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STATE OF CONNECTICUT *v.* JOSE T.[*]
(SC 21021)

Mullins, C. J., and McDonald, D'Auria, Ecker,
Alexander, Dannehy and Bright, Js.[**]

Syllabus

Convicted of, among other crimes, sexual assault in the first degree, sexual assault in the fourth degree, and risk of injury to a child in connection with the sexual abuse of the minor victim, the defendant appealed to this court. During and after the defendant's romantic relationship with the victim's mother, the defendant maintained a father-daughter like relationship with the victim, who was not the defendant's biological daughter. Around the victim's fifteenth birthday, the defendant hosted a party for her. Eight days later, while the victim was in a class in her freshman year of high school, she had a strong emotional reaction while reading aloud an article about a girl who decided to disclose that she had been sexually abused. Shortly thereafter, the victim disclosed to her teacher that the defendant had sexually abused her. Subsequently, during a video-recorded forensic interview, the victim recounted three instances of sexual abuse by the defendant, two of which occurred when she was about five years old, and the other when she was about twelve years old. At trial, the defense sought to establish that the alleged sexual abuse did not occur and that the victim had been motivated to fabricate her allegations against him shortly after her fifteenth birthday because she was angry with him for taking certain cash gifts that she had received at her party. During cross-examination, defense counsel questioned the victim regarding the party and her disclosure to her teacher, and he challenged the victim's credibility by impeaching her testimony with prior inconsistent statements from the video-recorded interview, which had been admitted into evidence over defense counsel's objection. Following the presentation of evidence and closing arguments, the prosecutor, relying on this court's decision in *State* v. *Daniel W. E.* (322 Conn. 593), which was the governing law at the time of the defendant's trial, requested that the court instruct the jurors that they could not consider any delay in the victim's disclosure of the sexual abuse when evaluating her credibility. Over defense counsel's objection, the court gave a modified version of the standard charge prescribed

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

Moreover, in accordance with federal law; see 18 U.S.C. §2265 (d) (3) (2024); we decline to identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that person's identity may be ascertained.

[**]The listing of justices reflects their seniority status on this court as of the date of oral argument.

by *Daniel W. E.* and instructed the jurors that, to the extent that the victim delayed in reporting the sexual abuse, they could not consider "the mere fact of that delay" in evaluating her credibility. On appeal, the defendant claimed, inter alia, that the trial court's delayed disclosure instruction was improper and violated his constitutional right to present a closing argument. *Held*:

Although the trial court's delayed disclosure instruction was improper under *Daniel W. E.*, the error was harmless, as it was not reasonably probable that the improper instruction misled the jury in reaching its verdict, and, accordingly, the defendant was not entitled to a new trial on the basis of that instructional error.

In *Daniel W. E.*, this court authorized trial courts to instruct juries that, to the extent that a sexual assault victim has delayed in reporting sexual abuse, the delay should not be considered by the jury in evaluating the victim's credibility, but only when the defense has not challenged the victim's credibility on the basis of the victim's delayed disclosure.

In the present case, it was improper for the trial court to give the modified *Daniel W. E.* instruction because it was undisputed that defense counsel challenged the victim's credibility in part on the basis of the victim's delayed disclosure, specifically, that the victim did not contemporaneously report her allegations of sexual abuse because they were a recent fabrication arising from her dispute with the defendant over his taking of the money that she had received at her party.

This court rejected the defendant's claim that the trial court's instructional impropriety was constitutional in nature insofar as the trial court's modified *Daniel W. E.* instruction infringed on his rights to due process, to present a defense, and to challenge the state's evidence, that claim having been inconsistent with this court's analysis in *State* v. *Adam P.* (351 Conn. 213), which overruled *Daniel W. E.* and held that the type of delayed disclosure instruction previously authorized by *Daniel W. E.*, although improper, does not rise to the level of a constitutional violation.

Moreover, to the extent the defendant claimed that the trial court's error in giving the modified *Daniel W. E.* instruction was constitutional in nature because it deprived him of his right to present a defense, that claim was unavailing because the instruction did not exclude defense evidence, prevent cross-examination, or foreclose the defense from otherwise challenging the victim's credibility or advancing the defendant's theory that the victim had fabricated her allegations of sexual abuse, and the jury remained free to disbelieve the victim's testimony for any reason apart from "the mere fact" that she had delayed in disclosing the sexual abuse.

The defendant failed to demonstrate that it was reasonably probable that the modified *Daniel W. E.* instruction misled the jury in reaching its verdict in light of the language of the particular instruction given, the adequacy of the jury instructions as a whole, the defendant's broader theory that the victim had fabricated her allegations, and the other evidence presented at trial.

With respect to the language of the modified *Daniel W. E.* instruction and the jury instructions as a whole, the jury would not have understood the challenged instruction to preclude it from considering the victim's credibility more generally or defense counsel's specific argument that the victim's allegations were a recent fabrication, especially when the instructions, as a whole, emphasized the jury's exclusive role in evaluating witness credibility, related the state's burden of proving each element of the crimes charged beyond a reasonable doubt, and directed the jurors to consider inconsistencies and omissions in the victim's prior statements.

Furthermore, unlike the standard *Daniel W. E.* charge, which this court found to be improper in *Adam P.*, the modified *Daniel W. E.* instruction given in the present case did not categorically preclude the jury from considering the victim's delayed disclosure but, rather, addressed certain concerns raised in *Adam P.* by expressly conveying to the jury the distinction between the fact of the delay and the reasons for, or circumstances surrounding, the delayed disclosure and by prohibiting only the inference that the victim was less credible merely because she did not promptly disclose the sexual abuse.

With respect to the evidence presented, it was clear that the defense theory did not depend on persuading the jury that the victim was untruthful merely because she delayed in reporting the sexual abuse, but, rather, defense counsel argued that the victim had fabricated her allegations because she was angry with him for taking her money.

In addition, although the state's case was not particularly strong, insofar as there was no physical or forensic evidence corroborating the sexual abuse, there was other corroborating testimony in the record, and the relative weakness of the state's case did not render it reasonably probable that the improper instruction infected the jury's verdict.

The defendant could not prevail on his claim that the trial court had violated his constitutional right to present a closing argument by giving the challenged instruction.

Although the trial court notified the parties, prior to closing argument, that it intended to provide the modified *Daniel W. E.* instruction in its final jury charge, it did not restrict the permissible scope of summation or affirmatively preclude defense counsel from arguing that the victim's delayed disclosure undermined her credibility and supported the defense theory that she had fabricated the allegations, and, therefore, the present case did not involve interference by the trial court that absolutely precluded defense counsel from presenting the defendant's theory of defense.

Even if this court assumed that the challenged instruction effectively restricted defense counsel from relying on "the mere fact of [the victim's] delay" during summation, counsel was not deprived of the opportunity to present the defendant's fabrication theory to the jury, as counsel repeatedly addressed the timing and evolution of the victim's disclosures during closing argument and challenged her account of when and how she remembered the sexual abuse.

Moreover, the challenged instruction restricted only the jurors' ability to draw a permissible credibility inference arising solely from the timing of delayed disclosure, and it did not preclude defense counsel from arguing that the circumstances surrounding the disclosure demonstrated that the victim had lied about her allegations or otherwise lacked credibility.

The defendant's claim that the trial court improperly admitted the video recording of the victim's forensic interview was moot, as the defendant failed to challenge all of the independent bases for the trial court's decision to admit the recording.

The record demonstrated that the trial court admitted the recording under the medical diagnosis or treatment exception to the hearsay rule, as a prior consistent statement, and under the rule of completeness, but, on appeal, the defendant challenged only the trial court's conclusions that the recording was admissible under the medical diagnosis or treatment hearsay exception and as a prior consistent statement, and, because there was an independent ground for the trial court's admission of the recording that the defendant did not challenge on appeal, namely, that the recording could be admitted under the rule of completeness, this court could not grant the defendant any practical relief in connection with his evidentiary claim.

(*Three justices concurring in part and dissenting in part and two justices dissenting in part in two separate opinions*)

Argued April 6—officially released September 29, 2026

Procedural History

Substitute information charging the defendant with the crimes of sexual assault in the first degree, sexual assault in the fourth degree, risk of injury to a child, and failure to appear in the first degree, brought to the Superior Court in the judicial district of Stamford-Norwalk and tried to the jury before *Blawie*, *J.*; verdict and judgment of guilty, from which the defendant appealed to this court. *Affirmed*.

Erica A. Barber, assistant public defender, with whom, on the brief, were *Kayla Kelly* and *Isabelle Kirschbaum*, law student interns, for the appellant (defendant).

Timothy J. Sugrue, assistant state's attorney, with whom, on the brief, were *Paul J. Ferencek*, state's

attorney, and *Margaret Moscati* and *Elizabeth K. Moran*, assistant state's attorneys, for the appellee (state).

Opinion

BRIGHT, J. The defendant, Jose T., appeals directly to this court from his conviction of one count of sexual assault in the first degree in violation of General Statutes § 53a-70 (a) (2), one count of sexual assault in the fourth degree in violation of General Statutes § 53a-73a (a) (1) (A), and one count of risk of injury to a child in violation of General Statutes § 53-21 (a) (2).[1] His principal claim on appeal is that the trial court improperly instructed the jury that, to the extent the victim delayed in reporting the alleged sexual abuse, "the mere fact of that delay" should not be considered in evaluating her credibility. The defendant contends that the instruction was improper under *State* v. *Daniel W. E.*, 322 Conn. 593, 629, 142 A.3d 265 (2016), and *State* v. *Adam P.*, 351 Conn. 213, 220, 226, 330 A.3d 73 (2025), which subsequently overruled *Daniel W. E.*, because delayed disclosure was central to his theory that the victim had fabricated the allegations and because he challenged the victim's credibility on that basis. The defendant further contends that the challenged instruction violated his constitutional right to present a closing argument. He separately claims that the trial court erred in admitting into evidence the video recording of the victim's forensic interview.

We conclude that, because the defendant challenged the victim's credibility in part on the basis of her delayed disclosure, it was improper under *State* v. *Daniel W. E.*, supra, 322 Conn. 629, for the trial court to give the

[1]The defendant also was convicted of one count of failure to appear in the first degree in violation of General Statutes § 53a-172 (a) (1). Although the defendant's principal brief asks that his "convictions" be reversed and the case remanded for a new trial, he has not asserted in this appeal any challenge to his failure to appear conviction. We therefore deem any claim as to his conviction of that particular offense abandoned. See, e.g., *State* v. *Gary*, 273 Conn. 393, 395 n.4, 869 A.2d 1236 (2005).

challenged instruction. We further conclude, however, that the error was not of constitutional magnitude and that it is not reasonably probable that the erroneous instruction misled the jury in reaching its verdict. Additionally, the improper instruction did not violate the defendant's right to present a closing argument. We decline to review the merits of the defendant's third claim regarding the admissibility of the forensic interview because the defendant's failure to challenge all bases on which the court admitted the video recording of the interview renders the claim moot. We therefore affirm the judgment of the trial court.

