R. A. *v.* R. A.*
(AC 41990)

Bright, C. J., and Elgo and Clark, Js.

Syllabus

The defendant appealed to this court from the judgment of the trial court dissolving her marriage to the plaintiff and making certain orders regarding the parties' finances and custody of the parties' minor children. *Held*:

1. The defendant's claim that the trial court improperly included her minor child from a previous relationship in the custody order without accounting for the rights of the minor child's biological father was moot: because the biological father was a party to a subsequent proceeding in which the plaintiff was granted custody of the minor child, there was no practical relief that could be afforded to the defendant, and this court lacked subject matter jurisdiction to consider the defendant's claim.
2. The trial court did not abuse its discretion in crafting its visitation order, which required the parties to collaborate on the terms of visitation: the court's order was supported by the record, particularly the testimony of a family relations counselor, which the trial court was free to credit.
3. The defendant could not prevail on her claim that the trial court relied on inaccurate information concerning the plaintiff's finances in fashioning its child support orders: because the court's order completely absolved her of any child support obligations, the defendant did not demonstrate any harm resulting from the allegedly improper order; moreover, because the court was presented with significant evidence regarding the parties' relative financial standing, employment histories, and future prospects, and it considered the possible costs that the defendant would incur to visit her children following their proposed relocation, this court would not disturb the child support orders.

Argued April 5—officially released December 21, 2021

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of New London at Norwich and tried to the court, *Carbonneau*, *J.*; judgment dissolving the marriage and granting certain other relief, from which the defendant

* In accordance with federal law; 18 U.S.C. § 2265 (d) (3) (2018); we decline to identify any party protected or sought to be protected under a protective order or a restraining order that was issued or applied for, or others through whom that party's identity may be ascertained.

appealed to this court. *Appeal dismissed in part*; *affirmed.*

R. A., self-represented, the appellant (defendant).

Logan A. Carducci, with whom, on the brief, was *Keith J. Anthony*, for the appellee (plaintiff).

Opinion

ELGO, J. The defendant mother, R. A.,[1] appeals from the judgment of the trial court dissolving the parties' marriage and granting the plaintiff father, R. A., sole custody of their minor children. On appeal, the defendant contends that the court (1) improperly included the defendant's child from a previous relationship in the custody order, (2) inequitably set forth procedures for the parties to collaborate on a visitation scheme, and (3) relied on inaccurate information concerning the plaintiff's finances in crafting its child support order.[2] We dismiss as moot the defendant's appeal as to her first claim and affirm the judgment of the trial court in all other respects.

The following facts and procedural history are relevant to this appeal. The parties met while the plaintiff was stationed in Hawaii and serving in the United States Navy. Shortly after meeting, the parties married on February 23, 2011. At that time, the defendant had custody of O, her minor child from a previous relationship.[3] The

[1] At all times, the defendant has appeared in a self-represented capacity.

[2] Although the defendant has raised additional claims on appeal, she has not adequately briefed those claims. See *Seaport Capital Partners, LLC* v. *Speer*, 202 Conn. App. 487, 490, 246 A.3d 77 (adequate briefing is necessary for appellate review), cert. denied, 336 Conn. 942, 250 A.3d 40 (2021). Accordingly, we do not consider the merits of those claims. See *Altraide* v. *Altraide*, 153 Conn. App. 327, 330 n.2, 101 A.3d 317, cert. denied, 315 Conn. 905, 104 A.3d 759 (2014).

[3] At trial, O's biological father, B, was mentioned only twice. When asked whether B was "involved" in O's life, the plaintiff responded in the negative. The defendant later noted B's child support obligations with respect to O. Neither party referenced the scope of B's parental rights as to O at any time.

parties thereafter had three children together: T, Q, and A.

In April, 2016, the plaintiff was transferred from Hawaii to Naval Submarine Base New London in Groton (naval base). The parties then purchased a house in the state of Washington, where the defendant and the four minor children resided for approximately six months. The defendant and the minor children subsequently relocated to Connecticut and moved into the plaintiff's apartment, while the plaintiff resided at the naval base barracks.

On December 23, 2016, an altercation ensued between the parties at the naval base that culminated in a motor vehicle collision.[4] While the parties characterized that altercation differently at trial, the court credited the plaintiff's testimony that the defendant "intentionally struck his car with hers in order to prevent him from leaving the scene." Following that incident, on December 30, 2016, the plaintiff filed an application for an emergency ex parte order of custody. The plaintiff then commenced the present dissolution action on January 11, 2017.

