Counsel

110k2088 Matters Not Sustained by Evidence

110k2089 k. In General. Most Cited

Cases

(Formerly 110k719(1))



110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by

Counsel

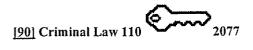
110k2102 Inferences from and Effect of Evidence

110k2103 k. In General. Most Cited

Cases

(Formerly 110k720(6))

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 has no right to consider.



110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by Counsel

 $\underline{110k2076}$ Statements as to Facts and Arguments

110k2077 k. In General. Most Cited

Cases

(Formerly 110k713)

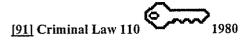
District and Prosecuting Attorneys 131

131 District and Prosecuting Attorneys

131k8 k. Powers and Proceedings in General. Most Cited Cases

(Formerly 110k700(1))

While a prosecutor may strike hard blows, he is not at liberty to strike foul ones; it is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.



110 Criminal Law

110XXXI Counsel

<u>110XXXI(D)</u> Duties and Obligations of Prosecuting Attorneys

110XXXI(D)1 In General

110k1980 k. In General. Most Cited

Cases

(Formerly 110k713)



110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by Counsel

110k2145 Appeals to Sympathy or

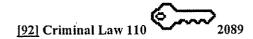
Prejudice

110k2146 k. In General. Most Cited

Cases

(Formerly 110k713, 110k723(1))

A prosecutor must draw a careful line; he should be fair and should not seek to arouse passion or engender prejudice, but earnestness or even a stirring eloquence cannot convict him of hitting foul blows.



110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by

Counsel

110k2088 Matters Not Sustained by

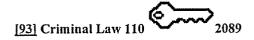
Evidence

110k2089 k. In General. Most Cited

<u>Cases</u>

(Formerly 110k720(1))

A prosecutor, in fulfilling his duties, must confine himself to the evidence in the record.



110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by

Counsel

110k2088 Matters Not Sustained by

Evidence

110k2089 k. In General. Most Cited

Cases

(Formerly 110k719(1))

Statements as to facts that have not been proven amount to unsworn testimony, which is not the

subject of proper closing argument.

[94] Criminal Law 110 2089

110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by Counsel

110k2088 Matters Not Sustained by

Evidence

110k2089 k. In General. Most Cited

Cases

(Formerly 110k719(1))



110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by Counsel

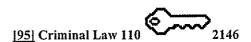
110k2102 Inferences from and Effect of Evidence

110k2103 k. In General. Most Cited

Cases

(Formerly 110k720(6))

A prosecutor may invite the jury to draw reasonable inferences from the evidence; however, he or she may not invite sheer speculation unconnected to evidence.



110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by Counsel

110k2145 Appeals to Sympathy or

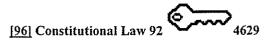
Prejudice

110k2146 k. In General. Most Cited

<u>Cases</u>

(Formerly 110k723(1))

A prosecutor may not appeal to the emotions, passions, and prejudices of the jurors; such appeals should be avoided because they have the effect of diverting the jurors' attention from their duty to decide the case on the evidence.



92 Constitutional Law

92XXVII Due Process

92XXVII(H) Criminal Law

92XXVII(H)4 Proceedings and Trial

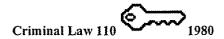
92k4627 Conduct and Comments of

Counsel; Argument

92k4629 k. Prosecutor. Most Cited

Cases

(Formerly 110k700(1))



110 Criminal Law

110XXXI Counsel

110XXXI(D) Duties and Obligations of

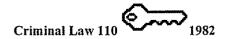
Prosecuting Attorneys

110XXXI(D)1 In General

110k1980 k. In General. Most Cited

Cases

(Formerly 110k700(1))



110 Criminal Law

110XXXI Counsel

<u>110XXXI(D)</u> Duties and Obligations of Prosecuting Attorneys

110XXXI(D)1 In General

110k1982 k. Prejudice Resulting from

Improper Conduct; Unfairness or Miscarriage of Justice. Most Cited Cases

(Formerly 110k700(1))

In analyzing claims of prosecutorial misconduct, the Supreme Court engages in a two-step process: (1) whether misconduct occurred in the first instance; and (2) whether that misconduct deprived a defendant of his due process right to a fair trial. <u>U.S.C.A.</u> Const.Amend. 14.

[97] Criminal Law 110 2117

110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by Counsel

 $\underline{110k2102}$ Inferences from and Effect of Evidence

110k2117 k. Homicide and Assault with Intent to Kill. Most Cited Cases

(Formerly 110k720(9))

Prosecutor's closing argument that defendant fabricated story about masturbating near murder victim's body urged the jury to draw reasonable inferences from the facts in prosecution for 1975 murder for which defendant asserted alibi defense; a witness had testified that, immediately after the defendant told him story, witness began receiving repeated telephone calls from the defendant's private investigators requesting a meeting to discuss the murder, witness also explained that, when he did not return their calls, the defendant himself called to urge him to talk to the investigators, and the prosecutor could thus argue that defendant or investigators considered it urgent that witness repeat the defendant's story and that the defendant's urgent interest in the matter likely was related to the fact that the state recently had reopened its investigation.

[98] Constitutional Law 92

92 Constitutional Law

92XXVII Due Process

92XXVII(H) Criminal Law

92XXVII(H)4 Proceedings and Trial

92k4627 Conduct and Comments of

Counsel; Argument

92k4629 k. Prosecutor. Most Cited

Cases

(Formerly 92k268(8))

Criminal Law 110

110 Criminal Law

110XXI Motions for New Trial

<u>110k919</u> Misconduct of Counsel for Prosecution

110k919(3) k. In Argument in General.

Most Cited Cases

Prosecutor's closing argument that DNA technology and its efficacy were well-known in 1992 when

defendant allegedly fabricated story about masturbating near murder victim's body did not violate due process or represent the kind of gross or flagrant impropriety for which a new trial was required in prosecution for 1975 murder for which defendant asserted alibi defense. <u>U.S.C.A.</u> Const.Amend. 14.

[99] Criminal Law 110 304(1)

110 Criminal Law

110XVII Evidence

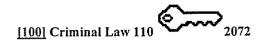
110XVII(A) Judicial Notice

110k304 Judicial Notice

110k304(1) k. In General. Most Cited

Cases

Supreme Court could take judicial notice of the fact that DNA technology was being used in the investigation of criminal offenses in this state as early as 1989.



110 Criminal Law

110XXXI Counsel

 $\underline{110XXXI(F)}$ Arguments and Statements by Counsel

110k2071 Scope of and Effect of Summing

Up

110k2072 k. In General. Most Cited

Cases

(Formerly 110k708.1)

Closing arguments often have a rough and tumble quality about them, and some leeway must be afforded to the advocates in offering arguments to the jury in final argument.

[101] Criminal Law 110 [1037.1(1)

110 Criminal Law

110XXIV Review

110XXIV(E) Presentation and Reservation in Lower Court of Grounds of Review

110XXIV(E)1 In General

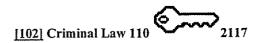
110k1037 Arguments and Conduct of

Counsel

110k1037.1 In General 110k1037.1(1) k. Arguments and

Conduct in General. Most Cited Cases

Defense counsel's failure to object to alleged prosecutorial misconduct, while not by itself fatal to a defendant's claim, frequently will indicate on appellate review that the challenged comments do not rise to the magnitude of constitutional error.



110 Criminal Law

110XXXI Counsel

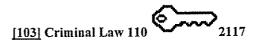
110XXXI(F) Arguments and Statements by Counsel

 $\underline{110k2102}$ Inferences from and Effect of Evidence

110k2117 k. Homicide and Assault

with Intent to Kill. Most Cited Cases (Formerly 110k720(9))

Prosecutor's closing argument that defendant's family produced an alibi was permissible as based on facts in evidence in murder prosecution; family tutor took defendant, brothers, and cousin (the chief proponents of the defendant's alibi) to family hunting lodge after police began investigating, the other siblings were left behind, and although the prosecutor could not point to any direct evidence of a concerted effort by the defendant's father or other family members to orchestrate an alibi, it was reasonable to implore the jury to infer, on the basis of the circumstantial evidence, that such an effort had been undertaken on the defendant's behalf.



110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by Counsel

110k2102 Inferences from and Effect of Evidence

110k2117 k. Homicide and Assault with Intent to Kill. Most Cited Cases

(Formerly 110k720(9))

Prosecutor's closing argument that defendant's family sent him to residential facility for troubled adolescents to shield him from police and that the family had told the school administrators about defendant's involvement in murder of neighbor was permissible as based on evidence in murder prosecution; two witnesses testified that defendant disclosed that his family had enrolled him at the school to shield him from police, defendant likely disclosed his guilt to at least one family member, and staff members confronted defendant on several occasions about his involvement in the murder.

[104] Criminal Law 110 2152

110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by Counsel

110k2145 Appeals to Sympathy or

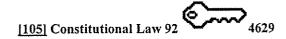
Prejudice

110k2152 k. Attacks on Accused. Most

Cited Cases

(Formerly 110k722.3)

Prosecutor's reference to defendant as "killer" in closing argument that defendant's family sent him to residential facility in order to deal with "killer" living in their household was neither gratuitous nor inflammatory and was permissible in murder prosecution; the prosecutor employed the term merely as a shorthand for the person who had killed the victim.



92 Constitutional Law

92XXVII Due Process

92XXVII(H) Criminal Law

92XXVII(H)4 Proceedings and Trial

92k4627 Conduct and Comments of

Counsel; Argument

92k4629 k. Prosecutor. Most Cited

Cases

(Formerly 92k268(8))



110 Criminal Law 110XXXI Counsel 110XXXI(F) Arguments and Statements by Counsel

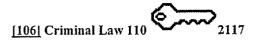
110k2145 Appeals to Sympathy or Prejudice

110k2152 k. Attacks on Accused. Most

Cited Cases

(Formerly 110k722.3)

Prosecutor's closing argument that, on two occasions, described the defendant as a "spoiled brat" did not violate due process in murder prosecution; when the objectionable references were viewed in the broader context of the entire trial, they were isolated, relatively innocuous, and not unduly prejudicial to the defendant. U.S.C.A. Const.Amend. 14.



110 Criminal Law

110XXXI Counsel

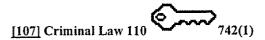
110XXXI(F) Arguments and Statements by Counsel

 $\underline{110k2102} \ \ Inferences \ from \ and \ Effect \ of \\ Evidence$

 $\frac{110k2117}{\text{with Intent to Kill.}} \text{ k. Homicide and Assault}$ with Intent to Kill. $\underline{\text{Most Cited Cases}}$

(Formerly 110k720(9))

Witness's credibility problems when testifying that defendant had confessed to killing the victim, returning to her body two days later, and masturbating on it did not preclude the prosecutor from arguing in closing that the defendant had masturbated on the dead body which was discovered within a day after the killing; the defendant was free to argue that the witness's testimony was not credible, and the jury could treat some of the testimony as unworthy of belief.



110 Criminal Law 110XX Trial

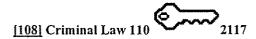
110XX(F) Province of Court and Jury in General

110k733 Questions of Law or of Fact 110k742 Credibility of Witnesses 110k742(1) k. In General. Most

Cited Cases

A fact finder is free to credit one aspect of a witness'

testimony and to discredit another portion thereof.



110 Criminal Law

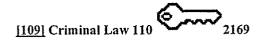
110XXXI Counsel

110XXXI(F) Arguments and Statements by Counsel

110k2102 Inferences from and Effect of Evidence

110k2117 k. Homicide and Assault with Intent to Kill. Most Cited Cases (Formerly 110k720(9))

Prosecutor's closing argument that defendant had masturbated on murder victim was permissible as based on red marks found on the inside of the victim's right and left thighs and defendant's alleged statement about masturbating on or near victim; criminalist testified that two reddish marks discovered on the upper portion of the victim's inner thighs were consistent with bloody hands attempting to push the victim's legs apart, and even though autopsy did not find semen in pubic region, the autopsy did not rule out the possibility of semen on other parts of the victim's body.



110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by Counsel

<u>110k2164</u> Rebuttal Argument; Responsive Statements and Remarks

110k2169 k. Exhibits and Illustrations.