I

The record reflects the following relevant facts, which the jury reasonably could have found, and procedural history. The defendant emigrated from Honduras to the United States in 1998 and settled in Stamford. In 2002, E, who was pregnant with the victim at the time, also emigrated from Honduras to the United States and began a romantic relationship with the defendant. Although the defendant is not the victim's biological father, he signed the victim's birth certificate and treated her as his daughter. Following the end of the defendant's relationship with E in 2006 or 2007, the victim and her sisters continued to maintain a close relationship with the defendant. In 2009, the defendant began dating Maria Diaz and subsequently moved in with her. Approximately every other weekend, the victim and her younger sister, M, would stay at the residence that Diaz shared with the defendant.

When the victim was a freshman in high school in 2017 or 2018, she had a strong emotional reaction while reading aloud to her class a book about a girl who decided to disclose that she had been sexually abused. The victim abruptly ran out of the classroom and subsequently disclosed to her social studies teacher, Kaylin English, that "her stepfather," the defendant, had sexually abused her. English made an appointment for the victim to meet with the school psychologist and contacted the Department of Children and Families to report the victim's

disclosure. Either that day or the following day, after the victim had told her mother and sisters about the sexual abuse, her family took her to the police station, and the victim reported to the police that the defendant had sexually abused her. Approximately one week later, Kim Sauter, a clinical social worker at the Child Guidance Center of Southern CT in Stamford, conducted a forensic interview of the victim.[2] During that interview, the victim recounted three specific instances of sexual abuse by the defendant, two of which had occurred in Stamford. After the Stamford police conducted an investigation, the defendant was arrested and charged with one count of sexual assault in the first degree, one count of sexual assault in the fourth degree, and one count of risk of injury to a child. See footnote 1 of this opinion and accompanying text.

At trial, the victim testified that, when she was around five years old, the defendant began sexually abusing her. The victim testified about three different, specific incidents of sexual abuse, one that occurred in Bridgeport and two that occurred in Stamford.[3] The first instance occurred in 2008 or 2009, when the victim was visiting the defendant in Bridgeport. The victim testified that, at the time, the defendant and his brothers participated in local soccer games, and Diaz would often prepare food at home to sell at those events. During one such game, Diaz ran out of food, and the defendant and the victim drove back to the residence the defendant shared with Diaz to retrieve more. Once inside the home, while the victim was seated on the defendant's bed, the defendant began to touch her breast and buttocks under her clothes. The victim then felt something penetrate her anally, causing a discomfort she had "never felt before." Following this incident, the victim felt pain in her rectal area and found it difficult to sit down. She disclosed the incident to an

[2]The forensic interview was video recorded, and the entire recording was admitted into evidence at trial over defense counsel's objection.

[3]Although the defendant was not charged in connection with the Bridgeport incident, the trial court, over defense counsel's objection, permitted the state to introduce evidence about this incident as uncharged sexual misconduct. See Conn. Code Evid. § 4-5 (b).

elementary school classmate named Maya, but, when Maya "freaked out," the victim told her that it was a joke because the victim feared that others might react similarly if they learned what had occurred.

The victim testified about a second incident that occurred around the same time as the Bridgeport incident, when the victim resided in Stamford with her mother and two of her sisters, N and M. Although the defendant had been residing with Diaz in Bridgeport, he stayed at the Stamford residence for a short period of time in either 2008 or 2009. The victim testified that, one day during the defendant's stay at the Stamford residence, while E was at work and N was upstairs cooking, the victim went into the basement, where the defendant was doing his laundry. After the victim hugged him, the defendant picked her up and placed her on top of the dryer. When the defendant finished transferring his clothes into the dryer, he began touching the victim's breast. The defendant then put his fingers inside the victim's vagina and rectum. While this incident was occurring, N began looking for the victim. Before N reached the bottom of the basement stairs, the defendant, having heard her approaching, moved the victim to a nearby bed and instructed her to "be quiet and not to move . . . ." This incident was the basis for the first degree sexual assault and risk of injury to a child charges.

The third incident occurred in either 2015 or early 2016, when the victim was approximately twelve years old. The victim testified that, while the victim and M were visiting the defendant in Stamford, the defendant stopped to buy them ice cream before going to the beach. The defendant parked in a secluded area of Cummings Park, and the three of them ate their ice cream inside the defendant's truck; the victim was sitting in the front passenger seat, and M was sitting in the backseat watching videos on the defendant's cell phone. The defendant then took the victim's hand and placed it inside his pants and underwear. The victim felt something "squishy" at first, but, as the defendant made her move her hand up

and down, she felt something "hard . . . ." Thereafter, the victim noticed something "sticky" on her hands that was not ice cream, and the defendant quickly wiped her hand with paper towels. The defendant then instructed the victim not to tell anyone what had occurred, stating that he would go to jail and that M would be hurt if the victim disclosed the incident. Nevertheless, the victim told a friend from middle school named DeAndre[4] about the incident at Cummings Park, as well as the incident at the Stamford residence. The incident at Cummings Park was the basis for the sexual assault in the fourth degree charge.

The defendant's theory of defense at trial was that no sexual abuse had occurred and that the victim had fabricated the allegations. In support of that theory, defense counsel challenged the victim's credibility by emphasizing that she was motivated to fabricate her allegations by a dispute she and the defendant had over money shortly before she made her disclosure to English; contradictions, inconsistencies, and omissions between the victim's forensic interview and trial testimony; the victim's delay in disclosing the abuse; the absence of physical evidence corroborating the victim's allegations; the implausibility of aspects of the victim's testimony; and deficiencies in the police investigation.

At trial, both parties presented multiple witnesses. In addition to the victim, the state called N, English, and Sergeant Leslie Lugo, who investigated the charged crimes. The state also presented expert testimony from Monica Madigan, a licensed clinical social worker and forensic interviewer at the Yale Child Abuse Clinic. Madigan testified generally regarding the dynamics of child sexual abuse disclosure, including delayed and incremental disclosures, barriers to disclosure, and factors that may affect a child's willingness or ability to disclose abuse. The defense called the defendant, Diaz, the defendant's brother, E, several members of Diaz'

[4]The victim testified that she did not remember DeAndre's last name.

family, and Sauter, who testified about the victim's forensic interview.

Following the close of evidence and the parties' closing arguments, the trial court instructed the jury. Over defense counsel's objection, the court instructed the jury that "[t]here was evidence in this case [that] the [victim] delayed in making an official report of the alleged sexual assault by the defendant. There are many reasons why sexual assault victims may delay in officially reporting the offense, and, to the extent that [the victim] delayed in reporting the alleged offenses here, *the mere fact of that delay should not be considered by you in evaluating her credibility*." (Emphasis added.)

The jury found the defendant guilty on all counts, and the trial court rendered judgment, imposing what the court described as a total effective sentence of forty years of imprisonment, execution suspended after twenty-five years, followed by thirty-five years of probation.[5] The defendant appealed directly to this court pursuant to General Statutes § 51-199 (b) (3).

The defendant raises three claims on appeal. He contends that (1) the trial court's provision of the delayed disclosure instruction was erroneous and requires a new trial, (2) the erroneous instruction improperly infringed on his constitutional right to present a closing argument,

[5]We note that the aggregate of the sentences imposed by the trial court, which are to run consecutively, appears to yield a total effective sentence of *fifty* years of imprisonment, execution suspended after twenty-five years, whereas the trial court stated that it was sentencing the defendant to "a total effective sentence of *forty* years, execution suspended after the service of twenty-five years, followed thereafter by thirty-five years of probation." (Emphasis added.) Although the defendant, in his principal appellate brief, refers to his sentence as a total effective sentence of forty years of imprisonment, he does not address the apparent discrepancy between the aggregate of the individual sentences imposed and the total effective sentence announced by the trial court and reflected in the judgment file. The state notes in a footnote in its appellate brief that, in its view, the defendant "understates by ten years the total amount of prison time . . . imposed" and that "the total effective sentence is accurately described as *fifty years of imprisonment* . . . ." (Emphasis in original.) Neither party, however, seeks review of that discrepancy in this appeal.

and (3) the trial court improperly admitted the video recording of the victim's forensic interview.

II

The defendant first claims that, because the victim's delay in reporting the sexual abuse was central to his theory that she had fabricated the allegations against him, the trial court's instruction preventing the jury from considering evidence of delay in assessing the victim's credibility was erroneous and requires a new trial. We agree with the defendant that the delayed disclosure instruction was erroneous under *State* v. *Daniel W. E.*, supra, 322 Conn. 629. We nevertheless conclude that the error was not of constitutional magnitude and that it is not reasonably probable that the erroneous instruction misled the jury. Accordingly, the defendant is not entitled to a new trial.

"We exercise plenary review over a challenge to jury instructions because it presents a question of law." *State* v. *Adam P.*, supra, 351 Conn. 230. The record reveals the following additional relevant facts and procedural history.

Relying on this court's decision in *Daniel W. E.*, the prosecutor requested that the trial court instruct the jury that it could not consider any delay in the victim's disclosure when evaluating her credibility. Defense counsel repeatedly objected to the prosecutor's request for a delayed disclosure instruction, both orally and in writing. In his November 16, 2023, written objection, defense counsel argued that the instruction was unnecessary in light of the general credibility charge and would improperly invade the province of the jury. He also argued that

Accordingly, we do not consider whether the trial court intended to impose a total effective sentence of forty years of imprisonment or whether the aggregate of the individual sentences reflects a greater total effective sentence. We note, however, that, to the extent the parties disagree about the court's intended disposition, motions for interpretation or clarification "are commonly considered by trial courts and are procedurally proper." (Internal quotation marks omitted.) *State* v. *Denya*, 294 Conn. 516, 528, 986 A.2d 260 (2010).

the instruction was inconsistent with the state's presentation of expert testimony on delayed disclosure because, if delay did not potentially bear on credibility, there would have been no need for such expert testimony. At the charge conference on November 17, defense counsel again objected to the proposed delayed disclosure instruction. Counsel reiterated his earlier concerns and further emphasized that delayed disclosure was central to the defense theory, arguing that instructing the jurors not to consider delay would effectively preclude the defense from arguing that the victim's lengthy delay in reporting undermined the reliability of her allegations. The state responded that the instruction was supported by *Daniel W. E.* and related case law and was intended to prevent the jurors from assuming that a sexual assault victim who delays reporting is not credible.