The defendant filed a motion to dismiss on January 20, 2017, arguing that Connecticut lacked jurisdiction over the parties pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (child custody act), General Statutes § 46b-115 et seq., and citing the existence of a pending dissolution proceeding in Hawaii. On January 23, 2017, the court, *Connors*, *J.*, held a hearing on both the motion to dismiss and the issue of emergency custody, at which both parties testified. The

[4] The plaintiff testified that, at the time of the altercation, security personnel at the naval base had instituted a Military Protective Order (protective order) stemming from the defendant's repeated attempts to contact the plaintiff's command. As the court clarified in its memorandum of decision, "[t]he [protective order] ha[d] no binding effect on [the defendant] because she is a civilian not subject to Navy discipline."

court then denied the motion to dismiss and took temporary emergency jurisdiction under the child custody act. With respect to the plaintiff's application for an emergency ex parte order of custody, the court awarded the parties joint legal custody but granted the plaintiff primary residence with the defendant able to participate in supervised visitation.[5] Following correspondence with the trial judge in the aforementioned Hawaii proceedings, the court took exclusive jurisdiction during a hearing on March 16, 2017, and sustained the plaintiff's objection to the defendant's prior motion to dismiss. Throughout the spring and summer of 2017, the defendant filed several motions requesting custody and increased access to the children, all of which were denied.

At the time of those proceedings, O was the subject of a concurrent neglect proceeding in the juvenile court of this state. On April 21, 2017, the court, *Driscoll*, *J.*, issued an order vesting the plaintiff with temporary custody of O. That order was entered into evidence as a full exhibit at trial in the present case.

Trial in the present matter commenced on February 23, 2018, and concluded on May 22, 2018. The plaintiff was represented by counsel, while the defendant was self-represented. On the final day of trial, the court, *Carbonneau*, *J.*, referred to the concurrent juvenile matter involving O, stating: "I was aware that Judge Driscoll had made his decision in the juvenile court case involving [the defendant]. And that I believe he has deferred all further action to [this] court, to decide in the dissolution file. I may be mistaken. I have not yet received a copy of his decision. So if there's something that we need to do or get from Judge Driscoll and [the juvenile court],

[5] The trial court, *Carbonneau*, *J.*, found that the defendant nevertheless arrived at the plaintiff's apartment—where the children were located—that evening. On January 25, 2017, the plaintiff moved separately for a temporary restraining order against the defendant, which was granted later that day.

I certainly will do that. But I'm [going to] operate on the notion that my orders will be sufficient to carry through and complete the functions here today." When the presentation of evidence concluded later that day, both parties agreed to present their final arguments to the court in written form.

The court issued a memorandum of decision on August 7, 2018, in which it rendered judgment dissolving the marriage and awarding the plaintiff custody of the minor children. With respect to O, the court stated in a footnote: "[The defendant] has an older child that is not issue of this marriage. This child was the subject of a [juvenile court] proceeding . . . [in which the court, *Driscoll*, *J.*,] found [O] to be neglected on January 18, 2018. [The court] vested guardianship and physical custody in [the plaintiff]. When [this] court refers to 'the children' in this decision, [O] is included."

The court also entered several orders concerning the defendant's child support obligations and visitation rights. More specifically, the court granted the defendant "access with the minor children under such conditions to which she and [the plaintiff] may reasonably agree in writing, traditional or electronic." In that order, the court listed several examples of "reasonable and appropriate telephonic and electronic contact," instructed the plaintiff to take steps to facilitate the defendant's contact with the minor children, and set forth a forty-eight hour notice requirement for the defendant's requests for visitation. The court also ordered that the defendant was not required to pay child support for any of the minor children, apart from outstanding arrearage payments regarding O. This appeal followed.[6]

[6] On November 12, 2019, the court, *Shluger*, *J.*, granted the plaintiff's October 29, 2019 application for an emergency ex parte order of custody of the four children. The defendant filed an amended appeal with this court to encompass that order on December 2, 2019, pursuant to Practice Book § 61-9, and this court granted the defendant's motion to file a supplemental brief on February 5, 2020. Although this court subsequently granted the defendant several extensions of time to do so, the defendant never filed

I

The defendant first claims that the court improperly included O in the custody order without accounting for the rights of O's biological father. We conclude that this claim has been rendered moot by subsequent orders of the Superior Court concerning the custodial status of O.