Most Cited Cases

(Formerly 110k726)

Prosecutor's rebuttal closing argument that used audiovisual presentation based on defendant's tape-recorded interview with biographer and trial exhibit photographs of murder victim was permissible despite defendant's claim that state omitted portions of the interview and conveyed to the jury the unfair impression that the defendant's panic was due to the fact that he had murdered the victim, when, in reality, it was due to his fear that someone could have seen him masturbating in the tree on the victim's property; the presentation was not deceptive, the jury had seen

a transcript of the entire interview, and by juxtaposing the photographs with the defendant's statements, the state's attorney sought to convey to the jury in graphic form what the state believed was the real reason for the defendant's panic, that is, that he had killed the victim.

[110] Criminal Law 110 2072

110 Criminal Law

110XXXI Counsel

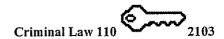
110XXXI(F) Arguments and Statements by Counsel

110k2071 Scope of and Effect of Summing Up

110k2072 k. In General. Most Cited

Cases

(Formerly 110k708.1)



110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by Counsel

 $\underline{110k2102}$ Inferences from and Effect of Evidence

110k2103 k. In General. Most Cited

Cases

(Formerly 110k720(6))

Counsel in closing argument is entitled to considerable leeway in deciding how best to highlight or to underscore the facts and the reasonable inferences to be drawn therefrom, for which there is adequate support in the record.

[111] Criminal Law 110 2079

110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by Counsel

 $\underline{110k2076}$ Statements as to Facts and Arguments

110k2079 k. Exhibits and Illustrations.

Most Cited Cases

(Formerly 110k715)

The use of visual aids during closing argument is a matter entrusted to the sound discretion of the trial court.

**996 <u>Hope C. Seeley</u>, with whom were <u>Hubert J. Santos</u>, <u>Steven D. Ecker</u>, Hartford, and, on the brief, <u>Patrick S. Bristol</u>, Groton, and <u>Sandra L. Snaden</u>, Hartford, for the appellant (defendant).

Susann E. Gill, senior assistant state's attorney, with whom were Christopher L. Morano, chief state's attorney, and Jonathan C. Benedict, state's attorney, for the appellee (state).

<u>SULLIVAN</u>, C.J., and <u>KATZ</u>, <u>PALMER</u>, <u>VERTEFEUILLE</u> and <u>ZARELLA</u>, Js.

Opinion

PALMER, J.

*639 On October 31, 1975, fifteen year old Martha Moxley was found bludgeoned to death in a wooded area on the grounds **997 near her family home in Greenwich. No one was charged in connection with her murder until twenty-five years later, when the defendant, Michael Skakel, a fifteen year old neighbor of the victim at the time of her death, was arrested and charged with the crime. The case initially was brought in the Superior Court for Juvenile Matters and, thereafter, transferred to the regular criminal docket of the Superior Court. Thereafter, the case was tried to a jury, which found him guilty of murder in violation of General Statutes (Rev. to 1975) § 53a-54a (a). The trial court rendered judgment in accordance with the jury verdict, FN2 from which the defendant appealed. FN3 On appeal, the defendant claims that: (1) his case improperly was transferred from the docket for juvenile matters to the regular criminal docket of the Superior Court; (2) his prosecution was time barred by the five year statute of limitations for felonies that was in effect when the victim was murdered in 1975; (3) the state failed to disclose certain exculpatory evidence in violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), thereby depriving him of his right to a fair trial; *640 4) the state's attorney engaged in pervasive misconduct during closing argument in violation of the defendant's right to a fair trial; (5) the trial court improperly permitted the state to introduce into evidence the prior sworn testimony of a certain witness in violation of the defendant's constitutionally protected right of confrontation; and (6) the trial court improperly permitted the state to present evidence of several incriminating statements that the defendant made while a resident at a school for troubled adolescents in Maine. The defendant also challenges the propriety of several other evidentiary rulings of the trial court. We reject each of the defendant's claims and, accordingly, affirm the judgment of the trial court.

FN1. General Statutes (Rev. to 1975) § 53a-54a provides in relevant part: "(a) A person is guilty of murder when, with intent to cause the death of another person, he causes the death of such person...."

<u>FN2.</u> The trial court sentenced the defendant to a term of twenty years to life imprisonment.

FN3. The defendant appealed from the judgment of the trial court to the Appellate Court. Because the defendant should have taken his appeal directly to this court; see General Statutes § 51-199(b) (3); his case was transferred to this court pursuant to Practice Book § 65-4.

The jury reasonably could have found the following facts. Sometime between 6:30 and 7:30 p.m. on the evening of Thursday, October 30, 1975, the victim left her home on Walsh Lane, located in the Belle Haven section of Greenwich, with a friend, Helen Ix, to play and socialize in and around the neighborhood. It was the night before Halloween, commonly referred to as "mischief night," an evening when the neighborhood children were known to engage in playful mischief. The victim and Ix soon were accompanied by other friends who lived nearby. Several times that night, the group stopped by the Skakel home, which was located on Otter Rock Drive. FN4 The first time they did so, the defendant was dining at the Belle Haven Club with his siblings, Rushton Skakel, Jr., Julie Skakel, Thomas Skakel, John Skakel, David Skakel and Stephen Skakel, their cousin James Dowdle. FN5 their tutor Kenneth Skakel's friend Andrea Littleton, and Julie Shakespeare. The Skakel group arrived home from dinner before 9 **998 p.m., at which time *641 the victim and her friends again visited the defendant's house.

FN4. The victim's home was located on Walsh Lane, diagonally across the street from the defendant's home, which faced Otter Rock Drive.

<u>FN5.</u> Dowdle also was known as James Terrien.

Shortly thereafter, the defendant, joined by the victim, Ix and Jeffrey Byrne, a friend of the victim, entered one of the Skakel family vehicles, a Lincoln Continental, which was parked on the Skakels' side driveway, to talk and listen to music. Thomas Skakel, the defendant's then seventeen year old brother, soon joined the group. Sometime before 9:30 p.m., the group was interrupted by Rushton Skakel, Jr., and John Skakel, who needed to use the Lincoln Continental to drive Dowdle home, where they planned to watch a television program scheduled to air at 10 p.m. Consequently, Thomas Skakel, Ix, Byrne and the victim exited the car. As Ix began to leave the Skakel property with Byrne, she observed Thomas Skakel and the victim engaging in flirtatious horse play at the other end of the driveway. Feeling "a bit embarrassed by the flirting," Ix left to go home. FN6

> FN6. The trial testimony was less than definitive as to whether the defendant had accompanied his brothers when they drove Dowdle home or whether he had stayed behind with the victim and the others. For example, Shakespeare testified that the defendant had stayed behind and did not accompany his brothers to Dowdle's home that night. Shakespeare, however, was unable to articulate the basis of her recollection and conceded that she had no specific memory either of the Lincoln Continental leaving without the defendant or seeing the defendant in the house after the car had departed for Dowdle's home. Rushton Skakel, Jr., John Skakel and Dowdle all testified that the defendant had accompanied them to Dowdle's home that evening.

The victim's mother, Dorothy Moxley, expected that the victim would be home that evening by 10:30 or

11 p.m. At about 1:30 or 2 a.m., upon discovering that her daughter had not returned home, she sent the victim's brother, John Moxley, out to look for her. Dorothy Moxley thereafter telephoned anyone who she thought might know the victim's whereabouts, including the defendant's family, whom Dorothy Moxley called several times. Dorothy Moxley's efforts to locate the victim were unsuccessful, and she eventually contacted the *642 Greenwich police department, which dispatched an officer to the Moxley home. The officer made a missing persons report and briefly searched the surrounding area. The next morning, at about 8:30 a.m., Dorothy Moxley, believing that the victim may have fallen asleep in the Skakel family motor home that usually was parked in the Skakels' driveway, went to the defendant's house. The defendant answered the door, appearing "hungover" and dressed in jeans and a Tshirt. The defendant informed Dorothy Moxley that the victim was not at his home, and an inspection of the motor home by a Skakel employee confirmed that she was not there either.

Later that day, at about noon, a neighborhood friend discovered the victim's dead body under a large pine tree in a wooded area on the Moxley property. The victim was lying facedown, with her pants and panties pulled down around her ankles. Forensic tests revealed that the victim had died from multiple blunt force traumatic head injuries. A large quantity of blood was discovered in two areas in a grassy region approximately seventy feet from the victim's body, with a distinct drag path leading from the pools of blood to the location where the victim's body was found. The victim likely was assaulted at or near the farther end of her circular driveway and then dragged approximately eighty feet to the pine tree under which her body subsequently was discovered. Remnants of the murder weapon, a Tony Penna six iron golf club, also were found at the crime scene. The head of the golf club and an eight inch section of its shaft were **999 found on the circular driveway, approximately 116 feet from the area where the large accumulation of the victim's blood was found. Another piece of the shaft was discovered on the grassy area near the two large pools of blood. The remaining part of the shaft attached to the club handle never was found.

*643 Harold Wayne Carver II, a forensic pathologist and the state's chief medical examiner, testified

regarding the findings of the original autopsy performed by then chief medical examiner Elliot M. Gross, also a forensic pathologist. Carver stated that the victim's injuries appeared consistent with having been inflicted by a golf club. In addition to the fatal head injuries, the victim had been stabbed in the neck with a piece of the golf club shaft. According to Carver, Gross had used an ultraviolet light to detect the presence of semen on the victim's pubic region and also had taken vaginal and anal swabs. No semen was found in those areas, however. Nothing in the autopsy report indicated that the ultraviolet light had been applied to the victim's buttocks or to other parts of the victim's body. With respect to the time of death. Carver testified that the victim had been dead for some time before her body was found. He further opined that the time of death more likely was closer to 9:30 p.m. on October 30, 1975, when she was last seen alive, rather than noon the following day, when her body was discovered. Because the autopsy was conducted twenty-four hours after the discovery of the victim's body, a more precise time of death could not be ascertained. FN7

FN7. The evidence revealed that residents in the neighborhood heard a disturbance between 9:30 and 10 p.m. on October 30, 1975, near the Moxley property. Dorothy Moxley testified that, around that time, she heard a commotion coming from the general direction of the area where the victim's body subsequently was discovered. She recalled hearing dogs barking and what sounded like excited young voices. Ix testified that her dog began to bark incessantly shortly after 9:30 p.m. David Skakel also recalled hearing dogs barking at approximately 10 p.m. that night.

Henry Lee, a forensic scientist and the former state chief criminalist, reviewed the documents, photographs and physical evidence compiled by the investigators and performed a partial reconstruction of the crime scene. On the basis of his investigation, Lee testified as to the likely nature and sequence of events leading *644 up to the victim's death. In particular, he indicated that the golf club that was used to assault and kill the victim probably had broken into pieces from the force with which the victim had been struck. This force, according to Lee, likely propelled the head of the golf club, and a piece

of its shaft, over seventy feet, from the location of the fatal assault to the location inside the circular driveway where those pieces subsequently were discovered. According to Lee, the remaining piece of the golf club shaft then was used as a sharp weapon to stab the victim. Lee further testified that, in light of the amount of blood found on the inside of the victim's jeans and panties, those garments likely were pulled down before the assault occurred. Lee also stated that the absence of vertical blood drippings on the victim's shoes and jeans indicated that the victim was lying on the ground when the perpetrator inflicted the injuries to her head and neck.

James Lunney, a detective with the Greenwich police department in 1975, testified that, on the day that the victim's body was discovered, he briefly visited the defendant's home and noticed a barrel containing several items, including golf clubs, in a hallway near the rear of the home. Lunney testified that one of the golf clubs, a Tony Penna four iron, later was seized **1000 from the property with the written consent of the defendant's father. Thomas G. Keegan, a captain in the detective division of the Greenwich police department in 1975, testified that an examination of the seized golf club and the golf club parts found at the crime scene revealed that the murder weapon came from the defendant's home. FNB

FN8. The seized golf club had two labels affixed to the shaft just below the handle of the grip. One label, from the Greenwich Country Club, indicated that the club had "Mrs. R.W. Skakel" of belonged to Conn.," the "Greenwich, defendant's deceased mother. Keegan testified that, along with the visible similarities between the murder weapon and the club seized from the Skakel home, namely, the brand and the make, a criminalist's examination of the murder weapon and the seized club revealed that the markings on the heads of the clubs were consistent with the two clubs previously having come in contact with one another.