After hearing the parties' arguments, the trial court stated that it was inclined to give the instruction but proposed modifying the final sentence to read: "To the extent that [the victim] delayed in reporting the alleged offenses here, *the mere fact of that delay, without more,* should not be considered by you in evaluating her credibility." (Emphasis added.) Defense counsel expressed satisfaction with the added language, stating: "That makes sense to me . . . . That sounds like the proposition [that the case law is] supposed to stand for." The prosecutor objected to the modification, arguing that the language would allow the jury to consider the delay if it found other reasons to question the victim's credibility, which the prosecutor maintained was contrary to the purpose of the instruction. The court then stated that it would consider the matter over the weekend and later advise the parties about how it intended to proceed.

Over the weekend, defense counsel filed a renewed written objection. In that filing, counsel argued that *Daniel W. E.* did not authorize the state's requested instruction under the circumstances of this case because the delayed disclosure language arose in the constancy of accusation context and applied only when the defense did not

challenge the victim's credibility on the basis of delayed reporting. Counsel emphasized that, in this case, delayed disclosure was a central feature of the defense and that the state had not presented any constancy witnesses. In the alternative, counsel requested that, if the court gave a delayed disclosure instruction, it include "language such as 'delay, *without more*, should not be considered in evaluating the witness' credibility.'" (Emphasis in original.)

When the charge conference resumed on November 20, 2023, the trial court explained that it had revised the instruction but "not as far as the defense was asking . . . ." The court declined to include the phrase "without more" but retained the rest of the modification, settling on the following language: "[T]o the extent that [the victim] delayed in reporting the alleged offenses here, *the mere fact of that delay* should not be considered by you in evaluating [her] credibility." (Emphasis added.) Defense counsel maintained his objection to the instruction, and the prosecutor withdrew his prior objection and asked that the instruction be given as written. Consistent with its ruling, the court instructed the jury as previously discussed in this opinion.

On appeal, the defendant challenges the propriety of the instruction as given and argues that he is entitled to a new trial.

A

We first consider whether the instruction was erroneous. The defendant argues that the delayed disclosure instruction was improper pursuant to *State* v. *Adam P.*, supra, 351 Conn. 213, which overruled *State* v. *Daniel W. E.*, supra, 322 Conn. 593. The defendant further contends that, because defense counsel attacked the victim's credibility on the basis of her delayed disclosure, the instruction was improper under *Daniel W. E.* itself because the delayed disclosure instruction "is not a standalone instruction and was not intended by the [court in] *Daniel W. E.* . . .

to be given when the defense challenges the delay." The state responds that the trial court's modification of the *Daniel W. E.* charge was "ameliorative in nature" and addressed the concerns that this court articulated in *Adam P.* regarding the standard *Daniel W. E.* instruction. The state further contends that the final charge, when examined as a whole, was adequate to guide the jury to a correct verdict and to avoid injustice. We agree with the defendant that it was improper for the court to give a delayed disclosure instruction in any form under the circumstances of this case.

In resolving the defendant's claim, it is helpful to start with a discussion of the recent evolution of our law regarding how juries should be instructed regarding a complaining witness' delay between when the alleged abuse occurred and when it was first reported. In sexual assault cases, our courts have long grappled with the significance of delayed disclosure and the extent to which such evidence properly bears on a complainant's credibility. Historically, these concerns arose in connection with the common-law constancy of accusation doctrine; that doctrine permitted "the state in a sexual assault case to offer constancy evidence, which generally included proof that the victim had disclosed the sexual assault to third parties prior to making a formal complaint to authorities," in order "to negate the inference a fact finder might draw . . . that a complainant was fabricating her accusation if she failed to officially report the alleged sexual abuse promptly after the incident." *State* v. *Adam P.*, supra, 351 Conn. 221; see also *State* v. *Troupe*, 237 Conn. 284, 294–99, 677 A.2d 917 (1996).

In *Troupe*, we undertook a comprehensive reexamination of the constancy of accusation doctrine and the assumptions underlying the admission of delayed disclosure evidence in sexual assault cases. See *State* v. *Troupe*, supra, 237 Conn. 294–99. We traced the historical origins of the doctrine to "the fresh complaint rule," which itself "evolved as a response to the common-law requirement of hue and cry." (Internal quotation marks

omitted.) Id., 294. Under the common law, "[v]ictims of violent crimes were expected to cry out immediately and [to] alert their neighbors that they had been violently assaulted," and courts later applied the same expectation "in rape cases . . . ." (Internal quotation marks omitted.) Id. We observed that courts historically assumed "that any normal woman would report a rape soon after its occurrence" and, therefore, treated a victim's silence or delayed disclosure as suggesting that "no rape had occurred." (Internal quotation marks omitted.) Id., 295. "These assumptions about how a normal woman should react to a sexual assault, coupled with the common-law rule requiring corroboration of the victim's testimony in order to obtain a rape conviction, reflect the common law's profound distrust of female complainants in rape cases." (Internal quotation marks omitted.) Id.

We further acknowledged in *Troupe* that a premise underlying the doctrine—"that it is natural for the victim of a sexual assault to complain promptly following the assault"—had been substantially discredited. (Internal quotation marks omitted.) Id., 300. "The overwhelming body of current empirical studies, data, and other information establishes that it is *not* inherently natural for the victim to confide in someone or to disclose, immediately following commission of the offense, that he or she was sexually assaulted." (Emphasis in original; internal quotation marks omitted.) Id., 300–301. We noted, however, that "many people still adhere to the belief that a rape victim ordinarily will report the crime and that the failure of the victim to do so casts doubt on the credibility of the accusation"; id., 301; and, accordingly, we declined to abolish the doctrine altogether. Id., 303.

Nevertheless, we concluded that the doctrine's existing scope was "broader than necessary" to address those lingering misconceptions. Id. Although the doctrine served a legitimate purpose, we observed that "a defendant has an interest in not being unreasonably burdened by such accrediting or supporting evidence"; id., 302; and that concerns regarding prejudice "are magnified" when a

victim reports the alleged assault to multiple individuals who are then permitted to recount the details of the complaint at trial. Id., 302–303. "In such circumstances," we explained, "there is an enhanced risk that the jury may be unduly swayed by the repeated iteration of the constancy of accusation testimony." Id., 303. Accordingly, we narrowed the scope of permissible constancy testimony largely "to the fact and timing of the victim's complaint"; id., 304; and we reaffirmed the principle that "the defendant is entitled to an instruction that any delay by the victim in reporting the incident is a matter for the jury to consider in evaluating the weight of the victim's testimony." Id., 305. Thus, although *Troupe* rejected the outdated premise that delayed reporting is inherently inconsistent with sexual assault, it preserved the principle that the timing of disclosure remained a permissible subject for the jury's consideration when evaluating the credibility of the victim and the weight to afford the victim's testimony at trial.

Twenty years later, in *Daniel W. E.*, this court modified the constancy of accusation doctrine established in *Troupe* to address concerns regarding the cumulative, prejudicial effect of multiple constancy witnesses. See *State* v. *Daniel W. E.*, supra, 322 Conn. 617–30. Under the framework adopted in *Daniel W. E.*, if the defendant challenges the victim's credibility on the basis of delayed disclosure or prior complaints, the state is "permitted to call constancy of accusation witnesses subject to the limitations established in *Troupe* . . . ." Id., 629. If, however, the defendant does not challenge the victim's credibility on those grounds, the constancy testimony is not admissible, and the trial court is directed to "instruct the jury that there are many reasons why sexual assault victims may delay in officially reporting the offense, and [that], to the extent the victim delayed in reporting the offense, the delay should not be considered by the jury in evaluating the victim's credibility." Id. Through this modified framework, we sought to reduce the need for constancy evidence while preventing jurors from

drawing unwarranted, adverse inferences from delayed disclosure. See id., 630.

In our recent decision in *Adam P.*, we reconsidered the delayed disclosure instruction adopted in *Daniel W. E.* and clarified the operation of the constancy of accusation doctrine in sexual assault cases. See *State* v. *Adam P.*, supra, 351 Conn. 220–30. In *Adam P.*, the defendant challenged the trial court's instruction to the jury that the victims' "eight year delay in reporting the sexual abuse [by the defendant] should not be considered by [the jury] in evaluating their credibility." (Internal quotation marks omitted.) Id., 217–18. The trial court had provided that instruction pursuant to our earlier decision in *Daniel W. E.,* which governed at the time of trial. See id. We concluded that the delayed disclosure instruction authorized by *Daniel W. E.* was incorrect and that the modified framework conflicted with important aspects of the doctrine articulated in *Troupe*. See id., 224–27. We explained that, under the approach authorized in *Daniel W. E.*, "if a defendant challenges the victim's credibility based on a delay in reporting and the state then calls constancy witnesses, the jury must be instructed to consider any delay; but, if a defendant does not challenge the victim's credibility and the state therefore does not call constancy witnesses, the jury will be instructed to disregard any delay." Id., 225–26. We could not "reconcile this disparate outcome considering the otherwise parallel nature of these cases." Id., 226. We further explained that the instruction itself risked confusing jurors regarding what evidence they could properly consider in evaluating credibility. See id., 224–26.

In *Adam P.*, we also rejected the state's argument that the instruction merely prohibited the jury from considering *the fact* of delay, while still permitting consideration of *the reasons* for delay, when assessing a victim's credibility. See id., 225. "[G]iven that we [had] trouble discerning or articulating this distinction convincingly ourselves," we were not persuaded that "the

jury would understand that the reasons why a victim might delay reporting sexual assault are necessarily separate from the delay itself based on the instructions provided . . . .” Id. Accordingly, we overruled *Daniel W. E.* and its requirement that trial courts, in certain circumstances, instruct jurors that a victim’s delay in reporting “should not be considered . . . in evaluating [the victim’s] credibility . . . .” (Internal quotation marks omitted.) Id., 234; see id., 229. Instead, we returned to the rule articulated in *Troupe*; id., 229; under which “the defendant is entitled to an instruction that any delay by the victim in reporting the incident is a matter for the jury to consider in evaluating the weight of the victim’s testimony . . . .” (Internal quotation marks omitted.) Id., 227; accord *State* v. *Troupe*, supra, 237 Conn. 305. We further explained that the abandonment of the *Daniel W. E.* instruction did not leave the jurors without guidance regarding delayed disclosure evidence. See *State* v. *Adam P.*, supra, 351 Conn. 226–29. As we noted, the state remains free to present expert testimony concerning the behavioral characteristics of sexual assault victims, including delayed disclosure; id., 226; and trial courts retain the authority to admit properly limited constancy evidence and to guard against undue prejudice under the rules of evidence. Id., 227–28.