The following additional procedural history is relevant to our resolution of this claim. While this appeal was pending, the defendant brought a separate action on February 19, 2019, seeking custody of O. Both the plaintiff and O's biological father, B, were parties to that action. The matter proceeded to trial over the course of two days in March and June, 2021. On June 10, 2021, the court, *Shluger*, *J.*, rendered judgment, in which the court issued orders granting sole legal and physical custody of O to the plaintiff. The court specifically found that B "[has] no interest in parenting [O]" and that he "attended but did not actively participate in the trial." Although the defendant subsequently moved for a waiver of appeal fees, the court, *Newson*, *J.*, denied that motion the day it was filed.

On October 19, 2021, this court ordered the parties to submit supplemental briefs on the issue of whether the court's June 10, 2021 orders rendered the defendant's claim with respect to the custody of O moot. The plaintiff filed his supplemental brief on November 1, 2021; on the same day, the defendant requested a three week extension, which this court denied. This court then ordered that the defendant file her supplemental brief no later than November 8, 2021. The defendant filed that brief on November 8, 2021. Although it con-

her supplemental brief. As a result, we deem abandoned the defendant's amended appeal with respect to the ex parte order of custody. See, e.g., *Clelford* v. *Bristol*, 150 Conn. App. 229, 235, 90 A.3d 998 (2014) ("as a result of the failure to adequately brief the ruling of the court appealed from, we conclude that the defendant abandoned his sole appellate claim").

tains a lengthy list of perceived procedural faults and inequities associated with her various child neglect and family court proceedings, it does not substantively address whether Judge Shluger's June 10, 2021 orders rendered her claim regarding the custody of O moot.

"When, during the pendency of an appeal, events have occurred that preclude an appellate court from granting any practical relief through its disposition of the merits, a case has become moot. . . . It is axiomatic that if the issues on appeal become moot, the reviewing court loses subject matter jurisdiction to hear the appeal. . . . It is a [well settled] general rule that the existence of an actual controversy is an essential requisite to appellate jurisdiction; it is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . An actual controversy must exist not only at the time the appeal is taken, but also throughout the pendency of the appeal." (Internal quotation marks omitted.) *Dempsey* v. *Cappuccino*, 200 Conn. App. 653, 657, 240 A.3d 1072 (2020).

In his supplemental brief, the plaintiff argues that Judge Shluger's June 10, 2021 order supersedes Judge Carbonneau's August 7, 2018 custody order and, accordingly, deprives the defendant of any practical relief that this court could otherwise grant. We agree. The defendant's contention that B was not adequately represented when Judge Carbonneau issued his custody order was directly remedied by B's status as a party to the custodial matter before Judge Shluger.[7] There is accordingly

[7] We are aware that, on November 12, 2021, the defendant filed a late appeal (Docket No. AC 45119) of Judge Shluger's June 10, 2021 order. Irrespective of the outcome of that appeal, we reiterate that the alleged procedural defect with Judge Carbonneau's order—the absence of B from the proceedings—was still remedied by B's presence at the hearing before Judge Shluger. Accordingly, our analysis of the mootness issue is unaffected by the pendency of that late appeal.

no relief that this court can offer the defendant. We therefore conclude that the defendant's claim regarding the custody of O is moot.

II

The defendant also claims that the court's visitation orders were inequitable insofar as they required the parties to work collaboratively on structuring and scheduling visits.[8] The crux of the defendant's claim is that, by requiring both parties to agree on the terms of visitation, the court's orders do not adequately safeguard against the plaintiff unilaterally refusing the defendant access to her children. We do not agree.

"We utilize an abuse of discretion standard in reviewing orders regarding custody and visitation rights . . . . Nothing short of a conviction that the action of the trial court is one which discloses a clear abuse of discretion can warrant our interference." (Internal quotation marks omitted.) *Merkel* v. *Hill*, 189 Conn. App. 779, 787–88, 207 A.3d 1115 (2019). Our review of the record indicates that the court had a well established basis to fashion its visitation order as it did. As the plaintiff points out, the court heard directly from both the parties themselves and individuals who were familiar with the parties, their relationship with each other, and their interpersonal skills. In particular, the trial court credited the testimony of Lisa Reveruzzi, a family relations counselor who thoroughly investigated the matter and presented her recommendations at trial. During her investigation, Reveruzzi interviewed several social workers who had been involved with the parties, as

[8] The defendant also claims that the visitation order failed to create a framework for visitation between O and his half-siblings, who are the additional biological children of B. As discussed in part I of this opinion, O's status with respect to the parties is controlled by Judge Shluger's June 10, 2021 orders. We therefore do not consider that argument when assessing the propriety of Judge Carbonneau's orders.

well as Karen Goldfinger, a therapist whom the defendant met with on three occasions. Reveruzzi's testimony highlighted the plaintiff's proactive involvement in parenting the minor children, and contrasted it with her concern regarding the defendant's judgment. Reveruzzi specifically expressed her concern that "if [the defendant] was to have access with the children unsupervised, that there would be a risk that the children would not be returned to [the plaintiff]."