*645 In the days and months following the victim's murder, the Greenwich police conducted numerous interviews in furtherance of its criminal investigation into the victim's death. The defendant and his siblings were among those interviewed in the early stages of

that investigation. On November 15, 1975, the defendant, who was accompanied by his father, gave a tape-recorded interview to the Greenwich police at the police station. Responding to inquiries concerning his whereabouts on the night of the murder, the defendant explained that he had accompanied his brothers and Dowdle to Dowdle's home, which was about twenty minutes away, and watched the television show "Monty Python's Flying Circus." According to the defendant, he returned to his home around 10:30 or 11 p.m., FN9 and went to bed about fifteen minutes later. When asked specifically about whether he left the house after he went to his bedroom that night, the defendant responded, "no." The defendant acknowledged, however, that, on other occasions, he had left his home after ostensibly retiring to his room for the night.

FN9. Dowdle and Rushton Skakel, Jr., corroborated the defendant's statement that he had spent part of that evening at Dowdle's home watching television. Shakespeare, however, recalled seeing the defendant at his home after Dowdle and Rushton Skakel, Jr., departed for Dowdle's home in the Lincoln Continental.

In 1977, two years following the victim's murder, the defendant revealed certain feelings of guilt and remorse to Larry Zicarelli, who then was employed by the defendant's family as a driver and general handyman. While being driven by Zicarelli to an appointment in New York City, the defendant, distraught from an earlier altercation with his father, told Zicarelli that he "had done something very bad" and that he "either had to kill himself or get out of the country." On another occasion, Zicarelli and the defendant were stopped in traffic on *646 the Triborough Bridge in New York on their way home when the defendant "opened the [car] door, started to jump out of the car and ran to the side ... of the bridge." Zicarelli ran after the defendant and forced him back into the car. As Zicarelli was proceeding to the driver's side door, the defendant again exited the car and ran toward the other side of the bridge. Zicarelli once again hurried toward the defendant and forced him back into the car. Just before Zicarelli and the defendant arrived at the Skakel home, Zicarelli asked the defendant, "[W]hy would [you] want to do what [you were] trying to do?" The defendant responded that, "if [you] knew what [I] had done, [you] would never talk to [me] again." FN10 Immediately **1001 following this incident, Zicarelli terminated his employment with the Skakels.

FN10. On cross-examination, defense counsel asked Zicarelli whether he was aware that, on the night before this incident, the defendant "had slept in his dead mother's dress and felt bad about it" Zicarelli responded that he had been unaware of any such incident. Julie Skakel testified that the defendant had contemplated jumping off the Triborough Bridge because he felt guilty about having slept in his deceased mother's dress.

FN11. The state also introduced the testimony of Matthew Tucharoni, who stated that, in the spring of 1976, the defendant, accompanied by Rushton Skakel, Jr., and Julie Skakel, came to the barbershop in Greenwich where Tucharoni then was employed and inquired about a haircut. Tucharoni testified that while he was preparing to cut the defendant's hair, he overheard the defendant say, "I am going to kill him." According to Tucharoni, Julie Skakel responded, "you can't do that," and the defendant replied, "Why not? I did it before...."

From 1978 to 1980, the defendant was a resident at the Elan School, a residential facility for troubled adolescents located in Poland Springs, Maine. Several former Elan residents testified about the deplorable conditions at the institution, which employed a <u>behavioral modification</u> approach controversial techniques of predicated on intimidation, confrontation and humiliation of its residents. As a result, Elan residents regularly endured mental and physical abuse at the hands of their peers and Elan staff members. While a *647 resident at Elan, the defendant frequently was confronted and interrogated about his involvement in the victim's murder. For example, Charles Seigen, who was enrolled at Elan with the defendant from 1978 to 1979, testified that he recalled attending two or three group therapy sessions, supervised by a staff member and typically attended by eight residents, during which the defendant was confronted about the victim's murder. According to Seigen, the defendant sometimes responded to such probing with annoyance. On other occasions, however, the defendant became very upset, cried and stated that he did not know if he had done it. The defendant also stated in these group sessions that, on the night of the victim's murder, he was "blind drunk" and "stumbling." EN12

FN12. Seigen also described the nature of the "general meetings" at Elan, which were convened to confront residents about specific issues. According to Seigen, "[a] general meeting was probably the scariest word that you would hear when you were at Elan."A typical general meeting, which was attended by 100 or more Elan residents and staff, focused on one or two residents who were singled out for violating Elan rules. Seigen recalled that the defendant was the subject of a general meeting as a result of his failed attempt to run away from the facility. Seigen stated that he first learned of the defendant's possible involvement in the victim's murder when it was announced at a general meeting by Joseph Ricci, Elan's executive director. Elizabeth Arnold, another former Elan resident, testified that, at that particular general meeting, which lasted approximately three hours, Ricci continuously had confronted the defendant about various issues and that four or five Elan residents "brutalized" the defendant in a boxing ring. Other former residents of Elan also testified about the details of the torment that the defendant had endured at this meeting, including accusations leveled against the defendant that he had killed the victim. The defendant's initial response to this interrogation was to deny his involvement in the murder. After several rounds in the boxing ring, however, the defendant stated, "I don't know" or "I don't remember" in response to questioning regarding his involvement in the murder. During the course of his enrollment at Elan, the defendant also was forced to wear a large cardboard sign around his neck, another form of punishment at Elan. The sign read, "Confront me on why I murdered Martha Moxley," or words to that effect.

Dorothy Rogers, another former resident of Elan, testified that, on one occasion, when she and the defendant*648 were talking at an Elan social function, the defendant told her that he had been drinking on the night of the murder and that he could not recall whether he was involved in the victim's death. The defendant further **1002 explained to Rogers that his family had enrolled him at Elan because they feared that he may have murdered the victim and wanted him in a location far removed from the investigating officers. Gregory Coleman, a resident at Elan from 1978 to 1980, testified about an exchange that he had had with the defendant while Coleman stood "guard" over the defendant following the defendant's failed escape attempt from Elan. During this conversation, the defendant confided in Coleman about murdering a girl who had rejected his advances. According to Coleman, the defendant had admitted killing the girl with a golf club in a wooded area, that the force with which he had hit her had caused the golf club to break in half, and that he had returned to the body two days later and masturbated on it. John Higgins, another former resident of Elan, recounted certain emotional admissions that the defendant had made to him while the two were on guard duty one night on the porch of the men's dormitory at Elan. In particular, Higgins testified that the defendant had told him that, on the night of the murder, there was a "party of some kind or another" at the defendant's home. The defendant also told Higgins that he remembered rummaging through his garage looking for a golf club, running through the woods with the club and seeing pine trees. Higgins further stated that, as the conversation continued, the defendant's acknowledgment of his culpability in the victim's murder progressed from "he didn't know whether he did it" to "he may have done it" to "he must have done it," and finally to "I did it."

Elizabeth Arnold and Alice Dunn, both of whom had attended Elan during the defendant's stay at the facility, also testified about certain inculpatory statements that *649 the defendant had made to them. Both testified that the defendant had expressed uncertainty as to whether he or his brother had murdered the victim. Arnold also recalled a group therapy session in which the defendant, upon being questioned about the victim's murder, stated that "[h]e was very drunk and had some sort of a blackout" that night, that his brother had "fool[ed] around" with his "girlfriend," and that his brother had stolen her from him. Dunn, who graduated from Elan

in 1978 and subsequently became a staff member there, testified that while she was employed at Elan, the defendant stated that he was not in "his normal state" on the night of the murder.

Thereafter, in the summer of 1987, the defendant told Michael Meredith, a former Elan resident who was staying temporarily in the defendant's home, that, on the night of the victim's murder, he had climbed a tree on the Moxley property and masturbated in the tree while watching the victim through her window. According to Meredith, he first learned of the victim's murder in this conversation. The defendant also told Meredith that while he was in the tree, he saw his brother Thomas Skakel walk across the Moxley property toward the victim's home but that Thomas Skakel had not seen him in the tree. The defendant related a similar story to Andrew Pugh, a close childhood friend, when the two saw one another in 1991. The defendant had expressed a desire to renew their friendship, which gradually had faded following the victim's murder. In an effort to ease Pugh's concerns about the defendant's involvement in the victim's death, the defendant assured Pugh that he did not kill the victim but mentioned that he had masturbated in a tree on the night that she was murdered. Pugh understood that the tree to which the defendant referred was the tree under which the victim's body was discovered.

*650 The most descriptive account of the defendant's activities on the night of the murder came in 1997 from an taped-recorded**1003 conversation between the defendant and Richard Hoffman, a writer who was collaborating with the defendant on a book about the defendant's life. On that tape, the defendant explained to Hoffman that, earlier in the evening of the victim's murder, he had invited the victim, who was seated with the defendant in his father's car, to accompany him to his cousin's house to watch the Monty Python Flying Circus television show. The victim declined the invitation because of her curfew, and the two instead made plans to go "trick or treating" the next night. The defendant thereafter left for Dowdle's home with his brothers Rushton Skakel, Jr., and John Skakel, as well as Dowdle.

The defendant told Hoffman that, after returning to his own home from Dowdle's house, he had walked through the house in search of various people. Upon observing that the door to his sister's room was closed, he had "remember[ed] that [his sister's friend, Shakespeare] had gone home" He then indicated that he had gone into "the master bedroom [but] there was nobody there, the [television] was on but nobody was there." The defendant went upstairs to bed shortly thereafter, but he became "horny" and decided to spy on a "lady" who lived on Walsh Lane. The defendant then "snuck out" of his house and went to this person's home, hoping to see her through her window. Unsuccessful in that endeavor, he thought, "[f]uck this ... Martha likes me, I'll go, I'll go get a kiss from Martha." (Internal quotation marks omitted.) The defendant then proceeded to the victim's home, climbed a tree near the victim's front door and masturbated in the tree for about thirty seconds. Shortly thereafter, "a moment of clarity came into [his] head," and the defendant climbed down from the tree and walked back home. On his way home, he threw rocks into the dark, repeatedly yelling, *651 "Who's in there?" He and his friends previously had done this while shooting BB guns into the dark. The next morning, the defendant awoke to "[Dorothy] Moxley saying 'Michael ... have you seen Martha?'" The defendant thought to himself, "Oh my God, did they see me last night?" At that moment, the defendant told Hoffman, he "remember[ed] just having a feeling of panic."

The state also adduced evidence establishing that the defendant, who was infatuated with the victim, had grown resentful of her flirtatious friendship with his older brother Thomas Skakel, whom he considered his nemesis. According to Pugh, who in 1975 was friendly with the victim and the defendant, the defendant had "told [him] that he liked Martha quite a bit and had a crush on her." Pugh also testified that the defendant had told him that "he would have liked to have a relationship with her." Pugh testified that he had observed the defendant and the victim engage in "horseplay, roughhousing, fooling around ... [and] kissing one time in the Skakel family motor home]." With respect to Thomas Skakel's relationship with the victim, Jacqueline Wettenhall O'Hara, a neighborhood friend of the victim, recounted observing flirtatious conduct between the victim and Thomas Skakel in the months leading up to the victim's death. Entries recorded in the victim's diary in the two months preceding her murder disclosed the victim's friendship with the defendant and Thomas Skakel, and also revealed the sometimes flirtatious nature of her relationship with Thomas Skakel. FN13 In **1004 addition, Ix testified*652 that she had observed the victim and Thomas Skakel engaging in flirtatious horseplay the last time she saw the victim alive. Moreover, one of the sneakers that the victim was wearing when her body was recovered had the name "Tom" written on it.