Applying these principles to the present case, we conclude that the trial court improperly instructed the jury regarding delayed disclosure. Irrespective of our decision in *Adam P.* in 2025, the instruction was improper under *Daniel W. E.*, which was the governing law at the time of the defendant’s trial in 2023. As discussed, the trial court was authorized to give the delayed disclosure instruction “[i]f defense counsel [*did*] *not challenge the victim’s credibility in any fashion*” on the basis of delayed disclosure. (Emphasis added.) *State* v. *Daniel W. E.*, supra, 322 Conn. 629. If defense counsel *did* challenge the victim’s credibility on the basis of delayed disclosure, the state’s remedy under *Daniel W. E.* was the introduction

of constancy witnesses, not an instruction directing the jury to disregard the delay in evaluating credibility. Id.

In the present case, it is undisputed that defense counsel challenged the victim's credibility in part on the basis of her delayed disclosure. Defense counsel argued that the victim's allegations were a recent fabrication brought about by a dispute between the victim and the defendant over money. Counsel argued that the allegations were not contemporaneously reported because the underlying facts did not happen. Instead, he argued, the victim concocted the allegations because she was angry with the defendant. Thus, because defense counsel placed the victim's credibility at issue in part on the basis of her delay in reporting, the trial court's modified delayed disclosure instruction was inconsistent with the framework set forth in *Daniel W. E.* itself.

Even if we assume, as the state contends, that, "in the context of the entire charge, the modification of the standard instruction from 'the delay' to the '*mere fact* of delay' accomplished what the standard *Daniel W. E.* instruction that was at issue in *Adam P.* failed to do . . . [insofar as] it enabled the . . . jury to 'understand that the *reasons* why a victim might delay reporting sexual assault are necessarily separate from *the delay itself*,'" the instruction nevertheless remains improper because the trial court should not have given it *in any form*. (Emphasis in original.) Although the trial court lacked the benefit of our subsequent decision in *Adam P.*, which reaffirmed that delay is a proper factor for the jury's consideration, the error of the instruction is even more apparent in view of that more recent decision. See *State* v. *Adam P.*, supra, 351 Conn. 227. We therefore conclude that the trial court erred in instructing the jury as it did.

B

We next consider whether the defendant is entitled to a new trial in light of the erroneous instruction. "To determine whether the defendant is entitled to a new trial because of an erroneous jury instruction, we review

the entire charge to determine if, taken as a whole, the charge adequately guided the jury to a correct verdict. . . . In appeals not involving a constitutional question [we] must determine whether it is reasonably probable that the jury [was] misled . . . . [I]n appeals involving a constitutional question, [however, the standard is] whether it is reasonably *possible* that the jury [was] misled." (Emphasis in original; internal quotation marks omitted.) Id., 230.

The defendant first contends that the instructional impropriety in the present case was constitutional in nature because it infringed on his state and federal constitutional rights to due process, to present a defense, and to challenge the state's evidence by depriving the jurors of the ability to consider the victim's delayed disclosure in assessing her credibility. He argues that, because credibility was the central issue in the case and the victim's testimony constituted the only direct evidence against him, the instruction invaded the province of the jury as the sole arbiter of witness credibility, created an impermissible mandatory inference favorable to the state, and effectively diluted the state's burden of proof. We disagree.

In *Adam P.*, we concluded that delayed disclosure instructions of the type previously authorized by *Daniel W. E.*, although improper, "are nonconstitutional in nature because they do not, on their own, confuse the elements of a crime, shift the state's burden of proof to the defendant, or undermine the defendant's presumption of innocence."[6] Id., 231–32. The defendant nevertheless attempts to distinguish *Adam P.* on the ground that delayed disclosure was more central to his defense in the

[6]To the extent that the defendant challenges the instruction as an impermissible mandatory inference, we explained in *Adam P.* that, "although we have held that instructions mandating that jurors draw particular inferences might violate due process, we have done so when those instructions [relieve] the state of the burden of proving an *essential element of the offense*"; (emphasis in original; internal quotation marks omitted) *State* v. *Adam P.*, supra, 351 Conn. 232; and the erroneous delayed disclosure instruction in the present case did not do so.

present case, which "depended on his ability to attack [the victim's] credibility by exposing the unreasonable delay." In *Adam P.*, however, we expressly recognized that "[c]redibility is often particularly important in sexual assault cases, and victims' delayed reporting may be relevant to their credibility. In fact, what to make of delay is often a point of dispute between the parties in sexual abuse cases, with one side positing that delay is a symptom of a victim's trauma, and the other claiming that it is consistent with a motivation to fabricate accusations. Even so, neither delay nor credibility is an element of the charged offenses; nor do they shift the state's burden of proof to the defendant." *State* v. *Adam P.*, supra, 351 Conn. 232. Thus, the defendant's reliance on delayed disclosure as a central component of his attack on the victim's credibility does not transform the instructional impropriety into one of constitutional magnitude. See, e.g., *State* v. *William G.*, 232 Conn. App. 317, 329–30, 335 A.3d 511 (2025) (instructional error was nonconstitutional, even when defense theory turned on victim's delay in reporting).[7]

Nor are we persuaded by the defendant's contention that the challenged instruction deprived him of his right to present a defense. The instruction did not exclude defense evidence, prevent cross-examination, or foreclose the defense from otherwise challenging the victim's credibility and advancing the theory that the victim fabricated her allegations.[8] Although the instruction

[7]We note that the instructional improprieties at issue in both *Adam P.* and *William G.* involved the standard *Daniel W. E.* delayed disclosure instruction. See *State* v. *Adam P.*, supra, 351 Conn. 217–18; *State* v. *William G.*, supra, 232 Conn. App. 324–25. The instruction given in the present case differed insofar as the trial court instructed the jurors that they could not consider "the mere fact" of delay in evaluating the victim's credibility. To the extent that the modification altered the instruction, the additional language limited its scope, further reducing any constitutional concerns.

[8]The defendant's reliance on *Cool* v. *United States*, 409 U.S. 100, 93 S. Ct. 354, 34 L. Ed. 2d 335 (1972), is misplaced. In *Cool*, the challenged instruction precluded the jurors from considering exculpatory accomplice testimony, unless they first found that testimony true beyond a reasonable doubt. Id., 101–102. The instruction therefore both restricted the jury's consideration of exculpatory evidence and

limited one permissible credibility inference, the jury remained free to disbelieve the victim's testimony for any other reason apart from "the mere fact" that the victim delayed in disclosing the abuse and, thus, did not amount to a constitutional deprivation of the defendant's right to present a defense. To the extent that delayed disclosure played a more prominent role in the present case, that consideration bears more directly on whether the instructional error was harmful rather than on whether it was of constitutional magnitude.

Therefore, consistent with our analysis in *Adam P.*, we conclude that the instructional impropriety in the present case was nonconstitutional in nature. See *State* v. *Adam P.*, supra, 351 Conn. 232–33.

C

Accordingly, "[w]e must now consider whether the defendant has demonstrated that it is not just reasonably possible, but reasonably probable—meaning more probable than not—that the instructional error misled the jury in arriving at its verdict, therefore requiring reversal." Id., 233. "The defendant's claim of harm requires that we conclude that the jury's verdict turned on its misunderstanding, based on the [modified] *Daniel W. E.* instruction, that it could not consider the [victim's] delayed reporting of the sexual abuse when assessing [her] credibility." Id. "This determination is necessarily fact intensive, requiring that we look to the instructions provided, the parties' theories of the case, and the larger record, all in their entireties, to ensure that injustice is not done to either party under the established rules of law. . . . We evaluate the harmfulness of a nonconstitutional error on the record as a whole. . . . An improper instruction is not automatically harmful merely because it adversely affects a defense." (Citation omitted; internal quotation marks omitted.) Id.

diluted the government's burden of proof. Id., 104. The delayed disclosure instruction in the present case did neither. See *State* v. *Adam P.*, supra, 351 Conn. 231–32.

The defendant contends that the instructional impropriety was harmful because the victim's credibility was the central issue at trial and his principal theory of defense challenged the credibility of her allegations on the basis of delayed disclosure. He argues that, because his convictions rested solely on the victim's testimony, the state presented no evidence corroborating the allegations, and the jury returned a guilty verdict on all counts, it is reasonably probable that the challenged instruction misled the jury to believe that it could not consider delayed disclosure in assessing the victim's credibility and that the jury's guilty verdict turned on such misunderstanding. The defendant further contends that the prejudicial effect of the instruction was compounded by the state's presentation of expert testimony explaining delayed disclosure.

The state responds that the defendant cannot demonstrate harm because the jury instructions, viewed as a whole, adequately informed the jury regarding credibility, the burden of proof, and inconsistent statements. The state further argues that the defendant's fabrication theory relied not on the mere fact of delayed disclosure but on apparent contradictions and inconsistencies in the victim's testimony, the lack of corroborating evidence, the implausibility of the victim's allegations, and the victim's motive to fabricate. Finally, the state contends that its case was sufficiently strong that there is no reasonable probability that the modified instruction affected the verdict.

Having reviewed the record in its entirety, including the instructions as a whole, the defendant's theory of the case, the evidence presented at trial, and the parties' closing arguments, we conclude that it is not reasonably probable that the erroneous delayed disclosure instruction misled the jury in arriving at its verdict.

We first consider the jury instructions. Notwithstanding the erroneous delayed disclosure instruction, we are not persuaded that the jury would have understood the challenged language to prohibit consideration of the

victim's credibility more generally or defense counsel's specific argument that the evidence demonstrated that the victim's allegations against the defendant were the product of a recent fabrication. Viewed as a whole, the charge repeatedly emphasized that the jury retained exclusive authority to determine witness credibility, to assess inconsistencies and omissions, and to decide what weight, if any, to assign to the victim's testimony. The trial court instructed the jury that it was "the sole [judge] of the facts" and that it alone determined what testimony to accept or reject, including whether to "believe all, none, or any part of any witness' testimony." The court charged the jurors to assess witness credibility by considering, among other things, a witness' ability to perceive and recall events, a witness' demeanor while testifying, a witness' possible bias or interest in the outcome of the case, the reasonableness of testimony in light of all the evidence, and whether the testimony was "contradicted by what that witness has said or done at another time or by the testimony of other witnesses or by other evidence." The court further instructed the jury that "[e]vidence has been presented that [the victim] made statements outside of court that are inconsistent with her trial testimony," explained that "[t]he law treats an omission in a prior statement as an inconsistent statement," and directed jurors to consider such evidence in determining the weight to assign the victim's testimony. The court instructed the jurors that, in evaluating credibility, they should consider whether a contradiction reflected "an innocent lapse in memory or an intentional falsehood" and that, if they believed a witness had "deliberately testified falsely in some respect," they should "carefully consider" whether to rely on *any* of that witness' testimony.