On the basis of her experience with the parties, Reveruzzi recommended that the plaintiff be the one to facilitate visitation of the minor children. The court, having observed Reveruzzi's testimony in person and weighed her input against that of other witnesses and evidence, chose to adopt her recommendations. Because the court was free to credit that testimony, we conclude that the court did not abuse its discretion in crafting its visitation order.

III

Last, the defendant claims that the court relied on inaccurate information concerning the plaintiff's finances in fashioning its child support orders. Specifically, the defendant alleges that the court failed to consider the plaintiff's receipt of certain government benefits. In response, the plaintiff contends that the defendant has not demonstrated any harm suffered as a result of the court's allegedly improper order. We agree with the plaintiff.

"The scope of our review of a trial court's exercise of its broad discretion in domestic relations cases is limited to the questions of whether the [trial] court correctly applied the law and could reasonably have concluded as it did. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action." (Citation omit-

ted; internal quotation marks omitted.) *Olson* v. *Mohammadu*, 310 Conn. 665, 671, 81 A.3d 215 (2013). "The [appellant] is entitled to relief from the court's improper rulings only if it was harmful. . . . To meet this burden in a civil case, the appellant must show that the ruling would likely affect the result." (Citation omitted; internal quotation marks omitted.) *Sander* v. *Sander*, 96 Conn. App. 102, 118, 899 A.2d 670 (2006) (appeal from judgment of dissolution challenging educational support order); see also *Van Nest* v. *Kegg*, 70 Conn. App. 191, 198, 800 A.2d 509 (2002) (errant factual finding in dissolution action "harmless because it did not form the basis of the court's order").

The child support order in question provides in relevant part that "[the defendant] shall pay zero support for the minor children, issue of this marriage. [The plaintiff] shall pay 100 percent of any unreimbursed health-related and work-related day care costs for the minor children. . . . [The defendant] shall pay zero child support for her older son currently under the guardianship of [the plaintiff]." Given the plain mandate of that order, it is clear that the court's reliance on even inaccurate information did not harm the plaintiff, as that order completely absolves her of *any* child support obligations.

Moreover, the court had before it significant evidence and testimony regarding the parties' relative financial standing, employment histories, and future prospects that led to its determination. In particular, the court emphasized the possible costs that the defendant would incur to visit her children following their proposed relocation to Florida with the plaintiff and noted that reducing the defendant's prospective child support obligations to zero would best serve the interests of fairness and equity. On the basis of this record, we see no reason to disturb the court's child support orders.

The appeal is dismissed only as to the defendant's claim that O was improperly included in the custody order; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

LEBANON HISTORICAL SOCIETY, INC. *v.* ATTORNEY GENERAL OF THE STATE OF CONNECTICUT ET AL.

(AC 43912)

Bright, C. J., and Alvord and Harper, Js.

Syllabus

The plaintiff historical society sought to quiet title to, and to impose conservation and preservation restrictions on, certain real property in the town of Lebanon, including a portion of the town green where the defendant F, a church, was located. The plaintiff sought to ensure that the parcels would always remain dedicated to a public purpose and that reasonable controls would be placed on the property so as to maintain the historic use and character of the town green. The court granted F's motion to dismiss as to the church parcel on the ground that the plaintiff lacked standing and rendered judgment thereon, from which the plaintiff appealed to this court. *Held* that the trial court correctly concluded that the plaintiff lacked standing to bring the action as to the church parcel because it claimed no title or interest in that parcel as required by the applicable statute (§ 47-31 (a)): because the plaintiff did not have an actual interest in F's property, it did not have standing to bring a quiet title action as to that property, and the plaintiff did not hold any conservation or preservation restrictions on F's property, rather, it sought to create such restrictions; moreover, even assuming that the plaintiff had conservation and preservation restrictions on the majority of the town green, holders of such restrictions have an interest in only the land on which those restrictions exist, not in land that is adjacent to, or connected to, that land; furthermore, the plaintiff's general interest in maintaining the public nature of the town green, including F's property, was not an actual interest sufficient to establish standing under § 47-31 (a), and there was no question that the town had standing to impose, and was the proper party to pursue, conservation and preservation restrictions on F's property.