FN13. For example, the victim made an entry in her diary on September 12, 1975, in which she stated that, while she was out driving in Thomas Skakel's car with several other teenagers, including the defendant, "I drove a little then ... I was practically sitting on [Thomas Skakel's] lap [be]cause I was only steering. He kept putting his hand on my knee.... [T]hen we went to Friendly's [restaurant and] Michael [the defendant] treated me [and] he got me a double but I only wanted a single so I threw the top scoop out the window. Then I was driving again [and Thomas Skakel] put his arm around me. He kept doing stuff like that." A diary entry from September 19, 1975, recounted the victim's activities with other neighborhood friends that day. In that entry, the victim stated that "Michael was so totally out of it that he was being a real asshole in his actions [and] words. He kept telling me that I was leading [Thomas Skakell on when I don't like him (except as a friend) [and] I said, well how about you [and] Jackie. You keep telling me that you don't like her [and] you are all over her.... Michael jumps to conclusions. I can't be friends [with Thomas Skakel] just because I talk to him, it doesn't mean I like him." In a subsequent entry, dated October 4, 1975, the victim describes events that had occurred at a school dance and at a party after the dance at a neighbor's home. The entry included the following: "Afterwards I went Mouakaud's for a party! I saw everybody. [Thomas Skakel] was being an ass. At the dance he kept putting his arms around me [and] making moves."

The defendant raised an alibi defense at trial. In particular, he claimed that the victim had been murdered at approximately 10 p.m. on October 30, 1975, FN14 and that he was at Dowdle's home, some twenty minutes away from the murder scene, at that time. The defendant also raised a third party

culpability defense, pointing to Littleton as a likely perpetrator of the victim's murder. In fact, Littleton, who had been hired as a parttime tutor by the Skakel family, had taken up residence at the Skakel home on October 30, 1975, the day that the victim was last seen alive, and had slept there with the Skakel children that night. Littleton testified that, after returning home from dinner at 9 p.m., he remained at the house all night, stepping outside briefly at approximately*653 9:30 p.m. only to investigate a disturbance. FN15 In addition, testimony adduced by the defendant revealed that Littleton, who began to manifest serious psychiatric and behavioral problems in the years following the murder, may have made a statement, several years after the killing, in which he implicated himself in the crime. Littleton emphatically denied that he had had anything to do with the victim's death, however.

FN14. Defense counsel adduced testimony from Joseph Alexander Jachimczyk, a forensic pathologist from Houston, Texas, who concluded that the time of the victim's death most likely was around 10 p.m. on October 30, 1975. Jachimczyk's testimony was bolstered by the testimony of several people, including Dorothy Moxley, Ix and David Skakel, that they had heard dogs barking in the vicinity of the crime scene at approximately that time. See footnote 7 of this opinion.

<u>FN15.</u> According to Littleton, he was unable to discern the cause of the disturbance.

At the conclusion of the trial, the jury found the defendant guilty of murder. The trial court denied the defendant's posttrial motions and, thereafter, sentenced the defendant to a period of incarceration of twenty years to life imprisonment. Additional facts will be set forth as necessary.

I

We first address the defendant's claim that the court, Dennis, J. (juvenile court), improperly transferred his case from the docket for juvenile matters to the regular criminal docket of the Superior Court. Specifically, the defendant claims that the juvenile court improperly: (1) failed to require**1005 a complete investigation into the defendant's personal

history and background in accordance with General Statutes (Rev. to 1975) §§ 17-60a FN16 *654 and 17-66, FN17 which, at all times relevant to this appeal, governed the transfer of a juvenile matter to the regular criminal docket of the Superior Court; (2) relied on the current regulations of the department of children and families (department) in concluding that there was no state institution suitable for the care and treatment of the defendant within the meaning of § 17-60a (2); and (3) failed to explore the existence of facilities outside the state suitable for the care and treatment of the defendant. We reject the defendant's claim that the juvenile court improperly transferred his case to the regular criminal docket of the Superior Court. FNI8

FN16. General Statutes (Rev. to 1975) § 17-60a provides: "The juvenile court shall have the authority to transfer to the jurisdiction of the superior court any child referred to it for the commission of a murder, provided any such murder was committed after such child attained the age of fourteen years. No such transfer shall be valid unless prior thereto court has caused a complete investigation to be made as provided in section 17-66 and has found, after a hearing, that there is reasonable cause to believe that (1) the child has committed the act for which he is charged and (2) there is no state institution designed for the care and treatment of children to which said court may commit such child which is suitable for his care or treatment or (3) the safety of the community requires that the child continue under restraint for a period extending beyond his majority and (4) the facilities of the superior court provide a more effective setting for disposition of the case and the institutions to which said court may sentence a defendant are more suitable for the care or treatment of such child."

Hereinafter, all references to § 17-60a in this opinion are to the 1975 revision.

FN17. General Statutes (Rev. to 1975) § 17-66 provides: "Prior to the disposition of the case of any child found to be delinquent, investigation shall be made of the facts as herein specified by the probation officer,

and until such investigation has been completed and the results thereof placed before the judge, no disposition of the child's case shall be made. Such investigation shall consist of an examination of the parentage and surroundings of the child, his age, habits, and history, and shall include also an inquiry into the home conditions, habits and character of his parents or guardians. Where a child is or legally should be in attendance at school, it shall further contain a report of the child's school adjustment, which shall be furnished by the school officials to the court upon its request. The court shall, when it is found necessary to the disposition, cause a complete physical or mental examination, or both, to be made of the child by persons professionally qualified to do so."

Hereinafter, all references to § 17-66 in this opinion are to the 1975 revision.

FN18. The state contends that the defendant is not entitled to appellate review of these claims because he failed to raise them in the juvenile court. We reject the state's contention because our review of the proceedings in the juvenile court indicates that these claims were raised, with adequate specificity, in that court.

The following facts and procedural history are relevant to our resolution of this claim. Because the defendant was fifteen years old at the time of the offense, he initially was charged as a delinquent in the Superior Court for Juvenile Matters. The state subsequently filed a motion under § 17-60a to transfer the defendant's case to the regular criminal docket. The juvenile court thereafter*655 conducted a hearing to determine whether, pursuant to § 17-60a, there was reasonable cause to believe that the defendant had committed the murder with which he had been charged. Following the presentation of evidence on that issue, the juvenile court concluded that there was reasonable cause to believe that the defendant had committed that offense. FN19 juvenile court also issued **1006 an order pursuant to § 17-60a directing that an investigation be conducted in accordance with § 17-66.

<u>FN19.</u> The defendant does not challenge the juvenile court's reasonable cause finding on appeal.

After the investigation was complete, the juvenile court reconvened the defendant's statutorily mandated transfer hearing for the purpose of addressing the remaining elements of § 17-60a. At the hearing, the parties elicited testimony from the supervisor of juvenile probation, Joseph Pacquin, who had been assigned to conduct the investigation required by § 17-60a. Pacquin acknowledged that his investigation had focused primarily on the possible availability of a state facility that would be suitable for the defendant, and not on the defendant's personal, family and educational background. See General Statutes (Rev. to 1975) § 17-66. Pacquin gave several reasons for failing to investigate the defendant's personal history and family background, notwithstanding the dictates of § 17-66, including the fact that the defendant was forty years of age at the time of the transfer hearing. With specific regard to the defendant's education, Pacquin testified that he had not looked into that facet of the defendant's background because § 17-66 does not require such a review unless the child is or legally should be attending school. Additionally, Pacquin testified that he had not sought a physical or mental examination of the defendant because the court had not ordered such an examination to be conducted pursuant to § 17-66. With respect to *656 possible residential and treatment alternatives, Pacquin testified that the department is the state agency solely responsible for the detention and treatment of juveniles, and that the department cannot lawfully accept for placement persons over the age of eighteen. Pacquin's testimony in this regard was consistent with the testimony of Judith Kallen, a program director employed by the department, who testified at the defendant's reasonable cause hearing department regulations prohibited commitment or placement of individuals over the age of eighteen into the care and custody of the department.

In support of his objection to the state's motion to transfer, defense counsel adduced testimony from Clinton Roberts, a former state probation officer and president of Alternative Sentencing Consultants, Inc., a private sentencing consulting firm. Roberts indicated that, contrary to the testimony of Pacquin, there is a private, nonprofit facility located in

Newtown that admits both juveniles and adults, and that the Newtown facility might serve the residential treatment needs of the defendant. On cross-examination, however, Roberts conceded that the facility operated primarily as a substance abuse treatment center, and he could not say whether the facility was appropriate for the defendant. Defense counsel also elicited testimony that the state juvenile justice system occasionally places juveniles in programs located in other states, but that these placements are reserved for juveniles with special needs that cannot be met in programs located within the state.

In a memorandum of decision issued after the conclusion of the hearing, the juvenile court noted that, under the particular circumstances presented, the provisions of § 17-66 "are not totally applicable ..." The court further observed that department regulations prohibit the placement with the department of anyone over the age of eighteen. The court also noted that, although *657 General Statutes (Rev. to 1975) § 17-68(c) FN20 provides for the commitment**1007 of a child directly to a hospital or other appropriate institution if the child is determined to be mentally ill, the issue of mental illness never was raised at any time by the defendant, and the record otherwise was devoid of any indication that the defendant suffered from any such illness. The court thereafter concluded that "there [was] no available or suitable state institution designed for the care and treatment of children to which the juvenile court could commit the ... forty year old [defendant] that would be suitable for his care and treatment, should he be adjudicated delinquent for the murder of [the victim]," and that "the facilities of the adult criminal division of the Superior Court afford[ed] and provide[ed] a more effective setting for the disposition of this case, and the institutions to which the adult criminal division of the Superior Court may sentence a defendant [were] more suitable for the care and treatment of this [defendant], should he be found guilty of the murder of [the victim]." Accordingly, the juvenile court transferred the case to the regular criminal docket. FN21

FN20. General Statutes (Rev. to 1975) § 17-68 provides in relevant part: "(c) Any child coming within the jurisdiction of the court, who is found to be mentally ill, may be committed by said court to a hospital or

other institution empowered by law to treat mentally ill children; and, if the court adjudges a child to be delinquent and finds him to be mentally deficient, it may commit him to an institution for mentally deficient children or defective delinquents...."

Hereinafter, all references to § 17-68 in this opinion are to the 1975 revision.

FN21. We note that the defendant filed an interlocutory appeal to the Appellate Court from the transfer order of the juvenile court, and we transferred the case to this court upon the joint motion of the parties. On appeal, we agreed with the state that the order of the juvenile court transferring the case to the regular criminal docket was not a final appealable judgment; In re Michael S., 258 Conn. 621, 631, 784 A.2d 317 (2001); and, therefore, we dismissed the appeal. Id.

[1][2][3] Before addressing the defendant's claims, we set forth the legal principles that govern our resolution of *658 those claims. "There is no dispute that adjudication as a juvenile rather than prosecution as an adult carries significant benefits, chief among which are a determination of delinquency rather than criminality ... confidentiality ... limitations with respect to sentencing ... erasure of files ... and isolation from the adult criminal population." (Citations omitted.) State v. Angel C., 245 Conn. 93, 103, 715 A.2d 652 (1998). Accordingly, "a juvenile in whom a liberty interest in his or her juvenile status has vested, has a substantial liberty interest in the continuation of that juvenile status and that the juvenile cannot and should not be deprived of that status without [proper] procedural protections"Id.; see also Kent v. United States, 383 U.S. 541, 557, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966) (juvenile court's failure to conduct full investigation, as required by statute, prior to juvenile's transfer to regular criminal docket resulted in deprivation of liberty without due process of law). Importantly, however, "[a]ny [special treatment] accorded to a juvenile because of his [or her] age with respect to proceedings relative to a criminal offense results from statutory authority, rather than from any inherent or constitutional right." (Internal quotation marks omitted.) State v. Angel C., supra, at 104, 715 A.2d 652. Accordingly, in the

present matter, to the extent that the defendant possesses a liberty interest in his juvenile status, that interest derives from, and is limited by, the statutory provisions governing the transfer, adjudication and commitment of juveniles.