To the extent that the defendant argues that the delayed disclosure instruction reinforced the testimony of the state's expert, Madigan, and directed the jury to accept the state's theory that the victim's delayed disclosure was consistent with the typical behavior of child sexual abuse victims, rather than indicative of

her untruthfulness, we are not persuaded. The jury was expressly instructed that Madigan's testimony was not binding and could be disregarded completely if the jury saw fit.[9] Moreover, in *Adam P.*, the state similarly presented expert testimony that sexual assault victims often delay reporting abuse, and defense counsel likewise argued that the delayed disclosure instruction would "bolster" the expert's testimony. *State* v. *Adam P.*, supra, 351 Conn. 219. Nevertheless, the presence of such expert testimony did not alter our conclusion in *Adam P.* that the instructional error was harmless. See id., 239–40, 243.

Additionally, rather than providing the standard *Daniel W. E.* charge, which instructs jurors broadly that delayed disclosure should not be considered in evaluating the victim's credibility; see *State* v. *Daniel W. E.*, supra, 322 Conn. 629; the trial court modified the language to instruct that only "the mere fact of [the victim's] delay" should not be considered. Although the modified delayed disclosure instruction should not have been given in light of defense counsel's attack on the victim's credibility, the added language lessened the likelihood that the jury understood the instruction to foreclose all consideration of the circumstances associated with the delayed disclosure that independently bore on credibility.

Although the concurring and dissenting opinion concludes that the trial court's modification of the standard *Daniel W. E.* instruction has no meaningful effect because, in *Adam P.*, we rejected the state's argument that the jury would have understood the instruction to mean "that it could consider the victims' reasons for delay, but not the fact of the delay itself, when assessing their credibility," we did not conclude that such a distinction was conceptually unsound or could never

[9] The court also instructed the jury that "[n]o such [expert] testimony is binding [on] you, and you may disregard the testimony either in whole or in part. It is for you to consider this testimony with the other circumstances in the case and, using your best judgment, [to] determine whether you will give any weight to it and, if so, what weight you will give to it."

be communicated to or understood by a jury. *State* v. *Adam P.*, supra, 351 Conn. 225; see also part II C of the concurring and dissenting opinion. Rather, we concluded that the standard *Daniel W. E.* instruction fails to communicate that distinction. See *State* v. *Adam P.*, supra, 224–25. The instruction at issue in *Adam P.* referenced "evidence 'that [the victims] delayed in making an official report' of the assaults and explain[ed] in the same sentence that there are 'many reasons why sexual assault victims may delay,' all the while admonishing that any delay 'should not be considered by [the jury] in evaluating [the victims'] credibility.'" Id. Thus, because the instruction informed the jury that there were "'many reasons'" why victims may delay reporting but then, in the same sentence, categorically directed that delay should not be considered in evaluating credibility, "we underst[ood] how the sentence [could] create confusion." Id., 225. We further explained that "we do not believe that the jury would understand that the reasons why a victim might delay reporting sexual assault are necessarily separate from the delay itself *based on the instructions provided*, given that we have trouble discerning or articulating this distinction convincingly ourselves." (Emphasis added.) Id.

Unlike the standard instruction at issue in *Adam P.*, the modified instruction in the present case did not categorically direct the jury to disregard delayed disclosure. Rather than leaving the jury to infer some unstated limitation from a broad prohibition against considering the victim's delay, the trial court first informed the jury that "[t]here are many reasons why sexual assault victims may delay in officially reporting the offense" and then expressly instructed the jury that only "the mere fact of [the victim's] delay should not be considered . . . in evaluating her credibility." In this way, the modification addressed the concern we expressed in *Adam P.* by expressly conveying to the jury the distinction between the *fact* of the delay and the reasons for, or circumstances surrounding, the delayed disclosure. See *State* v. *Adam P.*, supra, 351 Conn. 225. Accordingly, the modified

instruction was less likely than the standard instruction at issue in *Adam P.* to be understood by the jury as precluding it from considering all evidence relating to the victim's delayed disclosure, including the parties' competing theories concerning the timing of the disclosure and its significance in assessing the victim's credibility. Although this modification did not render the instruction proper in this case, the reduced risk of misunderstanding remains relevant to our harmless error analysis.[10]

The concurring and dissenting opinion suggests that it cannot discern what it means to consider "the mere fact" of delay differently from the surrounding circumstances. See part II C of the concurring and dissenting opinion. The distinction, however, is neither abstract nor novel. The phrase "the mere fact of . . . delay" refers to the existence of a lapse of time between the alleged abuse and the victim's disclosure, standing alone. It does not, by its terms, encompass the circumstances surrounding the delayed disclosure or any other evidence bearing on the victim's credibility. Thus, consistent with the historical considerations that informed the development of our constancy doctrine, the modified instruction prohibited only one inference—that, *solely* because the victim did not promptly disclose the abuse, she is therefore less credible. See, e.g., *State* v. *Troupe,* supra, 237 Conn. 303 (noting "the unwarranted, but nonetheless persistent, view that a sexual assault victim who does not report the crime cannot be trusted to testify truthfully about the incident"). This inference, as we explained in part II A of this opinion, is rooted in the now discredited premise underlying the constancy doctrine, that is, "that it is natural for the victim of a sexual assault to complain promptly following the assault"; (internal quotation

[10]As we noted; see footnote 7 of this opinion; both *Adam P.* and *William G.* involved the provision of the standard *Daniel W. E.* instruction, which we concluded in *Adam P.* was susceptible to misunderstanding. See *State* v. *Adam P.*, supra, 351 Conn. 224–26. The present case is distinguishable in that it involves a modification to the instruction that reduced the risk of misunderstanding, a consideration that weighs in favor of harmlessness.

marks omitted) id., 300; and, if the victim "did not, [if] she went about as if nothing had happened, [it] was in effect an assertion that nothing violent had been done." (Internal quotation marks omitted.) Id., 295–96. This inference has "[i]ndisputably . . . been discredited substantially in contemporary times." (Internal quotation marks omitted.) Id., 300. Because the modified instruction in the present case prohibited only that limited inference, it did not otherwise preclude the jury from considering the circumstances surrounding the eventual disclosure—including when, how, why, and under what circumstances that disclosure occurred—to the extent that those circumstances bore on the victim's credibility and the veracity of her allegations.

This is particularly true given the defendant's theory in attacking the credibility of the victim's disclosures, the state's explanations for the victim's delay in disclosing, and the inconsistencies in the victim's accounts of what had happened. The defendant's theory was not that the jury should not believe the victim solely because she delayed disclosing the alleged sexual assaults. Rather, defense counsel argued that the victim had fabricated the allegations shortly after her quinceañera[11] because the defendant kept the cash gifts she had received, and that the inconsistencies in her recounting of the alleged abuse proved that her story was contrived. The state responded to that theory by presenting Madigan to explain why child sexual assault victims delay disclosing and often disclose details incrementally. The trial court's instruction that the jury could not consider "the mere fact of [the victim's] delay" did not limit the jury's consideration of the defendant's theory of defense or the state's response.

Accordingly, when read together with the remainder of the charge, we are not persuaded that the jurors reasonably would have understood the modified delayed disclosure instruction to foreclose consideration of defense counsel's challenges to the victim's credibility.

[11] A quinceañera is a traditional Latin American celebration of a girl's fifteenth birthday, marking her transition to womanhood.

The instructions as a whole repeatedly emphasized the jury's exclusive role in evaluating witness credibility, directed the jurors to consider inconsistencies and omissions in the victim's prior statements, and reiterated that the state bore the burden of proving each element beyond a reasonable doubt.[12] See *State* v. *Adam P.*, supra, 351 Conn. 234 ("[t]here is no reason to believe that the jury, based purely on the *Daniel W. E.* instruction, would disregard the credibility factors the court provided as examples in its final charge or its instruction on the state's burden of proof").

Our conclusion that the delayed disclosure instruction did not mislead the jury is supported further by the evidence in the record and the defendant's theory of defense. At trial, defense counsel advanced a cohesive theory centered on the victim's motivation to fabricate the allegations following a dispute with the defendant over money she received at her quinceañera. Consistent with that theory, counsel sought to persuade the jury that the victim had acted on that motive and argued that the evidence presented at trial demonstrated that the allegations were fabricated.

The evidence at trial reflected that, on the Saturday following the victim's fifteenth birthday, the defendant hosted a quinceañera for the victim. The defendant and Diaz paid for most of the celebration, which included the hall rental, food, drinks, a disc jockey, security, and the victim's dress. Guests brought gifts for the victim and placed envelopes containing cash gifts into a card box. The victim stayed overnight at the defendant's home following the party. The next day, the victim opened the

[12] We do not suggest that the provision of other, accurate jury instructions caused the jury to disregard the delayed disclosure instruction. The other instructions are relevant not because they negate the erroneous instruction but because they inform how a reasonable juror would have understood its scope in the context of the entire charge. Our conclusion is simply that, when so considered, there is no reasonable probability that the jury understood the delayed disclosure instruction to foreclose consideration of defense counsel's credibility arguments or the theory of defense.

card box and counted the money she had received. The defendant subsequently informed her that he intended to keep the cash gifts to reimburse himself for expenses he incurred in hosting the celebration. The victim was upset by the defendant's decision, left the defendant's home, and did not speak with him again.[13] Approximately eight days later, the victim disclosed the sexual abuse to English.

Defense counsel argued to the jury that the dispute concerning the victim's quinceañera money explained *why* she would falsely accuse the defendant. The importance counsel attached to this theory is reflected in both his examination of witnesses and his representations to the trial court. Counsel questioned the victim about "storming out of the house" following the dispute and emphasized during closing argument that the victim had not seen or spoken to the defendant since that day.[14] In seeking to admit the testimony of E that the victim told her that the defendant had kept the cash gifts from the quinceañera, defense counsel explained to the court that "[t]he fact that [the victim] was given money but [the defendant] took the money is the motive for these false allegations. . . . That's our whole defense . . . ." Counsel further argued that the victim's belief that the

[13]Both the defendant and Diaz' niece, who was living with the defendant and Diaz at the time of the victim's quinceañera, testified about the dispute over the money and the victim's demeanor. Diaz' niece testified that the victim was initially "happy" while counting the money she had received but that her expression changed when the defendant explained that he needed the money to pay for the reception hall, at which point the victim "became displeased and . . . was no longer happy" because she believed that she was going to be able to keep the money. The defendant likewise testified that the victim was "thrilled" while counting the money, that she did not want to give it to him, and that, although she ultimately did so, "she was not happy." He further testified that the victim's sisters later arrived and found her upset, and, after the victim left the house that morning, he never spoke with her again.

[14]Defense counsel further argued to the jury that it did not "make any sense" that the defendant would spend years purchasing the victim gifts to keep her from disclosing the abuse, as the victim testified, and then turn around and risk disclosure by taking the victim's quinceañera money.

defendant had taken her money was "the number one key of our defense," "everything in this case in terms of the defense," and "exactly what our defense is," because it established the victim's "motiv[ation] to, eight days later, make these complaints." Thus, the defense theory was that the victim fabricated the allegations because she was angry with the defendant for taking her quinceañera money. The remaining credibility challenges advanced by the defense were offered to persuade the jury that the victim had acted on that motive.