Argued October 4—officially released December 21, 2021

Procedural History

Action, inter alia, seeking to quiet title to certain real property, and for other relief, brought to the Superior Court in the judicial district of New London, where the defendant Nancy Gentes et al. filed a cross complaint; thereafter, the plaintiff withdrew the action as to the defendant Sons of the American Revolution et al.; subsequently, the court, *Knox*, *J.*, rendered a judgment by stipulation as to the cross complaint; thereafter, the court, *Calmar*, *J.*, granted the motion to dismiss filed by the defendant First Congregational Church of Lebanon and rendered judgment thereon, from which the plaintiff appealed to this court. *Affirmed.*

Leslie P. King, with whom were *Sara C. Bronin*, and, on the brief, *Dean A. Morande*, pro hac vice, for the appellant (plaintiff).

Alayna M. Stone, assistant attorney general, with whom were *Caitlin M.E. Calder*, assistant attorney general, and, on the brief, *William Tong*, attorney general, *Clare Kindall*, solicitor general, and *Karen Gano* and *Jane Rosenberg*, assistant attorneys general, for the appellee (named defendant).

Mary Mintel Miller, with whom was *Jeffrey N. Kaplan*, for the appellee (defendant First Congregational Church of Lebanon).

Jeffrey Gentes filed a brief on behalf of the appellees (defendant Nancy Gentes et al.).

Opinion

BRIGHT, C. J. In this action to quiet title to, and to impose conservation and preservation restrictions on, property in the town of Lebanon (town), the plaintiff, Lebanon Historical Society, Inc., appeals from the judgment of the trial court granting the motion to dismiss filed by the defendant First Congregational Church of

Lebanon (church), on the ground that the plaintiff lacks standing to bring the action.[1] On appeal, the plaintiff contends that the court erred when it concluded that the plaintiff lacked standing to bring a quiet title action on the portion of the Lebanon Town Green (Green), where the church is located (Church Parcel). We affirm the judgment of the trial court.

The following facts and procedural history are relevant to our resolution of this appeal. The Green is the largest town green in Connecticut and an important historic resource for the town. In 1692, the property

[1] The summons listed the following additional defendants: the Attorney General of the state of Connecticut (attorney general); the town; the Hugh Leander Adams, Mary Trumbull Adams, and Hugh Trumbull Adams Town Memorial Fund (Memorial Fund); the Sons of the American Revolution; Sharon P. Moore; Nancy L. Mullaly; the Connecticut Daughters of the American Revolution, Inc.; Gina R. Wentworth; Robert M. Gentes and Nancy W. Gentes (collectively, Gentes); Leebg, LLC; Thomas M. McGee; Roland P. Russo; Marion B. Russo; Sarai Ledoux; Annalyn N. Bauer; Joshua A. Deal; Nicole E. Giownia; the Jean K. Reichard Trust; Cara J. Condit; Christopher M. Condit; Brian Kolar; the Connecticut Trust for Historic Preservation; "the proprietors of the [town], together with their heirs and assigns"; and "all unknown persons claiming or who may claim any rights, title, interest or estate in or lien or encumbrance upon the real property described in this complaint, adverse to the plaintiff, whether such claim or possible claim be vested or contingent."

The church, the attorney general, the town, the Memorial Fund, and the Gentes filed appearances in the trial court, but the remaining defendants did not. The trial court granted motions for default for failure to appear as to the proprietors of the town and all unknown persons claiming an interest in the property, and the plaintiff withdrew the action as to most of the remaining defendants, including the Gentes. The Gentes, however, remain parties to the present appeal because of a cross complaint that they filed against the town and the attorney general, seeking to quiet title to their property. That cross complaint, however, is not at issue in this appeal. It also appears that the Connecticut Trust for Historic Preservation was never removed from the underlying action; however, that party has not participated in this appeal.

The church, the attorney general, the town, and the Gentes are the only defendants participating in the present appeal. The church, the attorney general, and the Gentes all filed appellees' briefs, but only the church and the attorney general attended oral argument before this court. The town neither filed a brief nor attended oral argument.

that now makes up the town, including the Green, was conveyed in fee by Oweneco, Sachem of the Mohegan Tribe of Indians, to the four original proprietors of the town. In 1705, that conveyance was extended to additional proprietors, together with their heirs and assignees. Those proprietors were the last known owners of the Green, and, through the passage of time and the impossibility of identifying the proprietors' heirs and assignees, the Green was left to public use.