We turn next to the relevant statutory provisions. Under the statutory scheme in effect in 1975, FN22 the juvenile court had **1008 original and exclusive jurisdiction "over all proceedings concerning uncared-for, neglected, *659 dependent and delinquent children within this state" General Statutes (Rev. to 1975) § 17-59. Statutes governing the authority and proceedings of the juvenile court define a "child" as "any person under sixteen years of age," who may be found "delinquent" by the court if, inter alia, the child "has violated any federal or state law or municipal or local ordinance" General Statutes (Rev. to 1975) § 17-53. With respect to a child who has been referred to the juvenile court because that child allegedly had committed the crime of murder, § 17-60a authorizes the court to transfer the child to the regular criminal docket of the Superior Court provided that the child was at least fourteen years of age when the murder was committed. Such a transfer is not permitted by § 17-60a, however, unless an investigation of the child's personal and family background has been completed in accordance with § 17-66, and the juvenile court has determined, after a hearing, that there is reasonable cause to believe that: (1) the child has committed the crime charged; (2) there is no available state institution designed for the care and treatment of children that would be suitable for the child, or community safety requires that the child be detained in a custodial setting for a period extending beyond majority age; and (3) the facilities of the Superior Court provide a more effective setting for disposition of the case and the adult institutions to which the child may be sentenced are more appropriate for his or her care or treatment. With respect to the mandated investigation, General Statutes (Rev. to 1975) § 17-66 mandates that the required investigation include an examination of "the parentage and surroundings of the child, his age, habits, and history, and ... also an inquiry into the home conditions, habits and character of his parents or guardians." FN23

<u>FN22.</u> As we previously have explained, the juvenile court applied the law in effect at the

time of the commission of the offense. See, e.g., *In re Daniel H.*, 237 Conn. 364, 377, 678 A.2d 462 (1996). That determination has not been challenged by either party to this appeal.

FN23. Section 17-66 identifies other potential areas of investigation. See footnote 17 of this opinion. Those other areas, however, are not implicated by this appeal.

[4][5] *660 The defendant first claims that his transfer from the docket for juvenile matters to the regular criminal docket was improper because Pacquin did not conduct a complete investigation into the defendant's personal and family background as required by §§ 17-60a and 17-66. We agree with the defendant that Pacquin's investigation did not satisfy the requirements of § 17-66, and that, normally, a failure to meet those requirements would render invalid the transfer of any case from juvenile court to the regular criminal docket pursuant to $\S 17-60a$. It also is clear, however, that a § 17-66 investigation is mandated by § 17-60a solely for the purpose of assisting the juvenile court in its determination of whether, under the circumstances, there exists a suitable state institution to which the child may be committed in preference to the facilities otherwise available for the treatment and punishment of adult offenders. In the present case, however, testimony adduced at the transfer hearing established that the age of the then forty year old defendant foreclosed his adjudication in juvenile court because the department was prohibited by state regulations FN24 from accepting for placement anyone over the age of eighteen, regardless of whether such placement would involve a custodial or noncustodial setting. Thus, the juvenile court necessarily would have concluded, irrespective of the results of a complete investigation in accordance with § 17-66, that the defendant's age mandated the **1009 transfer of his case to the regular criminal docket. Consequently, Pacquin's failure to complete the investigation contemplated by § 17-66, and the juvenile court's failure to consider facts that might have been brought to light upon the completion of that investigation, had no bearing on that court's ultimate decision under § 17-60a to transfer the defendant's case to the regular criminal docket. FN25

FN24. See Regs., Conn. State Agencies §

17a-145-48 (e).

FN25. For the first time on appeal, the defendant claims that, if a complete § 17-66 investigation had been performed, the juvenile court might have concluded that the defendant suffers or suffered from a mental illness or deficiency and, on that basis, the juvenile court reasonably might have committed the defendant to a mental health facility pursuant to § 17-68(c). See footnote 20 of this opinion. We are not persuaded by this contention. First, at no time during the transfer stage of the proceedings in juvenile court did the defendant ever claim that he was mentally ill or deficient, and he never challenged the express finding of the juvenile court that there was nothing in the record to suggest that a mental health commitment was warranted. Second, the defendant concedes that the juvenile court could not have ordered him to undergo a physical or mental evaluation because the court was barred from doing so by Practice Book, 1963, § 1125(2) (Cum.Sup.1974) (effective July 1, 1974), which provides that, subject to certain exceptions not applicable to the present case, "[n]o such examination ... shall be made of any child denying responsibility for [his or her allegedly] delinquent behavior In circumstances, the defendant's belated attempt to raise the possibility of a commitment under § 17-68(c) is unavailing.

[6] *661 The defendant next claims that the juvenile court improperly relied on regulations of the department that were in effect at the time of the transfer hearing in concluding that there was no state institution suitable for his care and treatment. In particular, the defendant claims that the juvenile court's reliance on the regulations prohibiting the placement with the department of anyone over the age of eighteen thwarts the will of the legislature as expressed in the statutory scheme that was in effect in 1975, because that age limitation on placements with the department was not a part of the statutory scheme at that time.

[7] General Statutes (Rev. to 1975) § 17-60a provides in relevant part that no transfer shall be valid unless

the juvenile court finds that "there is no state institution designed for the care and treatment of children to which [the] court may commit such child which is suitable for his care or treatment" (Emphasis added.) We agree with the juvenile court that this statutory provision "narrowly focus[es] on the availability and suitability of state institutions 'designed for the care and treatment of children' to which the juvenile court has authority to 'commit such child." (Emphasis *662 added.) Thus, under § 17-60a, the commitment alternatives available to the iuvenile court are those alternatives available at the time of the transfer hearing. FN26 Because the iuvenile court properly considered those commitment options, and not the commitment options that might have been available in 1975, the defendant's claim must fail.

FN26. We note, moreover, that, in 1975, the legislature necessarily contemplated that the department would adopt and enforce regulations for the purpose of effectuating the statutory scheme relating to children because the legislature expressly had authorized the department to do so. See General Statutes (Rev. to 1975) § 17-415(b).

[8] We also disagree with the defendant's final claim, namely, that the juvenile court improperly failed to explore the suitability of placing the defendant in an out-of-state institution. Under General Statutes (Rev. to 1975) § 17-420, the commissioner of children and families (commissioner) may transfer "any person committed, admitted or transferred to the department ... to any private agency or **1010 organization within or without the state under contract with the department," provided that certain conditions are satisfied. Thus, a necessary prerequisite to the out-ofstate transfer of a juvenile found to be delinquent is that the juvenile first must be "committed, admitted or transferred" to the care and custody of the department. As the trial court properly determined, however, under state law, no person over the age of eighteen may be committed to the care and custody of the department. Because the defendant could not be placed with the department, he could not be transferred by the commissioner to an out-of-state institution and, accordingly, the juvenile court properly declined to explore out-of-state placement alternatives for the defendant.

For the foregoing reasons, the defendant has failed to establish that the juvenile court improperly transferred his case to the regular criminal docket. Because *663 that transfer was proper, the state's prosecution of the defendant as an adult was lawful.

II

[9] The defendant next claims that the trial court improperly concluded that his prosecution for murder was not barred by the applicable statute of limitations. We disagree, albeit on the basis of an analysis that differs from that of the trial court.

The following factual and procedural background is necessary to our resolution of this claim. The defendant was arrested on January 19, 2000, for the October, 1975, murder of the victim and, as we have explained; see part I of this opinion; his case was transferred from the docket for juvenile matters to the regular criminal docket. Prior to trial, the defendant filed a motion to dismiss the information on the ground that his prosecution for murder was barred by the five year limitation period of General Statutes (Rev. to 1975) § 54-193, $\frac{FN27}{}$ the statute of limitations that was in effect at the time of the victim's murder. The trial court, Kavanewsky, J., denied the defendant's motion to dismiss, concluding that the five year limitation period of § 54-193, although *664 facially applicable to all felonies, including murder and all other class A felonies, was inapplicable to the crime of murder. The trial court acknowledged that § 54-193 contains no express exception for murder and that this court, in State v. Paradise, 189 Conn. 346, 350, 456 A.2d 305 (1983), had concluded**1011 that the 1976 amendment to § 54-193; Public Acts 1976, No. 76-35, § 1 (P.A. 76-35); which excepted all class A felonies, including murder, from the purview of § 54-193, did not apply retroactively to offenses committed prior to April 6, 1976, the effective date of P.A. 76-35. The trial court further recognized that, in Paradise, we ultimately had determined, on facts materially identical to the facts of the present case, that the prosecution of the defendants for murder in that case was barred by the five year limitation period of the pre-1976 amendment version of § 54-193, the same version of § 54-193 that was in effect at the time of the murder of the victim in the present case. The trial court explained, however, that our determination in Paradise must be considered in light of two subsequent cases, <u>State v. Ellis.</u> 197 Conn. 436, 460, 497 A.2d 974 (1985), FN29 and <u>State v. Golino</u>, 201 Conn. 435, 438-39, 518 A.2d 57 (1986), the holdings and rationale of which, in the trial court's view, lead to the conclusion that the *665 five year limitation period of the pre-1976 amendment version of § 54-193 was inapplicable to the crime of murder. FN30 The trial court therefore**1012 denied the defendant's*666 motion to dismiss, and the case proceeded to trial, following which a jury found the defendant guilty of murder.

FN27. General Statutes (Rev. to 1975) § 54-193 provides: "No person shall be prosecuted for treason against this state, or for any crime or misdemeanor of which the punishment is or may be imprisonment in the Connecticut Correctional Institution, Somers, except within five years next after the offense has been committed; nor shall any person be prosecuted for the violation of any penal law, or for other crime or misdemeanor, except crimes punishable by death or imprisonment in the Connecticut Correctional Institution, Somers, but within one year next after the offense has been committed; but, if the person, against whom an indictment, information or complaint for any of said offenses is brought, has fled from and resided out of this state, during the period so limited, it may be brought against him at any time, within such period, during which he resides in this state, after the commission of the offense; and, when any suit, indictment, information or complaint for any crime may be brought within any other time than is limited by this section, it shall be brought within such time."

Hereinafter, all references to § 54-193 are to the 1975 revision unless otherwise indicated.

FN28. The defendant filed a similar motion while his case was pending in the juvenile court. The juvenile court, however, concluded that the defendant's motion was premature because § 54-193 applies to prosecutions under the regular criminal docket of the Superior Court.

FN29. The defendants in Ellis were Brian Ellis and Wilmer Paradise, the same defendants who, in State v. Paradise, supra. 189 Conn. 346, 456 A.2d 305, successfully had defended the trial court's dismissal of the murder charges that had been lodged against them. Id., at 347, 456 A.2d 305; see State v. Ellis, supra, 197 Conn. at 438, 497 A.2d 974. The appeal in Ellis followed the decision by the state, after our decision in Paradise, to charge Ellis and Paradise with capital felony arising out of the same murder that had been the subject of the appeal in Paradise. Following the trial court's dismissal of the capital felony charges against Ellis and Paradise, the state appealed, and we reversed the judgment of the trial court, concluding, inter alia, that the prosecution of Ellis and Paradise was not barred by the five year limitation period of the pre-1976 amendment version of § 54-193. State v. Ellis, supra, at 460, 497 A.2d 974.

FN30. In Paradise, the sole issue presented was whether P.A. 76-35, which, as we have explained, expressly excepted all class A felonies, including murder, from the five year limitation period otherwise applicable to felonies, applied retroactively to offenses committed prior to the effective date of that amendment, that is, April 6, 1976. State v. Paradise, supra, 189 Conn. at 347, 456 A.2d 305. After concluding that the amendment had prospective effect only; id., at 350, 456 A.2d 305; we affirmed the judgment dismissing the murder charges, which was based on the trial court's application of the five year limitation period of the pre-1976 amendment version of § 54-193. In light of the narrow issue raised by the parties in Paradise, we had no occasion expressly to consider, in that case, whether the legislature had intended to subject the offense of murder to the five year limitation period of the pre-1976 amendment version of § 54-193; rather, we assumed, like the parties, that the limitation period applied equally to murder as to all other felonies. Thereafter, in Ellis, we were required to decide whether the five year limitation period of the pre-1976 amendment version of § 54-193 applied to the offense of capital felony. See State v. Ellis, supra, 197 Conn. at 441, 497 After undertaking a detailed A.2d 974. historical analysis of this state's criminal statutes of limitation, we concluded that the statutory scheme governing capital felonies was not intended to upset the "deep-rooted understanding"; id., at 459, 497 A.2d 974; that capital crimes, because of their gravity, are not subject to repose. Id., at 459-60, We reached a similar 497 A.2d 974. conclusion in State v. Golino, supra, 201 Conn. 435, 518 A.2d 57. In Golino, this court considered the claim of the defendant, Anthony Golino, that his prosecution for a 1973 murder in violation of General Statutes (Rev. to 1972) § 53a-54 (a) was barred by the five year limitation period of the pre-1976 amendment version of § 54-193 because Golino had not been charged with that murder until 1984. In contrast to the 1975 revision of the murder statute under which the defendants in Ellis were charged, the 1972 revision of the murder statute under which Golino was charged effectively had been declared unconstitutional by the United States Supreme Court in Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972). As we explained in Golino, the then applicable murder statute carried a possible penalty of death; State v. Golino, supra, at 439, 518 A.2d 57; see General Statutes (Rev. to 1972) § 53a-54 (c); and, therefore, for statute of limitation purposes, we treated the case as one "punishable by death" (Internal quotation marks omitted.) State v. Golino, supra, at 447, 518 A.2d 57. We further concluded that, although the state was barred by Furman from seeking the death penalty against Golino, that fact did not affect the conclusion, based on our historical analysis, that we had reached in Ellis, namely, that the legislature never intended for capital crimes, because of their gravity, to be subject to any period of limitation. See id., at 444-45, 518 A.2d 57. The trial court in the present case relied heavily on the historical analysis that we employed in Ellis and Golino in concluding that, despite the broad language of the pre-1976 amendment version of § 54-193, the legislature never intended to establish a limitation period for the offense of murder because of the gravity of *that* offense.

