

STATE v. NICHOLAS PAPANTONIOU, AC 40554

Judicial District of New Haven at G.A. 23

Criminal; Whether Prosecution’s “Generic Tailoring Argument” Violated Defendant’s State Constitutional Right to be Present at Trial; Whether Prosecutorial Impropriety Deprived Defendant of a Fair Trial. The defendant was arrested and charged with felony murder, burglary in the first degree, and criminal possession of a firearm in connection with the murder of Larry Dildy during a burglary. At trial, the defendant’s codefendant, William Coutermash, testified that he and the defendant had planned to rob Dildy for drugs, that he drove them to Dildy’s apartment, that the defendant entered Dildy’s apartment alone with a gun, and that he picked up the defendant from another street shortly thereafter. In contrast, the defendant testified that Coutermash took him to Dildy’s apartment without his knowledge, asked him to help collect money from Dildy, and gave him a gun. The defendant further testified that he and Coutermash entered Dildy’s apartment together, that Coutermash and Dildy got into a fight that he attempted to break up, and that the gun accidentally discharged during his ensuing struggle with Dildy. During closing argument, the defendant’s attorney argued that the evidence supported the defendant’s version of the events. The prosecutor rebutted during the state’s closing argument that “the defendant has had access to . . . every single piece of information that was presented to you . . . [and] was able to sit there and listen to and come up with his version. . . . He attempts to create a story that fits all of the evidence . . . but it’s not going to work because the evidence shows you that this version makes zero sense.” A jury found the defendant guilty of felony murder, burglary in the first degree, and criminal possession of a firearm, and he was sentenced to 45 years of imprisonment. The defendant appeals, claiming that the prosecution violated his state constitutional right to be present at his trial when, during closing argument, the prosecutor suggested that, by virtue of the fact that he was present at the trial, the defendant had the opportunity to “tailor” his own testimony to explain respond to the evidence and testimony of other witnesses presented at trial. The defendant acknowledges that both the United States Supreme Court and the Connecticut Supreme Court have held a prosecutor’s “generic tailoring argument” does not violate a defendant’s federal constitutional right to be present a trial, but he urges that the state constitution offers broader protection than the federal one and accordingly that the Appellate Court should now hold that a generic tailoring argument violates a defendant’s right to be present at trial that is guaranteed by the Connecticut Constitution. The defendant also claims on appeal that prosecutorial impropriety denied him a fair trial. He claims that, during closing argument, the prosecutor engaged in impropriety in (1) arguing that the evidence showed that Dildy’s shooting could not have been accidental, and (2) stating that the defendant called his attorney—and not 911—after leaving Dildy’s apartment.