The plaintiff is a membership based § 501 (c) (3)[2] nonstock, tax-exempt corporation that preserves and interprets the history of the town, including the Green. Specifically, the plaintiff educates the public about the town's history, creates and commissions historical events about the town, organizes and sponsors events on the Green, publishes books and pamphlets, and owns and operates several buildings located adjacent to the Green.

In 2017, the town decided to expand its public library, part of which is located on the Green. In order to obtain state funding for the project, the town was required to demonstrate that it held legal title to that property (Library Parcel). After running a title search for that property, however, the town learned that there was no known owner of either the Library Parcel or the Green as a whole. Instead, the Green had been dedicated to public use since the early 1700s.

After learning that it did not own the Library Parcel, in January, 2018, the town brought an action to quiet title to that parcel, as well as to the part of the Green where the town hall is located (Town Hall Parcel).[3] The

[2] Section 501 (c) (3) of title 26 of the United States Code is the provision of the Internal Revenue Code that allows for federal tax exemption for certain nonprofit organizations.

[3] The defendants in the town's action were the attorney general, the Hugh Leander Adams, Mary Trumbull Adams, and Hugh Trumbull Adams Town Memorial Fund, the church, the plaintiff in the present case, the heirs and assigns of the fifty-one proprietors of the town of Lebanon, and "all unknown

plaintiff filed a counterclaim in that action, asking the court to impose conservation and preservation restrictions on both parcels.[4] In March, 2019, the court rendered a judgment by stipulation in the town's quiet title action, quieting title to both the Library and Town Hall Parcels in the town, and imposing conservation and preservation restrictions on both parcels, as the plaintiff had requested in its counterclaim. Those restrictions are currently held by the plaintiff.

While the town's quiet title action was pending, in February, 2019, the plaintiff commenced the underlying action, which sought to quiet title to the three remaining sections of the Green: (1) the northernmost part of the Green, sometimes referred to as the Common (Northern Parcel); (2) parts of the Green that are adjacent to privately owned property (Neighbor Parcel); and (3) the Church Parcel. With respect to the Northern Parcel, the plaintiff sought to quiet title in the town. With respect to the Neighbor Parcel, the plaintiff sought to quiet title in the individuals who own properties that are adjacent to the Green. With respect to the Church Parcel, the plaintiff sought to quiet title in the church. Most importantly, the plaintiff also asked that conservation and preservation restrictions be imposed in its favor on each of the three parcels. Through these restrictions, the plaintiff sought to ensure that the parcels would always remain dedicated to a public purpose and that reasonable controls would be placed on the demolition, alteration, and construction of buildings

persons claiming or who may claim any rights, title, interest or estate in or lien or encumbrance upon the real property described in this complaint, adverse to the plaintiff, whether such claim or possible claim be vested or contingent."

[4] Specifically, the plaintiff wanted to impose restrictions that would ensure that the parcels "shall be dedicated to a public purpose in perpetuity and which places reasonable controls on the demolition, alteration, and construction of buildings and other improvements."

and other improvements on the property, so as to maintain the historic use and character of the Green.

Thereafter, the plaintiff reached stipulated agreements with the town and almost all of the individuals who own properties adjacent to the Green concerning the imposition of conservation and preservation restrictions on the Northern Parcel and the Neighbor Parcel. The stipulation resolved all of the plaintiff's requests for conservation and preservation restrictions on the Green, except with respect to the Church Parcel and the property of the defendants Robert M. Gentes and Nancy W. Gentes (collectively, Gentes). Consequently, the plaintiff then filed an amended complaint seeking only to quiet title to, and the imposition of conservation and preservation restrictions on, the Church Parcel and withdrew its complaint as to the Gentes.[5]

In March, 2019, before the plaintiff filed its amended complaint, the church filed a motion to dismiss the plaintiff's quiet title action, claiming that the plaintiff lacked standing to bring the action because it claimed no title or interest in the Church Parcel, as required by General Statutes § 47-31 (a).[6] The plaintiff opposed the

[5] Also in connection with the stipulation, the town filed a second quiet title action seeking to quiet title to the Northern Parcel, subject to the plaintiff's requests for conservation and preservation restrictions on that parcel. In September, 2019, the court rendered judgment by stipulation in that quiet title action, in which the court quieted title in the Northern Parcel to the town, subject to the conservation and preservation restrictions held by the plaintiff. The judgment by stipulation mirrored the stipulation entered regarding the Northern Parcel in the present case. That judgment, however, expressly provided that it had no effect on the ownership of the Church Parcel. Finally, the town's second quiet title action resulted in a judgment regarding the Neighbor Parcel that mirrored the judgment in this case.