Consistent with this fabrication theory, defense counsel sought to demonstrate that the victim's testimony about the abuse was unreliable. He questioned the victim at length about statements she had made during the 2018 forensic interview and compared those statements to her trial testimony, focusing on allegations or details that appeared in one account but not the other, as well as details that changed over time. Counsel then revisited many of those discrepancies during his direct examination of Sauter, eliciting testimony about statements the victim had made during her forensic interview that were absent from, or distinct from, her trial testimony. During closing argument, defense counsel returned to those discrepancies and repeatedly argued that they constituted "direct contradictions" demonstrating that the victim's allegations were fabricated rather than truthful recollections of the abuse.[15] Counsel also relied on the tes-

[15]For example, with respect to the incident at the Stamford residence, defense counsel emphasized that, during the victim's forensic interview, she stated that the defendant had penetrated her anally with his penis while she faced the wall, but she then testified at trial that the defendant had penetrated her anally and vaginally with his fingers while she faced him. Counsel argued: "Those are not inconsistent. Those are directly contradictory statements. . . . [I]t doesn't make any sense." Likewise, with respect to the Cummings Park incident, defense counsel highlighted that, during the victim's forensic interview, she stated that the defendant touched her breasts and vagina but denied that "anything [came] out of [the defendant's] penis . . . ." At trial, however, the victim testified that the defendant had not touched her breasts or vagina but that "something sticky" came out of his penis and got on her hand. Counsel characterized this as "the kind of contradiction that raises reasonable doubt . . . ." He further argued to the jury that

timony of the state's expert, Madigan, to reinforce this argument. He emphasized Madigan's acknowledgment that true contradictions, as opposed to the incremental disclosure of additional details over time, may indicate fabrication, arguing that her testimony revealed that such contradictions "are a telltale sign of a false accusation" and "not something you would expect [during] the process of disclosure."[16] Defense counsel argued that the victim changed her account of the abuse "to make her two stories more consistent and more believable," and that the discrepancies he had highlighted throughout trial constituted precisely the type of contradictions indicative of fabricated allegations.[17]

Defense counsel also focused on the timing, progression, and content of the victim's disclosures as part of his broader effort to demonstrate that her account of the abuse was unreliable. Through his cross-examination of the victim, he explored the circumstances surrounding her disclosures to English, family members, the police,

"the only thing [the victim] didn't directly contradict is the Bridgeport incident. And [do] you know why? Because she didn't give any details in 2018 to contradict."

[16]Defense counsel argued: "I asked . . . Madigan, isn't it true that contradictions . . . are a telltale sign of a false accusation? [Madigan] said yes, but she wanted an example. And I gave her an example. I said, for instance, if a child said first, he put his penis in my mouth, but then later [the child] said no, he didn't put his penis in my mouth, he put his finger in my vagina. [Madigan] said, yes, that would be a contradiction. *That's not something you would expect* [*during*] *the process of disclosure.* That's the kind of thing that's indicative of a false allegation. That . . . is reasonable doubt, and it came from the state's own . . . expert witness. . . . [T]hat's what reasonable doubt is. It's the kind of doubt that causes you in the serious affairs of your life to hesitate to act. And that analogy is directly analogous to what happened here." (Emphasis added.)

[17]Defense counsel urged the jurors to "look carefully" at the instructions on credibility and inconsistent statements, emphasizing that "credibility is everything in this case" and arguing that "any question" about the victim's credibility constituted reasonable doubt because, "for all intents and purposes," her testimony supplied the only evidence supporting the charged offenses. Specifically, counsel maintained: "You can't convict [the defendant] of these heinous crimes if you have a question about [the victim's] credibility, and the fact that she said such diametrically opposite, contradictory things has to create questions about her credibility in your mind[s]."

and Sauter, and sought to challenge the consistency of her explanations regarding how and when she came forward with the allegations.[18] He further elicited that, during the February 2018 forensic interview, the victim stated that she did not recall any abuse besides the three incidents she described at the time. At trial, however, she testified that the abuse occurred many more times when she was between the ages of five and twelve, although she had not previously disclosed those additional memories to "anybody on the planet . . . ." Defense counsel further emphasized that the victim repeatedly claimed not to

[18]The concurring and dissenting opinion views this case as "unique" because defense counsel argued that the victim's testimony that reading a book in school " 'triggered' " memories she had " 'kept buried inside' " or repressed was incompatible with her later testimony that she " 'never forgot' " the abuse. Part II A of the concurring and dissenting opinion. We believe that that argument mischaracterizes the victim's testimony.

When defense counsel first asked whether the book "triggered memories" of the abuse, the victim said "[y]es." But, when counsel tried to reframe the victim's answer as meaning that she had previously forgotten the abuse, she unequivocally rejected that characterization, responding: "I never forgot. I just never found the ability to talk about it because I was in constant fear, and [the defendant] kept bribing me by buying me stuff." The victim likewise declined counsel's repeated attempts to characterize her experience as recovering "long lost memories," explaining that the book "triggered" memories that she had "kept buried inside . . . ." And, when defense counsel later suggested that, if the book had "triggered [the victim] to remember these incidents," then she necessarily "didn't remember them" when she was twelve years old, the victim rejected that premise, responding: "I did." Thus, the victim never testified that she had forgotten or repressed the abuse until the book caused her to recover those memories for the first time. Rather, she consistently maintained that she had always remembered the abuse but had "buried" it, "sort of just kept it down," and did not tell anyone about the abuse, other than the two schoolmates to whom she did disclose it, because she "was in constant fear," had been told not to disclose it, had been bribed to remain silent, and "was scared that [disclosure] would end up hurting" her sisters insofar as the defendant was their father.

The victim never testified that the memories had been absent from her consciousness or that she had repressed them. To the contrary, she testified that she "never forgot" the abuse. Whether the jury credited that explanation is, of course, a question of fact. We disagree only with the assertion of the concurring and dissenting justice that this presents a "unique" case because the defense theory was that the victim's account "not only of the alleged crimes but *of the delay itself* was inconsistent . . . ." (Emphasis in original.)

remember statements she had made during her forensic interview, despite acknowledging that she had reviewed a recording of the interview just three weeks prior to trial. In closing, counsel relied heavily on the victim's inability to recall her prior statements or to provide any details about the additional abuse in arguing that her allegations had evolved over time because they were fabricated rather than remembered.

Defense counsel likewise emphasized the absence of physical or corroborating evidence and argued that aspects of the victim's allegations were implausible. For example, counsel highlighted that N had bathed the victim on the day of the incident at the Stamford residence yet testified that she observed no signs of abuse. Counsel further argued that the victim had changed her account of that incident because, as she got older, she realized "how [im]plausible [it is] that a grown man put his adult penis in her five year old buttocks and there'd be no physical signs." Counsel also highlighted the evidence that contradicted the victim's accounts, including testimony that the defendant and his brothers did not play organized outdoor soccer, and Diaz did not begin selling food at those games, until 2015—several years after the alleged Bridgeport incident—and that the defendant did not treat the victim differently than her sisters.

Defense counsel further argued that the victim's fabrication was allowed to gain traction because the police had failed to adequately investigate the victim's claims. Throughout closing argument, counsel repeatedly criticized Lugo for failing to interview potential witnesses, to pursue corroborating information, or to investigate and verify the circumstances surrounding the victim's disclosure at school.[19] Counsel argued that these inves-

[19]Defense counsel argued that the inadequate police investigation directly undermined the state's ability to satisfy its burden of proof and specifically criticized Lugo for failing (1) to interview M, who was present in the vehicle during the Cummings Park incident, (2) to enter the Stamford residence to confirm the layout, (3) to discover the full names of, and to question, the friends in elementary and middle school to whom the victim claimed to have disclosed the abuse, (4) to promptly

tigative deficiencies deprived the jury of evidence that could have confirmed or disproved the victim's allegations, and, thus, the inadequate investigation undermined the state's ability to prove the defendant's guilt beyond a reasonable doubt.

The victim's testimony that she disclosed the abuse to Maya and DeAndre several years prior to 2018 further undermines the defendant's contention that his defense depended on persuading the jury that the victim's allegations were not credible simply because she delayed disclosure. The victim testified that she told Maya about the Bridgeport incident shortly after it occurred and later disclosed the incidents at the Stamford residence and Cummings Park to DeAndre when they were in middle school. She likewise referenced her disclosure to DeAndre during the forensic interview. Thus, if credited, the victim's testimony established that she had disclosed the abuse to her classmates years before her 2018 disclosure to English. Defense counsel, however, incorporated these purported earlier contemporaneous disclosures into his broader fabrication theory. During closing, counsel emphasized that the victim could not provide the last names of Maya or DeAndre, despite describing them as close friends, and argued that it was not believable that she remembered disclosing the abuse to those friends but could not recall their full names. Counsel further highlighted that law enforcement officers never identified, located, or interviewed either individual.

Thus, as in *Adam P.*, the record in the present case does not support "the defendant's efforts on appeal to portray the delay as the centerpiece of his defense . . . ." *State* v. *Adam P.*, supra, 351 Conn. 238. Even if we assume that defense counsel tempered his reliance on delayed disclosure during closing argument in anticipation of the trial court's instruction, the record nevertheless demonstrates that the defense theory did not depend

take a statement from English, (5) to speak to the teacher of the class in which the victim was triggered to disclose, (6) to attempt to locate the book the victim was reading in that class, and (7) to interview the school psychologist with whom the victim spoke.

on persuading the jury that the victim was untruthful merely because she delayed in reporting the abuse. Rather, counsel advanced a comprehensive fabrication theory, arguing that the victim had falsely accused the defendant because she was angry with him for taking her quinceañera money. In support of that theory, counsel argued that evidence regarding the timing and circumstances of the victim's disclosures, contradictions and inconsistencies between her forensic interview and trial testimony, the evolution of her allegations over time, implausibilities in her account, and deficiencies in the police investigation all combined to demonstrate that the allegations were fabricated. Thus, as in *Adam P.*, "the jury was able to appreciate [the defendant's theory of] defense even if it arguably believed it was constrained to disregard delay in assessing the [victim's] credibility." Id., 236. "[T]he jury was able to assess the [victim's] credibility by considering other factors, such as [her] consistency while testifying, that both the trial court and defense counsel had emphasized." Id., 239.