In support of his claim that the trial court improperly declined to dismiss the information as time barred, the defendant maintains that this case is both factually and legally indistinguishable from State v. Paradise, supra, 189 Conn. 346, 456 A.2d 305, which, the defendant asserts, is therefore controlling and requires the dismissal of the information in the present case. The state asserts that we should overrule our holding in Paradise that P.A. 76-35, § 1, did not apply retroactively, a conclusion that was predicated on our determination that criminal statutes of prospective presumptively limitation have applicability only. See id., at 351-53, 456 A.2d 305. Alternatively, the state maintains that the trial court correctly concluded that Paradise does not bar the state's prosecution of the defendant for murder because our determination in Paradise that the murder prosecutions in that case were time barred rested on a faulty assumption, namely, that the five year limitation period of the pre-1976 amendment version of § 54-193 applied to murder as well as to all other felonies. See footnote 30 of this opinion.

Upon reconsideration, we are persuaded that Paradise was wrongly decided. In particular, we conclude that we were misguided in establishing a presumption that, in the absence of a contrary indication of legislative intent, an amendment to a criminal statute of limitations is not to be applied retroactively. As we explain more fully hereinafter, we are convinced that, with respect to those offenses for which the preamendment limitation period has not expired, it is far more likely that the legislature intended for the amended limitation period to apply to those offenses. In view of the fact that the five year limitation period of the pre-1976 amendment version of § 54-193 had not expired with respect to the October, 1975 murder of the victim when *667 the 1976 amendment to that statutory provision became effective, we conclude that P.A. 76-35, § 1, is the operative statute of limitations for purposes of this case. FN31 Because, under P.A. **1013 76-35, § 1, there is no time period within which murder and other class A felonies must be prosecuted, the trial court properly denied the defendant's motion to dismiss the information.

FN31. In light of our conclusion that P.A. 76-35, § 1, applies to the offense in the present case, we have no reason to address the state's alternate contention that the legislature never intended to establish a limitation period for murder consequently, that the five year limitation period of the pre-1976 amendment version of § 54-193, despite its facial applicability to all felonies, including murder, does not bar the state's prosecution of the defendant for the murder of the victim. Indeed, this court is bound to consider first the state's claim that P.A. 76-35, § 1, applies retroactively to the offense in the present case because, if that claim has merit, P.A. 76-35, § 1, necessarily trumps the possible applicability of the pre-1976 amendment version of § 54-193. Because we conclude that P.A. 76-35, § 1, does, indeed, have retrospective applicability to the offense in the present case, the issue of whether the legislature intended for the pre-1976 limitation period of § 54-193 to apply to murder is a moot question for purposes of this case. For purposes of our analysis and resolution of the issue presented, however, we assume, without deciding, that the five year pre-1976 period of the limitation amendment version of § 54-193 applies to murder.

We begin our analysis of this issue with a brief overview of the pertinent statutory provisions. The defendant was convicted of murder in violation of § 53a-54a, which, in 1975, specified that the offense "is punishable as a class A felony unless it is a capital felony and the death penalty is imposed as provided by section 53a-46a" General Statutes (Rev. to 1975) § 53a-54a (c). Because the defendant was not charged with capital murder, FN32 his offense was punishable as a class A felony, which, pursuant to General Statutes (Rev. to 1975) § 53a-35 (b)(1), carries a maximum sentence of life imprisonment. At the time of the offense in October, 1975, General Statutes (Rev. to 1975) § 54-193 provided in relevant part: "No person shall be prosecuted ... *668 for any crime or misdemeanor of which the punishment is or may be imprisonment ... except within five years next after the offense has been committed...." In 1976, however, the legislature amended § 54-193 to provide: "No person shall be prosecuted for any offense, except a capital felony or a class A felony for which the punishment is or may be imprisonment in excess of one year, except within five years next after the offense has been committed.... There shall be no limitation of time within which a person may be prosecuted for a capital felony or a class A felony." P.A. 76-35, § 1.

<u>FN32.</u> There is no dispute that the murder of the victim in the present case did not give rise to a charge of capital murder.

We next turn to a review of our relevant prior precedent construing legislative amendments to criminal statutes of limitation, beginning with Paradise. In Paradise, the defendants, Brian Ellis and Wilmer Paradise, were charged, in 1981, with murder, felony murder and kidnapping, all class A felonies, in connection with a murder that had been committed in 1974. State v. Paradise, supra. 189 The trial court Conn. at 347, 456 A.2d 305. dismissed the charges against Ellis and Paradise; id., concluding that their at 348, 456 A.2d 305; prosecutions were barred by the five year limitation period of the pre-1976 amendment version of § 54-193, which was in effect at the time of the offenses. See id., at 350, 456 A.2d 305. On appeal, the state claimed that P.A. 76-35, § 1, which excluded class A felonies, including murder, from the purview of the five year limitation period of § 54-193, was procedural in nature and, therefore, had retroactive applicability absent a contrary legislative intent. Id. In support of its position, the state relied primarily on "an extensive body of civil case law"; id.; in which this court had held that "procedural statute[s] ... ordinarily will be applied retroactively without a legislative imperative to the contrary" FN33Id., at 351, 456 A.2d 305.

FN33. In Paradise, the state maintained that the retroactive application of the 1976 amendment to § 54-193 did not affect Paradise's or Ellis' substantive rights because, at the time that they allegedly had committed the murder with which they were charged, the five year limitation period of the pre-1976 amendment version of § 54-193 had not yet expired. See State v. Paradise, Conn. Supreme Court Record & Briefs, December Term, 1982, Pt. 2, State's Brief p. 5.

*669 We declined, however, to decide whether the 1976 amendment was substantive or procedural. **1014Id., at 353, 456 A.2d 305. Although we reaffirmed "the continued vitality and utility of the principle that procedural statutes will be applied retrospectively absent a contrary legislative intent in the civil field"; id., at 351, 456 A.2d 305; we concluded that this tenet was inapplicable to criminal statutes in light of the principle that such statutes "must be strictly construed." Id., at 352, 456 A.2d 305. In accordance with this principle, we concluded that "criminal statutes are not to be accorded retrospective effect absent language clearly necessitating such a construction...." FN34 Id., at 353, 456 A.2d 305. After observing that § 54-193 must be strictly construed because it is "penal in nature"; id., at 352, 456 A.2d 305; we explained that, because the language of P.A. 76-35, § 1, did not indicate "a clear legislative intent that the statute have a retrospective effect"; id., at 353, 456 A.2d 305: it could not be applied retroactively to conduct that had preceded its effective date. See id. In view of the fact that all of the parties in Paradise had proceeded on the assumption that the five year limitation period of the pre-1976 amendment version of § 54-193 applied to all felonies, including murder, we affirmed the judgment of the trial court dismissing the information as time barred.

> FN34. Our conclusion in Paradise that criminal statutes are not subject to retroactivity analysis on the basis of whether they are substantive or procedural was predicated on State v. Jones, 132 Conn. 682, 47 A.2d 185 (1946), a case in which this court had concluded that a statute requiring the examination of certain criminal defendants for venereal disease was not retroactive in light of the general principle that, "in a criminal case a retrospective construction of a statute should not be adopted unless its language clearly makes such a construction necessary." (Internal quotation marks omitted.) Id., at 685, 47 A.2d 185. We nevertheless acknowledged in Paradise-albeit without elaboration or specification-that "[t]he civil-criminal distinction enunciated in Jones and affirmed [in Paradise], is not necessarily applicable to other areas of the criminal process."

State v. Paradise, supra, 189 Conn. at 353 n. 5, 456 A.2d 305.

*670 In State v. Crowell, 228 Conn. 393, 398-99, 636 A.2d 804 (1994), we expressly reaffirmed our conclusion in Paradise that criminal statutes of limitation are accorded prospective effect only. The sole issue presented in Crowell was whether the seven year limitation period of General Statutes (Rev. to 1993) § 54-193a was applicable to the state's prosecution of the defendant, Martin Crowell, for offenses relating to his alleged sexual molestation of a child when the amendment establishing that seven year limitation period became effective after the commission of the charged offenses but prior to the expiration of the preamendment five year limitation period. Id., at 394-95, 636 A.2d 804. In urging this court to overrule Paradise, the state maintained that our holding in that case was "based on the faulty premise that a statute of limitations that extends a previous limitation period before that previous period has expired is 'retroactive.' Id., at 398, 636 A.2d Specifically, the state claimed that, "to be 804. 'retroactive,' a statute must affect a 'vested right' that existed on the date it took effect. Because a defendant has no right to a statute of limitations defense while the original limitation period remains unexpired, a new statute of limitations that takes effect before the original limitations period has expired does not affect a vested right and therefore cannot be retroactive." Id. We rejected the state's claim, noting that "[t]he holding in Paradise was based firmly on the principle that criminal statutes must be strictly construed ... [and] not, as the state claims, on a technical misunderstanding of the nature of retroactivity." (Citation omitted.) <u>Id., at 399, 636 A.2d 804.</u> Because there was nothing in the language of the the extended indicate that amendment to limitation**1015 period had retrospective effect, we concluded that the trial court properly had followed the dictates of Paradise in dismissing as time barred the charges against Crowell.

The next case relevant to our inquiry is <u>In re Daniel H.</u>, 237 Conn. 364, 678 A.2d 462 (1996), in which this *671 court addressed the issue of whether a 1994 amendment to <u>General Statutes § 46b-127</u>, the mandatory juvenile transfer statute, had retroactive applicability. See id., at 366-67, <u>678 A.2d 462</u>. We concluded that the 1994 amendment, which eliminated the right to an immediate appeal from a

court order transferring a juvenile matter to the regular criminal docket, had prospective effect only. See id., at 378, 678 A.2d 462. In so concluding, we explained, first, that our resolution of the issue was guided by the canon of strict construction applicable to criminal statutes. FN35 Id., at 373, 678 A.2d 462. In contrast to Paradise, however, that conclusion did not end our analysis. After noting that, under General Statutes § 55-3, FN36 substantive changes to the law presumptively have prospective application only; id., at 372, 678 A.2d 462; we stated that "[t]he first step in ascertaining whether the 1994 amendment was intended to apply retroactively ... is to decide whether the removal of a juvenile's ability to appeal immediately from a court's transfer order is a substantive change in the law." Id., at 373, 678 We answered that question in the A.2d 462. affirmative and, therefore, concluded that the change presumptively had prospective applicability only. Id., at 375-76, 678 A.2d 462. We further determined that, because the presumption of prospective applicability was not rebutted by a clear expression of legislative intent to the contrary, the amendment did not apply retroactively. Id., at 376, 678 A.2d 462.

FN35. We observed that, although statutes concerning juvenile matters generally are considered to be civil in nature, statutes relating to alleged criminal misconduct of juveniles, such as § 46b-127, are subject to the canon of strict construction applicable to criminal statutes. *In re Daniel H.*, supra. 237 Conn. at 373, 678 A.2d 462.

FN36. General Statutes § 55-3 provides: "No provision of the general statutes, not previously contained in the statutes of the state, which imposes any new obligation on any person or corporation, shall be construed to have a retrospective effect."