[6] General Statutes § 47-31 (a) provides in relevant part: "An action may be brought by any person *claiming title to, or any interest in, real or personal property*, or both, against any person who may claim to own the property, or any part of it, or to have any estate in it, either in fee, for years, for life or in reversion or remainder, or to have any interest in the property, or any lien or encumbrance on it, adverse to the plaintiff, or against any person in whom the land records disclose any interest, lien, claim or title conflicting with the plaintiff's claim, title or interest, for the purpose of

church's motion, arguing that it had standing because (1) the conservation and preservation restrictions that it seeks to impose are " 'interests in land,' " (2) the plaintiff holds conservation and preservation restrictions on parts of the Green that are adjacent to the Church Parcel, and (3) the plaintiff's extensive involvement with preserving the Green provides it with an additional interest sufficient to convey standing. Later that year, the plaintiff filed another memorandum opposing the church's motion to dismiss, in which it explained that, as a result of separate litigation, it held conservation and preservation restrictions on approximately 95 percent of the Green, a development that it claimed strengthened its standing to bring the underlying action.[7]

In December, 2019, the trial court, *Calmar, J.*, granted the church's motion to dismiss. The court concluded that the plaintiff lacked standing to bring a quiet title action against the church because it did not hold any conservation or preservation restrictions on the Church Parcel, meaning that the plaintiff did not have an actual interest in the property, as required by § 47-31 (a). The plaintiff and the attorney general both filed motions to reargue/reconsider, asserting that the court erred in overlooking the public use character of the Church Parcel and the plaintiff's stated mission to protect the public character of the Green. The trial court denied both motions, and the plaintiff appealed.

While the plaintiff's quiet title action was pending, the church filed its own action to quiet title in the Church Parcel. The town then filed a counterclaim in which it sought the "imposition of conservation and preservation restrictions on [the Church Parcel] . . .

determining such adverse estate, interest or claim, and to clear up all doubts and disputes and to quiet and settle the title to the property. . . ." (Emphasis added.)

[7] The attorney general joined in this memorandum.

which ensure that the [Church Parcel] shall be dedicated to a public purpose in perpetuity and which place reasonable controls on improvements." In its answer to the town's counterclaim, the church agreed to the proposed restrictions. Thereafter, the church filed a motion for judgment seeking to quiet title to the Church Parcel in the church, subject to the conservation and preservation restrictions requested by the town. In November, 2020, however, the plaintiff moved to intervene as a defendant in the church's quiet title action and filed a counterclaim seeking additional conservation and preservation restrictions that were not included in the restrictions sought in the town's counterclaim and agreed to by the church.[8] The plaintiff's motion to intervene in that action was granted by the court. In December, 2020, given the present appeal and its likely effect on the church's quiet title action, the church moved to stay that action, and the court granted its motion.

On appeal from the court's judgment granting the church's motion to dismiss in the present case, the plaintiff and the attorney general[9] contend that the plaintiff has standing to bring an action to quiet title to the Church Parcel because (1) the plaintiff has an interest in the parcel, given its dedication to preserving the history and character of the Green, of which the Church Parcel is a part, (2) the plaintiff is the holder of conservation and preservation restrictions on the remaining 95 percent of the Green, and the Green is a contiguous

[8] Specifically, the plaintiff sought restrictions that would "place reasonable controls on the demolition, alteration, and construction of buildings and structures on the Church Parcel . . . ." According to the plaintiff, these additional restrictions were necessary because the town's restrictions did not include any restraints on what could be done to the buildings located on the Church Parcel.

[9] Although the attorney general was named as a defendant in this action, the attorney general agrees with the position advanced by the plaintiff and, thus, argues in support of the plaintiff's claim on appeal.

and indivisible whole, and (3) if the plaintiff does not have standing to bring this action, no one will ever have standing to seek the imposition of conservation and preservation restrictions on the parcel. The plaintiff also contends that it has standing because (1) to hold that it lacks standing in the present case would contradict the court's judgment in the town's first quiet title action, and (2) the general presumption in favor of concluding that subject matter jurisdiction exists should apply. We are not persuaded by any of these arguments.