We next consider the strength of the state's case. We agree that the victim's credibility was central in the present case, and, based on the lack of physical or forensic evidence corroborating the abuse, we recognize that the state's case was not particularly strong. See, e.g., *State* v. *Giovanni D.*, 353 Conn. 742, 760, 346 A.3d 945 (2025) ("[g]iven the lack of physical evidence or eyewitnesses to the alleged abuse, the state's case was not an exceedingly strong one"); *State* v. *Freddy T.*, 200 Conn. App. 577, 599, 241 A.3d 173 (2020) ("[i]n cases of sexual assault or risk of injury to a child, a lack of corroborating physical evidence or any witnesses to the alleged sexual assaults . . . weakens the state's case" (citation omitted; internal quotation marks omitted)). Nevertheless, a sexual abuse case "is not automatically weak"; *State* v. *Felix R.*, 319 Conn. 1, 18, 124 A.3d 871 (2015); just because there is a "lack of conclusive physical evidence corroborating sexual

assault," especially when, as in the present case, there is other corroborating evidence introduced at trial. Id., 19.

Although there was no physical evidence of the sexual abuse, the state's case was not devoid of supporting evidence. The victim's older sister, N, testified about the day of the incident at the Stamford residence and the layout of the house, all of which largely corroborated the victim's testimony.[20] Additionally, English testified regarding the victim's initial disclosures and corroborated several aspects of the victim's testimony concerning the circumstances of those disclosures, including the victim's fears about disclosure.[21] Finally, Madigan's testimony about the behavioral characteristics typical of child sexual assault victims provided some context for the victim's accounts.

Thus, this was neither an exceptionally strong case nor one entirely devoid of corroboration. Although the

[20]N testified that she was supervising the victim and cooking upstairs while the defendant was in the basement when she realized that she could not find the victim. N began calling the victim's name, and, when N checked the basement, the defendant told her that the victim was not there. N rapidly searched the house and eventually found the victim in the basement sitting next to the defendant on the sofa. When N asked the defendant why he had denied that the victim was downstairs, he claimed the victim had been in the laundry room "folding a hose"—which N had never known the victim to do. Later that day, the victim told N that she did not answer when called because she had been playing a "game" with the defendant in which she was his "girlfriend," prompting N to confront the defendant and to tell him that she was uncomfortable with him playing those types of games.

[21]English testified that, in February 2018, the victim came to see her, appearing "very closed off" and "uncomfortable," which was uncharacteristic of the victim's usual "confident and bubbly" demeanor. The victim told English that she was in another class and that they were reading something about rape. When English asked the victim if someone had touched her, the victim nodded affirmatively and told English that "she had been raped as a child." English testified that, when the victim came to speak with her again the following day, she appeared "extremely sad," was "tearing up," and disclosed to English that it was "her stepfather" who had sexually abused her. English testified that, when she told the victim that she had to contact the Department of Children and Families, the victim broke down and expressed that she was very nervous about her mother finding out and her siblings being taken away from their father.

state's case depended heavily on the victim's credibility, the corroborative testimony presented provided some independent support for aspects of the victim's accounts and distinguishes this case from one resting solely on the victim's uncorroborated testimony. Accordingly, the relative weakness of the state's case does not, in light of the foregoing analysis, persuade us that it is reasonably probable that the challenged instruction infected the verdict.

Finally, the defendant argues that, unlike in *Adam P.*, the jury in the present case found him guilty on all counts, and, therefore, there is no split verdict from which this court may infer that the jury evaluated the victim's credibility on the basis of evidence other than the delayed disclosure. See *State* v. *Adam P.*, supra, 351 Conn. 242. We are not persuaded. As we observed in *Adam P.*, "there are limits to what inferences we may properly draw from a jury's verdict . . . ." Id. In any event, even if we were to assume that the absence of a split verdict lends some support to the defendant's position, it would not undermine our conclusion that the instructional error was harmless.[22] As we have explained, the record independently supports our conclusion that the jury was able to assess the victim's credibility on the basis of evidence other than the mere fact of the delayed disclosure.

In conclusion, our review of the record persuades us that the defendant's theory of defense that the victim fabricated the allegations did not hinge on the jury's ability to infer untruthfulness from the mere fact of delay in disclosure. The record reflects that the defendant's theory of defense was that the victim fabricated the allegations against the defendant shortly after the victim's quinceañera because she was angry with him

[22]Any comparison to the split verdict in *Adam P.* is further limited because the inference drawn in that case rested on the jury's differing treatment of otherwise similar allegations involving two victims, whereby the jury found the defendant not guilty on two counts involving only one victim and guilty of a similar count involving only the other victim. See *State* v. *Adam P.*, supra, 351 Conn. 242.

for keeping the money she had received. Defense counsel argued that several aspects of the evidence adduced at trial indicated that the victim had fabricated the allegations and advanced several reasons why the jury should reject the victim's testimony as not credible. Thus, "the jury had sufficient grounding on which to make a credibility determination . . . ." Id., 242–43.

In light of the adequacy of the jury instructions as a whole, the modified language of the delayed disclosure instruction, the defendant's broader fabrication theory, and the evidence presented at trial, we conclude that the defendant has not demonstrated that it is reasonably probable that the improper instruction misled the jury in reaching its verdict.

III

The defendant next argues that the delayed disclosure instruction improperly infringed on his constitutional right to present a closing argument. He claims that the trial court's instruction prevented defense counsel from arguing that the victim's delayed disclosure undermined her credibility and supported the defense theory that she had fabricated the allegations. The defendant further contends that this alleged infringement constituted structural error requiring automatic reversal. We disagree.

The following principles guide our analysis. "The opportunity for the defense to make a closing argument in a criminal trial has been held to be a basic element of the adversary process and, therefore, constitutionally protected under the sixth and fourteenth amendments. . . . Closing argument is an integral part of any criminal trial, for it is in this phase that the issues are sharpened and clarified for the jury and each party may present his theory of the case. Only then can [counsel] . . . argue the inferences to be drawn from all the testimony, and point out the weaknesses of their adversaries' positions. And for the defense, closing argument is the last clear chance to persuade the trier of fact that there may be reasonable

doubt of the defendant's guilt." (Internal quotation marks omitted.) *State* v. *Silva*, 339 Conn. 598, 625–26, 262 A.3d 113 (2021). We "have consistently recognized that the sixth amendment right to present a closing argument protects a criminal defendant's right to present his theory of the defense at the close of evidence." *State* v. *Gonzalez*, 338 Conn. 108, 130, 257 A.3d 283 (2021). The right is abridged not only when a defendant is denied summation altogether, but also when he "is deprived of the opportunity to raise a significant issue that is reasonably inferable from the facts in evidence," particularly when "the prohibited argument bears directly on the defendant's theory of the defense." (Internal quotation marks omitted.) Id., 128; accord *State* v. *Arline,* 223 Conn. 52, 64, 612 A.2d 755 (1992).

At the same time, "the scope of final argument lies within the sound discretion of the court . . . subject to appropriate constitutional limitations. . . . It is within the discretion of the trial court to limit the scope of final argument to prevent comment on facts that are not properly in evidence, to prevent the jury from considering matters in the realm of speculation and to prevent the jury from being influenced by improper matter that might prejudice its deliberations. . . . [Although] we are sensitive to the discretion of the trial court in limiting argument to the actual issues of the case, tight control over argument is undesirable when counsel is precluded from raising a significant issue." (Internal quotation marks omitted.) *State* v. *Robert R.*, 340 Conn. 69, 80, 262 A.3d 810 (2021).

The record does not demonstrate that the trial court prevented defense counsel from presenting the defendant's theory of defense to the jury during closing argument. Although the court informed the parties, prior to closing argument, that it intended to provide the modified delayed disclosure instruction in its final charge, the court did not circumscribe the permissible scope of summation. The court did not tell defense counsel or otherwise rule that he could not argue delayed disclosure

or advance any of his arguments in support of his fabrication theory. Nor did the court prohibit counsel from urging the jury to reject the victim's testimony. Rather, *after* the parties had finished delivering their closing arguments, the court instructed the jury that "the mere fact of [the victim's] delay" should not be considered in evaluating her credibility.

The delayed disclosure instruction therefore concerned only the jury's use of evidence; it did not restrict the scope of defense counsel's summation. See *State* v. *Ames*, 171 Conn. App. 486, 516–17, 157 A.3d 660 ("[r]egarding a trial court's interference with closing argument, our courts have found reversible error only [when] the trial court affirmatively precluded defense counsel from discussing particular issues during closing argument"), cert. denied, 327 Conn. 908, 170 A.3d 679 (2017). Cases recognizing violations of a defendant's right to present a closing argument have involved affirmative trial court rulings precluding the defense from making specific arguments during closing. See *State* v. *Robert R.*, supra, 340 Conn. 86; see also, e.g., id., 77, 79–80, 89 (precluding defense counsel from arguing that victim planted defendant's DNA on paper towel following consensual sexual encounter to substantiate her false allegations violated defendant's right to present closing argument); *State* v. *Arline*, supra, 223 Conn. 63–65 (precluding defense counsel from referring to "the only evidence from which the jury could infer motive or bias" violated defendant's right to present closing argument); *State* v. *Ross*, 18 Conn. App. 423, 431–34, 558 A.2d 1015 (1989) (precluding defense counsel from commenting that state's sole eyewitness did not testify at trial violated defendant's right to present closing argument). But cf. *State* v. *Silva*, supra, 339 Conn. 622–28 (there was no violation of defendant's right to present closing argument when trial court sustained objection to defense counsel's "missing witness argument"). The defendant has not identified, and we are not aware of, any case in which we have found a violation of a defendant's constitutional right to present a closing argument when defense counsel was not affirmatively

restricted during summation but instead claimed to be effectively constrained by the anticipated content of a forthcoming jury instruction.

Thus, this case differs from those involving "trial court interference that absolutely precluded . . . defendants from presenting the theory of their defenses." *State* v. *Gonzalez*, supra, 338 Conn. 132. Even if, as the defendant contends, the erroneous instruction effectively restricted counsel from relying on the mere fact of delay during summation because he could not properly urge the jury to disregard the court's instructions, the record does not support the conclusion that the defendant was deprived of the opportunity to present his fabrication theory to the jury. Indeed, defense counsel repeatedly addressed the timing and evolution of the victim's disclosures during closing argument. He challenged the victim's account of when and how she remembered the abuse, arguing that her claimed prior disclosures to friends were inconsistent with her testimony that the book she was reading in class later "triggered" repressed memories, and asserting that those explanations did not "make sense." Counsel further argued: "[I]f [the victim] really remembered all along, she just decided to tell now. Why wouldn't she just say that here?" Notwithstanding the challenged instruction, counsel expressly invited the jury to draw credibility inferences from the timing, progression, consistency, plausibility, and circumstances of the victim's disclosure. Thus, the challenged instruction neither foreclosed the defendant's principal contention that the victim lacked credibility nor prevented counsel from arguing that the state failed to satisfy its burden of proof. To the contrary, the defendant remained free to advance—and in fact did advance—his theory that the victim had fabricated the allegations because she was angry with him.