Thereafter, in <u>State v. Parra</u>, 251 Conn. 617, 619-20, 741 A.2d 902 (1999), we considered whether a statutory amendment limiting the time within which a defendant *672 may move to vacate a judgment and withdraw a previously entered plea properly was applied to crimes committed prior to the effective date of the amendment. The defendant, Juan Parra, relied on *Paradise* in support of his claim that the amendment could not operate retroactively because it

lacked explicit statutory language requiring such an application. Id., at 622, 741 A.2d 902. Although we acknowledged that "Paradise created a bright line rule on matters involving the statutory construction of criminal statutes ... namely, that the language of the statute itself must clearly necessitate a retrospective construction for one to be given"; (citation omitted; internal quotation marks omitted) id., at 624, 741 A.2d 902; we nevertheless reasoned that "the breadth of [our] holding in Paradise"; id.; is limited to "certain types of criminal statutes, such as a statute of limitations for the prosecution of a crime" Id., at 625, 741 A.2d 902. In reaching this conclusion, we noted that, in In re Daniel H., we previously had "made clear that there are instances in which ...Paradise... [does not prevent] this court from considering the legislative history of a criminal statute in determining **1016 whether such a statute should be applied retroactively." State v. Parra, supra, at 625, 741 A.2d 902. As we explained in Parra, "[i]n In re Daniel H., we determined whether a statutory amendment eliminating the right to an immediate appeal from an order transferring a juvenile matter to the regular criminal docket applied retroactively.... While we specifically held that the statutory amendment at issue was a criminal statute that affected substantive rights ... we, nonetheless, looked to its legislative history to determine whether the amendment should be applied retroactively.... Thus, we did not limit our analysis to a determination of whether the language of the amendment clearly necessitated a retrospective application, but, rather, used the normal tools of statutory construction to determine the legislature's intent on the issue of retroactive application of the amendment." (Citations omitted.) Id.

*673 We further explained that the amendment at issue in *Parra* fell within "those other areas of the criminal process ... to which the holding of *Paradise* does not extend"; (citation omitted; internal quotation marks omitted) id., at 626, 741 A.2d 902; because the provision "affect[ed] an area of the criminal process far removed from the actual criminal conduct for which the defendant originally was charged. For example, [the amendment did] not change the elements of the crime with which the defendant was charged, alter the elements of his defense to that crime or make more burdensome the punishment for that crime, after its commission." Id. Accordingly, we concluded that we were not restricted to the language of the amendment in determining whether

the legislature had intended that it be applied retroactively; rather, the "proper test ... [was] whether the language of [the amendment] or its legislative history ... indicates that the legislature clearly and unequivocally intended for the statute to apply retroactively." Id., at 627, 741 A.2d 902. We noted, finally, that, because the pertinent legislative history evinced a clear legislative intent to apply the amendment retroactively; id., at 628, 741 A.2d 902; it was not necessary to determine whether the amendment was substantive or procedural. Id., at 628 n. 8, 741 A.2d 902.

[10][11] With this background in mind, we now reexamine our conclusion in Paradise that P.A. 76-35, § 1, has prospective effect only. As we explain hereinafter, that conclusion is fundamentally flawed because it is founded solely on the mistaken premise that the rule of strict construction bars the presumption of retroactivity otherwise applicable to amendments to statutes of limitation. In view of our determination that our conclusion in Paradise rested on a faulty premise, we are obliged to take a fresh look at the issue of whether a criminal statute of limitations should be applied retroactively or prospectively in circumstances such as those of the present case, in which the legislature has not clearly *674 evinced an intent one way or the other. For the reasons that follow, we conclude that, with respect to those criminal offenses for which the applicable preamendment statute of limitations period has not yet expired, an amendment to that statute of limitations is presumptively retroactive. Because the limitation period of the pre-1976 amendment version of § 54-193 had not expired with respect to the offense in the present case prior to the effective date of the 1976 amendment, and because the legislature did not evince an intent to have the amendment apply prospectively only, we conclude that P.A. 76-35, § 1, provides the operative statute of limitations in the defendant's case.

[12][13] Of course, our ultimate objective in construing statutes is to discern and **1017 effectuate the apparent intent of the legislature. E.g., Cogan v. Chase Manhattan Auto Financial Corp., 276 Conn. 1. 7, 882 A.2d 597 (2005); State v. Ledbetter, 263 Conn. 1, 12, 818 A.2d 1 (2003). Although that objective is the same for both civil and criminal statutes, we have recognized that certain principles of statutory construction bear special

relevance to our interpretation of criminal statutes, one of which is the rule of strict construction. Thus, it has long been held that, "unless a contrary interpretation would frustrate an evident legislative intent, criminal statutes are governed by the fundamental principle that such statutes are strictly construed against the state." (Internal quotation marks omitted.) State v. Revnolds, 264 Conn. 1, 69, 836 A.2d 224 (2003), cert. denied, 541 U.S. 908, 124 S.Ct. 1614, 158 L.Ed.2d 254 (2004). Indeed, the rule, which "is perhaps not much less old than construction itself"; United States v. Wiltberger, 18 U.S. (5 Wheat.) 76, 95, 5 L.Ed. 37 (1820); finds its roots in Sir Edward Coke's opinion in Heydon's Case, 76 Eng. Rep. 637 (Ex. 1584); see M. Radin, "A Short Way with Statutes," 56 Harv. L.Rev. 388, 389 (1942); and, in this state, it can be traced back to at least 1821. See Daggett v. State, 4 *675 Conn. 60, 63 (1821). Succinctly stated, "[t]he purpose of the rule of strict construction is ... to enable the people of the State to know clearly and precisely what acts the legislature has forbidden under a penalty, that they may govern their conduct accordingly, and to make sure that no act which the legislature did not intend to include will be held by the courts within the penalty of the law." State v. Faro, 118 Conn. 267, 274, 171 A. 660 (1934); accord State v. Zazzaro, 128 Conn. 160, 167, 20 A.2d 737 (1941). "Strict construction is a means of assuring fairness to persons subject to the law by requiring penal statutes to give clear and unequivocal warning in language that people generally would understand, concerning actions that would expose them to liability for penalties and what the penalties would be." 3 J. Sutherland, Statutes and Statutory Construction (6th Ed. Singer 2001) § 59:3, p. 142. "Another reason for strict construction is to protect the individual against arbitrary discretion by officials and judges.... A related argument is to the effect that since the power to declare what conduct is subject to penal sanctions is legislative rather than judicial, it would risk judicial usurpation of the legislative function for a court to enforce a penalty whe[n] the legislature had not clearly and unequivocally prescribed it." Id., pp. 144-45.

[14] The requirement that criminal statutes shall be strictly construed is therefore predicated on two fundamental principles. First, the public is entitled to fair notice of what the law forbids. Second, legislatures and not courts are responsible for defining criminal activity. Neither of these two principles is advanced, however, by applying the rule

of strict construction to criminal statutes of limitation. Because the statutory limitation period has nothing to do with the scope or reach of the substantive offense, neither the public's right to fair warning of the legislatively proscribed conduct nor the risk that the offense will be enlarged judicially beyond *676 the contemplation of the legislature is implicated by the statutory limitation period. Consequently, applying the rule of strict construction to criminal statutes of limitation would be "[t]o enforce the rule beyond its purpose [and, thereby] to exalt technicalities above substance." State v. Faro. supra, 118 Conn. at 274, 171 A. 660.

[15][16] Indeed, because criminal statutes of limitation do not define criminal conduct, establish the punishment to be imposed or otherwise burden defendants, **1018 such statutes are not truly penal at all. See, e.g., Commonwealth v. George, 430 Mass. 276, 279, 717 N.E.2d 1285 (1999) ("[s]tatutes of limitation do not define criminal conduct, are not penal statutes, and may not be subject to ... strict construction against the [state]"). In fact, such statutes represent an expression of "legislative grace"; State v. Hodgson, 108 Wash.2d 662, 667, 740 P.2d 848 (1987), cert. denied sub nom. Fied v. Washington, 485 U.S. 938, 108 S.Ct. 1117, 99 L.Ed.2d 277 (1988); for "they are a surrendering by the sovereign of its right to prosecute"; id.; after a specified period of time has elapsed from the acts constituting the offense. Put differently, because such statutes inure to the benefit of criminal defendants, it is illogical to characterize those statutes as penal for purposes of determining the proper approach to their construction.

In *Paradise*, we did not explain our conclusion that § 54-193 is penal in nature, and, therefore, that that provision must be strictly construed. Indeed, we cited only one case, namely, *State v. Anonymous* (1976-6), 33 Conn.Supp. 34, 358 A.2d 691 (1976)(*Anonymous*), to support that conclusion. See *State v. Paradise*. supra, 189 Conn. at 352, 456 A.2d 305. In *State v. Anonymous* (1976-6), supra, at 39, 358 A.2d 691, a judge of the Court of Common Pleas FN37 concluded, also without analysis or explanation, that § 54-193 is a *677 penal statute and, therefore, subject to the canon of strict construction. In support of its assertion that § 54-193 is a penal statute, the court in *Anonymous* relied solely on *State v. Bello*, 133 Conn. 600, 53 A.2d 381 (1947), a case in which this court

affirmed the conviction of the defendant, Riggs Bello, for gambling. See id., at 601, 604, 53 A.2d 381. In Bello, however, we applied the canon of strict construction in connection with our interpretation of the antigambling statute itself, not any applicable statutory limitation period. See id., at 604, 53 A.2d 381. Thus, the cases that provide the basis for our conclusion in Paradise that § 54-193 is a penal statute to which the canon of strict construction applies simply do not support that conclusion.

FN37. The Court of Common Pleas was merged into the Superior Court in 1978. See General Statutes § 51-164s.

[17][18][19] Contrary to our determination in Paradise, § 54-193, like other criminal statutes of limitation, is remedial in nature. "The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity." Toussie v. United States, 397 U.S. 112, 114-15, 90

<u>Toussie v. United States</u>, 397 U.S. 112, 114-15, 90 S.Ct. 858, 25 L.Ed.2d 156 (1970). Indeed, it is because of the remedial nature of criminal statutes of limitation that they "are to be liberally interpreted in favor of repose." **1019 (Internal quotation marks omitted.) Id., at 115, 90 S.Ct. 858.

FN38. Thus, like all remedial statutes, a criminal statute of limitation must be construed liberally to effectuate the legislature's intent. See, e.g., Knight v. F.L. Roberts & Co., 241 Conn. 466, 474, 696 A.2d 1249 (1997); Dysart Corp. v. Seaboard Surety Co., 240 Conn. 10, 18, 688 A.2d 306 (1997). Because the remedial purpose of a criminal statute of limitation is to provide for repose after the expiration of a specified period of time, the statute must be construed liberally to effectuate that purpose. This maxim of liberal construction,

however, is not determinative of whether the pre-1976 amendment version or the post-1976 amendment version of § 54-193 applies to the criminal conduct that is the subject of the present case because both provisions represent a legislative mandate; the question is which such mandate applies. Of course, once it has been determined which provision is applicable, then that provision must be liberally construed in favor of repose. But until such time as the applicable statute is identified, the doctrine of liberal construction has no applicability. Thus, although in Paradise, we referred to this tenet of statutory construction; State v. Paradise, supra, 189 Conn. at 352, 456 A.2d 305; it provides no guidance on the issue of whether the pre-1976 amendment or the post-1976 amendment version of § 54-193 applies to the defendant's conduct.

*678 In Paradise, the rule of strict construction provided the sole basis for our determination that P.A. 76-35, § 1, has prospective effect only. See State v. Paradise, supra, 189 Conn. at 352, 456 A.2d 305. Because we are not persuaded that that rule applies to criminal statutes of limitation, the validity of our holding in *Paradise* necessarily is suspect. Even if we were to assume that the rule is applicable to such statutes, however, we see no reason why its application would lead inexorably to the presumption against retroactivity that we announced in Paradise. Indeed, as we had recognized long before Paradise,"[t]he rule of strict construction does not require that the narrowest technical meaning be given to the words employed in a criminal statute in disregard of their context and in frustration of the obvious legislative intent." (Internal quotation marks omitted.) State v. Faro, supra, 118 Conn. at 274, 171 A. 660. In other words, the principle of strict construction should not be applied in a manner that is "hostile" to an evident legislative purpose; *679 State v. Levy, 103 Conn. 138, 141, 130 A. 96 (1925); or in a way that is contrary to common sense. See State v. Revnolds, supra, 264 Conn. at 70, 836 A.2d 224. Thus, as a leading commentator on statutory construction has explained, "[t]he rule of strict construction is not the only factor which influences the interpretation of [criminal] laws. Instead, the rule is merely one among various aids which may be useful in determining the meaning of penal laws. This has been recognized time and again by the decisions,

which frequently enunciate the principle that the intent of the legislature, or the meaning of the statute, must govern and that a strict construction should not be permitted to defeat the policy and purposes of the statute." 3 J. Sutherland, supra, § 59:6, pp. 159-61. At a minimum, therefore, our reliance in *Paradise* on the canon of strict construction, to the exclusion of all other considerations, casts serious doubt on the validity of our conclusion.

FN39. We also note that our holding in Paradise leads to a result that is inconsistent with the rationale underlying that holding when it is applied to a statutory amendment that reduces the limitation period. In such circumstances, the prospective application of the amendment would inure to the detriment of the defendant because the limitation period original, longer presumptively would be applicable. This result is incompatible with the rationale of our holding in Paradise, namely, the rule of strict construction, a rule that, when applicable, requires us to construe statutes against the state and in favor of criminal defendants. The bizarre nature of this result substantiates our rejection of the rote application of the rule of strict construction to criminal statutes of limitation in Paradise.

FN40. As we previously have noted, in <u>State</u> v. Crowell, supra, 228 Conn. 393, 636 A.2d 804, this court reaffirmed our holding in stating: "After a thorough Paradise, consideration of the parties' arguments in ...Paradise... and the reasoning behind that decision, we conclude that it should not be overruled." Id., at 399, 636 A.2d 804. We then expressed our approval of the rationale on which our holding in Paradise was based, namely, "the principle that criminal be strictly construed statutes must"Id.These assertions conclusory Crowell notwithstanding, we engaged in no analysis or explanation as to why the rule of strict of construction constituted a sound basis for our determination that criminal statutes of limitation presumptively have prospective effect only. Consequently, Crowell is no more persuasive a precedent than is Paradise.

**1020 For the foregoing reasons, we reject as logically unfounded our holding in *Paradise* that the canon of strict construction requires the conclusion that P.A. 76-35, § 1, has prospective effect only. We therefore must determine whether our conclusion in *Paradise* nevertheless was correct. We conclude that it was not.

[20][21][22] It is axiomatic that, "[w]hether to apply a statute retroactively or prospectively depends upon the intent *680 of the legislature in enacting the statute." (Internal quotation marks omitted.) In re Eden F., 250 Conn. 674, 695, 741 A.2d 873 (1999). In seeking to discern that intent, "[o]ur point of departure is ... § 55-3, FN41 which ... we have uniformly interpreted ... as a rule of presumed legislative intent that statutes affecting substantive rights shall apply prospectively only.... The Legislature only rebuts this presumption when it clearly and unequivocally expresses its intent that the legislation shall apply retrospectively." FN42 (Internal quotation marks omitted.) Rice v. Vermilyn Brown, Inc., 232 Conn. 780, 786, 657 A.2d 616 (1995); see also Colev v. Camden Associates, Inc., 243 Conn. 311, 316, 702 A.2d 1180 (1997). As a corollary to this principle, we also "have presumed that procedural or remedial statutes are intended to apply retroactively absent a clear expression of legislative intent to the contrary" FN43 Miano v. Thorne, 218 Conn. 170, 175, 588 A.2d 189 (1991); accord In re Daniel H., supra, 237 Conn. at 372-73, 678 A.2d 462. "While there is no precise definition of either [substantive*681 or procedural law], it is generally agreed that a substantive law creates, defines and regulates rights while a procedural law prescribes the methods of enforcing such rights or obtaining redress." (Internal quotation marks omitted.) Carr v. Planning & Zoning Commission, 273 Conn. 573, 593, 872 A.2d 385 (2005). Moreover, the "retroactive application of a law occurs only if the new or revised law was not yet in effect on the date that the relevant events underlying its application occurred." State v. Faraday, 268 Conn. 174, 197, 842 A.2d 567 (2004); see also **1021State v. Breton, 264 Conn. 327, 421-22, 824 A.2d 778, cert. denied, 540 U.S. 1055, 124 S.Ct. 819, 157 L.Ed.2d 708 (2003); In re Daniel H., supra, at 377, 678 A.2d 462. Finally, in determining the retrospective applicability of any criminal statute, we must be mindful that the ex post facto clause of the United States constitution FN44 bars any state from enacting "any law [that] imposes a punishment for an act [that] was not punishable at the time [that] it was committed; or imposes additional punishment to that then prescribed." (Internal quotation marks omitted.) Weaver v. Graham, 450 U.S. 24, 28, 101 S.Ct. 960. 67 L.Ed.2d 17 (1981). Although "a law enacted after expiration of a previously applicable limitations period violates the Ex Post Facto Clause when it is applied to revive a previously time-barred prosecution"; (emphasis in original) Stogner v. California, 539 U.S. 607, 632-33, 123 S.Ct. 2446. 156 L.Ed.2d 544 (2003); because it deprives the defendant of a fully vested defense to prosecution, the constitution "does not prevent the State from extending time limits ... for prosecutions not yet time barred." FN45 (Emphasis added.) Id., at 632, 123 S.Ct. 2446.

FN41. See footnote 36 of this opinion.

presumption against FN42. "[This] retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine than our Republic. centuries older Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted. For that reason, the principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal human appeal." (Internal quotation marks omitted.) State v. Faraday, 268 Conn. 174, 196, 842 A.2d 567 (2004), quoting Immigration & Naturalization Service v. St. Cyr., 533 U.S. 289, 316, 121 S.Ct. 2271, 150 L.Ed.2d 347 (2001).

FN43. Since our decision in *Paradise*, we repeatedly have recognized the utility of this approach to statutory construction as a guide to determining whether the legislature intended for a particular criminal statute to have retrospective effect. See, e.g., *State v. Faraday*, 268 Conn. 174. 197. 842 A.2d 567 (2004); *In re Michael S.*, 258 Conn. 621, 630, 784 A.2d 317 (2001); *State v. Parra*, supra, 251 Conn. at 628 n. 8, 741 A.2d 902; *In re Daniel H.*, supra, 237 Conn. at 372.

678 A.2d 462. Indeed, as we have explained, in *Paradise*, we acknowledged the applicability of this approach in regard to certain unspecified "areas of the criminal process." *State v. Paradise*, supra, 189 Conn. at 353 n. 5, 456 A.2d 305.

<u>FN44.</u> The constitution of the United States, article one, § 10, provides in relevant part: "No State shall ... pass any ... ex post facto Law"

FN45. In Stogner, the United States considered the Court Supreme constitutionality of a statute of limitations that, as applied to the defendant, Marion Stogner, revived a prosecution that had been time barred under the original limitation period that was in effect when Stogner allegedly had committed the crimes with which he was charged. Stogner v. California, supra, 539 U.S. at 609, 123 S.Ct. 2446. The court concluded that the statute as applied violated the ex post facto clause because it "retroactively withdr[ew] a complete defense to prosecution after it ha[d] already attached"; id., at 632, 123 thereby rendering Stogner S.Ct. 2446; subject to punishment under the new law for past criminal conduct for which he was not subject to punishment when the new law was enacted. See id., at 613, 123 S.Ct. 2446.

The court also made clear, however, that the extension of a statute of limitations to offenses not barred by a previous limitation period does not implicate the ex post facto clause. Id., at 632, 123 S.Ct. 2446.

[23][24] *682 Application of these considerations leads unmistakably to the conclusion that, subject to the limitations of the ex post facto clause, criminal statutes of limitation, including P.A. 76-35, § 1, should be accorded a presumption of retroactivity. Indeed, we long have held that civil statutes of limitation are presumed to apply retroactively because they do not affect or alter substantive rights. Roberts v. Caton. 224 Conn. 483, 488, 619 A.2d 844 (1993); see, e.g., Jones Destruction. Inc. v. Upjohn. 161 Conn. 191, 195-96, 286 A.2d 308 (1971). As we have explained, "[a] statute of limitations is generally considered to be procedural, [and therefore

presumptively retroactive] especially whe[n] the statute contains only a limitation as to time with respect to a right of action and does not itself create the right of action." (Internal quotation marks omitted.) Moore v. McNamara, 201 Conn. 16, 22, 513 A.2d 660 (1986); accord Roberts v. Caton, supra. at 488, 619 A.2d 844, "This is so because ... the limitation merely acts as a bar to a remedy otherwise available." Moore v. McNamara, supra, at 22, 513 A.2d 660. The fundamental purpose and effect of criminal statutes of limitation are the same as civil statutes of limitation; as the United States Supreme Court has stated in noting the similarities between such statutes, they both "represent a legislative judgment about the balance of equities in a situation involving the tardy assertion of otherwise valid rights: [t]he theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation**1022 and that the right to be free of stale claims in time comes to prevail over the right to prosecute them." (Internal quotation marks *683 omitted.) United States v. Marion, 404 U.S. 307, 322-23 n. 14, 92 S.Ct. 455, 30 L.Ed.2d 468 (1971). Because both criminal and civil statutes of limitation are predicated on the same general policy considerations and perform the same basic functions, it makes sense to treat them the same for the purpose of determining whether they give rise to a presumption of retroactive or prospective applicability, at least in the absence of good reason not to do so.

[25][26] We know of no such reason. Unless the statute of limitations that was in effect when a crime was committed has expired with respect to that crime, a defendant accused of that crime has no right to have that limitation period applied to his conduct. Succinctly stated, "[s]tatutes of limitations are measures of public policy only. They are entirely subject to the will of the legislature, and may be changed or repealed altogether in any case [in which] a right to acquittal has not been absolutely acquired by the completion of the [original] period of limitation. Such a statute is an act of grace in criminal prosecutions. The State makes no contract with criminals at the time of the passage of acts of limitations that they shall have immunity from punishment if not prosecuted within the statutory period." (Internal quotation marks omitted.) People v. Isaacs, 37 III.2d 205, 229, 226 N.E.2d 38 (1967); accord State v. Petrucelli, 156 Vt. 382, 383, 592 A.2d 365 (1991); see also State v. Hodgson, supra, 108

Wash.2d at 668, 740 P.2d 848 ("until the [criminal] statute [of limitations] has run it is a mere regulation of the remedy ... subject to legislative control" [internal quotation marks omitted]). In such cases, a defendant also has no legitimate expectancy interest in the application of that limitation period: defendants do not engage in criminal conduct with an eye on the then applicable statute of limitations, and, even if they did, *684 society, for obvious reasons, is not prepared to recognize any such reliance as reasonable. FN.46

FN46. We note that a significant number of courts have concluded that applying an amendment to a statute of limitations enlarging the unexpired period of time within which a prosecution may be brought is not a retroactive application of the extended period at all. E.g., State v. Schultzen, 522 N.W.2d 833 (Iowa 1994) ("applying the extended statute of limitations was not retroactive because the statute barred only prospective prosecutions ... [and][b]ecause the prosecution of the defendant was not barred as of the time the amendment became effective" [citation omitted]); State v. Hirsch, 245 Neb. 31, 43, 511 N.W.2d 69 (1994) ("because the extension of a statute of limitations to offenses not barred by a previous period of limitations does not affect a defendant's existing rights or defenses, the application of the extended statute to existing causes of action is not a retroactive law"); State v. Dufort, 111 Or.App. 515, 519, 827 P.2d 192 (1992) ("the amended Statute of Limitations is not retroactive legislation and ... it applies to incidents ... that had not yet been barred previous statute"); under the Commonwealth v. Johnson, 520 Pa. 165, 170, 553 A.2d 897 (1989) ("There is nothing retroactive about the application of an extension of a statute of limitations, so long as the original statutory period has not yet expired.... Only whe[n] a vested right or contractual obligation is involved is a statute applied retroactively when it is applied to a condition existing on its effective date which resulted from events [that] occurred prior to that date." [Citations omitted; internal quotation marks omitted.]). This viewunder which P.A. 76-35, § 1, would apply to