The defendant's reliance on *State* v. *Robert R.*, supra, 340 Conn. 69, does not persuade us otherwise. In *Robert R.*, we concluded that the trial court had violated the defendant's constitutional right to present a closing

argument when it barred defense counsel from arguing to the jury that the victim had planted physical evidence on a paper towel after a consensual sexual encounter with the defendant in an effort to substantiate her false allegations that the defendant had sexually assaulted her. See id., 77, 79–80, 89. We found this restriction on defense counsel's arguments particularly significant because the prosecutor had argued that the victim had no motive to fabricate her testimony and that the defendant had repeatedly lied. Id., 88. We concluded that, because the case turned on questions of credibility, it was "disconcerting that the defendant was not afforded an equal opportunity to emphasize his theory" that the victim had also lied. Id.

The present case differs in both form and effect. The prohibited argument in *Robert R.* supplied an exculpatory explanation for how inculpatory physical evidence came to exist at all—namely, that the victim herself manufactured evidence to corroborate her false accusation. The precluded argument would have directly undermined the evidentiary basis of the state's case. The challenged instruction in the present case, however, restricted only the jury's ability to draw a permissible credibility inference arising solely from the timing of delayed disclosure; it did not prevent defense counsel from arguing that the circumstances surrounding the disclosure showed that the victim had lied about the allegations or otherwise lacked credibility. Further, evidence that the victim provided contradictory accounts of the alleged abuse and possessed a motive to fabricate more directly supported the defendant's theory that the victim lied than did the mere fact that the disclosure was first made to an authority figure years after the abuse. Under these circumstances, the challenged instruction did not foreclose defense counsel from advancing the central premise of the defendant's defense and, therefore, did not operate in the manner of the affirmative restrictions on summation recognized in our prior cases.

IV

Finally, the defendant claims that the trial court erred when it admitted evidence of the video recording of the victim's forensic interview. He argues that the recording was inadmissible hearsay and that the court erroneously admitted it under the medical diagnosis or treatment exception because there was no evidence that the victim understood the interview to have a medical purpose or that her statements were reasonably pertinent to treatment. He further contends that, to the extent the court admitted the recording as a prior consistent statement, that ruling also was improper because the recording contained statements beyond those necessary to rehabilitate the victim, and the jury received no limiting instruction. The state responds that we need not reach the merits of those evidentiary arguments because the court relied on several grounds to admit the recording, including the rule of completeness; see Conn. Code Evid. § 1-5; which the defendant has not challenged on appeal. Because the defendant has not challenged the rule of completeness as an independent basis for the trial court's ruling, the state maintains that this court cannot grant him relief on this evidentiary claim. We agree with the state.

The record reflects that, after defense counsel used statements the victim had made during the forensic interview to impeach the victim on cross-examination and later elicited testimony from Sauter concerning statements the victim had made or omitted during the forensic interview,[23] the prosecutor sought admission

[23]Before Sauter testified, the prosecutor objected on the grounds that the victim had not been properly confronted with the contents of the forensic interview, as is required for a prior inconsistent statement used for impeachment purposes, and that many of the asserted inconsistencies had already been introduced during cross-examination. The trial court overruled the objection, finding a sufficient evidentiary foundation for admissibility under § 6-10 of the Connecticut Code of Evidence. In doing so, however, the court expressly cautioned defense counsel that, by introducing Sauter's testimony regarding the victim's prior statements from the recorded forensic interview, he was "opening the door to the state's offering the entire video under the doctrine of completeness." Although defense counsel disagreed that his use of Sauter's testimony

of the recording on multiple grounds. The prosecutor first argued that, under the rule of completeness, the remainder of the interview should be admitted because the defense had introduced prior inconsistent statements from the interview and the additional portions were necessary to provide context. The prosecutor next argued that, because the victim's credibility had been impeached with prior inconsistent statements, the remainder of the interview constituted prior consistent statements that were consistent with her trial testimony and were admissible to rebut that impeachment. The prosecutor further argued that she had laid a foundation for its admission under the business records exception to the hearsay rule. The trial court then raised the medical diagnosis or treatment hearsay exception under § 8-3 (5) of the Connecticut Code of Evidence, after which the prosecutor argued that Madigan's testimony established that a forensic interview serves to assess a child's medical and mental health needs, that the victim received therapy at the Child Guidance Center of Southern CT following the interview, and that the victim later underwent a forensic medical examination.

Defense counsel objected, arguing that the medical diagnosis or treatment exception did not apply because there was no foundation that the interview was conducted for purposes of medical treatment, and because it was purely investigatory. He also argued that the rule of completeness did not warrant admission of the entire interview because the prior inconsistent statements elicited on cross-examination were not misleading or taken out of context. Finally, he argued that any prior

would have that effect, arguing that he was offering live testimony rather than the recording itself, the court advised: "[T]he more I'm listening to you, and you want to offer a witness who was on video five years ago talking to the [victim], rather than offering the portion of the video [in which] the [victim] said what you said she said—and I'm not disputing the accuracy of what she said—the recitation, not necessarily accuracy in the sense of truthfulness. But . . . your argument is . . . different from what she testified to here under oath. I grant that. . . . I'm just letting you know that the consequences of that may allow the state on rebuttal to offer the video. But we're not there yet."

consistent statements should be elicited from the witness rather than admitted through the recording, which he maintained was unfairly prejudicial. The trial court rejected the applicability of the business records exception but stated that it would admit the recording "on several grounds."[24] The court also indicated that the recording was admissible under the medical diagnosis or treatment exception.

Although the defendant acknowledges that the prosecutor offered the rule of completeness as a ground for admitting the forensic interview during the trial, the defendant challenges only the medical treatment and prior consistent statement theories of admissibility on appeal. Relying on *State* v. *Lester*, 324 Conn. 519, 153 A.3d 647 (2017), the defendant argues in his reply brief that he need not challenge the rule of completeness ground because the trial court's articulated basis for admitting the evidence rested on the medical treatment and prior consistent statement grounds and that "[a] reviewing court evaluates an evidentiary ruling based on the grounds articulated by the trial court in admitting the evidence . . . not on the various, alternative rationales offered by the state."[25] (Citation omitted.)

We are not persuaded. Although the defendant correctly observes that appellate review ordinarily focuses

[24]The recording was then entered into evidence in its entirety by agreement of the parties, with defense counsel commenting: "I don't want it in, but, if it's coming in, [the jury] should just listen to the whole thing."

[25]The defendant did not challenge the trial court's reliance on the rule of completeness in his principal brief. For the first time in his reply brief, he briefly argues that the rule of completeness would not apply to the introduction of the forensic interview. "It is axiomatic that a party may not raise an issue for the first time on appeal in [his] reply brief. . . . Although the function of the appellant's reply brief is to respond to the arguments and authority presented in the appellee's brief, that function does not include raising an entirely new claim of error." (Internal quotation marks omitted.) *Barlow* v. *Commissioner of Correction*, 343 Conn. 347, 362 n.2, 273 A.3d 680 (2022); see also *State* v. *Council*, 344 Conn. 113, 121, 277 A.3d 1251 (2022) ("[a]lthough the defendant makes cursory reference to [the unchallenged ground for exclusion] in his reply brief, it is well settled that we will not consider claims of error that are raised for the first time in an appellant's reply brief").

on the grounds articulated by the trial court, the record in the present case demonstrates that the trial court admitted the recording on multiple, independent grounds, including the rule of completeness. Prior to the admission of the recording, the trial court observed that defense counsel's use of selected portions of the forensic interview to impeach the victim on cross-examination and through Sauter's testimony could "[open] the door to the state's offering the entire video under the doctrine of completeness." Thereafter, when the prosecutor formally offered the recording into evidence, she expressly relied on the rule of completeness and the business records exception, and argued that it could also be admitted as a prior consistent statement. Although the court rejected the state's reliance on the business records exception, it stated that it would admit the recording "on several grounds." The court did not specifically limit its ruling to the medical treatment exception to the hearsay rule or the rule concerning the admission of prior consistent statements; nor did it reject the state's reliance on the rule of completeness. Accordingly, the record does not support the defendant's contention that the trial court did not rely on the rule of completeness as an independent basis for admitting the recording of the entire forensic interview into evidence.[26]

Thus, the defendant's failure to challenge on appeal each independent basis for admitting the forensic interview is dispositive. "[W]hen an appellant challenges a trial court's adverse ruling, but does not challenge all

[26]Defense counsel renewed his objection to the admission of the forensic interview after the close of evidence, focusing on the admissibility of the video recording under the medical treatment hearsay exception, and the trial court heard argument on the motion immediately before the charge conference. In overruling counsel's objection, the court noted that the prosecutor had offered the recording "under several evidentiary theories . . . ." Although the court did not explicitly reference the rule of completeness, the court noted that "the defendant properly . . . sought to have certain inconsistencies [between] the [victim's] . . . forensic interview and [her] trial testimony brought before the jury, and *it was only after that had been accomplished that the court allowed the state to offer the full interview*." (Emphasis added.)

independent bases for that ruling, the appeal is moot."[27] *State* v. *Lester*, supra, 324 Conn. 527. Even if we agreed with the defendant that the recorded interview was not admissible under the medical treatment exception or as a prior consistent statement, the unchallenged rule of completeness ground would remain an independent basis for the trial court's ruling. See id., 526–28; see, e.g., *State* v. *Council*, 344 Conn. 113, 121–22, 277 A.3d 1251 (2022). For that reason, we cannot grant the defendant any practical relief. See, e.g., *State* v. *Lester*, supra, 528. Consequently, the defendant's evidentiary claim that the video recording of the victim's forensic interview was improperly admitted is moot.

The judgment is affirmed.

In this opinion MULLINS, C. J., and ALEXANDER and DANNEHY, Js., concurred.

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[27] We appreciate the distinction, noted by Justice D'Auria in his dissenting opinion, between jurisdictional and prudential concerns. Nevertheless, this case is on all fours with *State* v. *Lester*, supra, 324 Conn. 519, which neither party has asked us to overrule. We agree that, if the analysis set forth by Justice D'Auria were advanced in a future case, it would merit serious consideration. We note, however, that we do not conclude that the defendant's claim is moot because it was inadequately briefed. Rather, we are concluding that the defendant is incorrect when he affirmatively argues that the rule of completeness was not one of the bases for the trial court's decision. For the reasons previously set forth in this opinion, we disagree with Justice D'Auria's suggestion that the record is unclear as to whether the trial court relied on the rule of completeness when it overruled defense counsel's objection to the admission of the video of the interview. Accordingly, regardless of whether the defendant's failure to address the rule of completeness is characterized as rendering his claim moot or as rendering his claim abandoned—based on his position that it was not an independent ground supporting the trial court's ruling—the result in the present case is the same.