We begin by setting forth the applicable standard of review and principles of law that guide our analysis. "The proper procedural vehicle for disputing a party's standing is a motion to dismiss. . . . A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court." (Citation omitted; internal quotation marks omitted.) *Heinonen* v. *Gupton*, 173 Conn. App. 54, 58, 162 A.3d 70, cert. denied, 327 Conn. 902, 169 A.3d 794 (2017). When a court "decides a jurisdictional question raised by a pretrial motion to dismiss, it must consider the allegations of the complaint in their most favorable light . . . . In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader." (Internal quotation marks omitted.) Id.

"Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy." (Internal quotation marks omitted.) *Deutsche Bank National Trust Co.* v. *Bliss*, 159 Conn. App. 483, 488, 124 A.3d 890, cert.

denied, 320 Conn. 903, 127 A.3d 186 (2015), cert. denied, 579 U.S. 903, 136 S. Ct. 2466, 195 L. Ed. 2d 801 (2016). "If a party is found to lack standing, the court is without subject matter jurisdiction to hear the case. Because standing implicates the court's subject matter jurisdiction, the plaintiff bears the burden of establishing standing." (Internal quotation marks omitted.) *Heinonen* v. *Gupton*, supra, 173 Conn. App. 59. A court's determination of whether a plaintiff lacks standing is a conclusion of law that is subject to plenary review. Id. "In undertaking this review, we are mindful of the well established notion that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) Id.

The plaintiff contends that it has standing to bring an action to quiet title to the Church Parcel under § 47-31 (a). Section 47-31 (a) provides in relevant part that a quiet title action "may be brought by any person claiming title to, or any interest in, real . . . property . . . ." The purpose of this requirement "is to make certain that a plaintiff has, within the purview of the allegations of his complaint, not a mere groundless claim but an *actual interest* in the property sufficient to justify his instituting an action concerning it . . . ." (Emphasis added.) *Loewenberg* v. *Wallace*, 147 Conn. 689, 692, 166 A.2d 150 (1960); see also *Brill* v. *Ulrey*, 159 Conn. 371, 373–74, 269 A.2d 262 (1970) (standing under § 47-31 (a) requires "actual interest" in real property at issue). Unless a plaintiff has an actual interest in the real property at issue, a plaintiff "has no right to maintain an action under [§ 47-31 (a)] for the adjudication of any claims concerning the property." *Loewenberg* v. *Wallace*, supra, 692.

We conclude, as did the trial court, that because the plaintiff does not have an actual interest in the Church

Parcel, as required by § 47-31 (a), it does not have standing to bring a quiet title action as to that parcel. It is undisputed that conservation and preservation restrictions are interests in land that are sufficient to convey standing on the holders of those restrictions. See General Statutes § 47-42c ("conservation and preservation restrictions are interests in land"); General Statutes § 47-31 (a) (quiet title action can be brought by any entity claiming "any interest in" real property). The plaintiff, however, does not currently hold any conservation or preservation restrictions on the Church Parcel. Instead, it is seeking to create such restrictions. Seeking to create conservation and preservation restrictions is different from holding those restrictions. In fact, the plaintiff is seeking to create and acquire conservation and preservation restrictions on the Church Parcel precisely because it currently does not possess any that can be enforced. See General Statutes § 47-42c (indicating that conservation and preservation restrictions become interests in land only once acquired). Because the plaintiff does not currently hold any restrictions on the Church Parcel, it does not have an actual interest in that property sufficient to establish standing under § 47-31 (a).

Furthermore, assuming, as the plaintiff claims, that the plaintiff has conservation and preservation restrictions on 95 percent of the Green, our analysis and conclusion is the same. Holders of conservation and preservation restrictions, just like holders of any other interest, have an interest only in the land on which those restrictions exist, not land that is adjacent to, or connected to, that land. Again, because the plaintiff does not have an actual interest in the *specific* property to which it is seeking to quiet title, it does not have standing to bring a quiet title action on that property, regardless of the fact that the plaintiff has an actual

interest in other properties that abut the Green and that are adjacent to the Church Parcel.

For these same reasons, we are equally unpersuaded by the plaintiff's and the attorney general's argument that, because the Green is an indivisible, contiguous whole, and because the plaintiff claims to hold restrictions on 95 percent of the Green, the plaintiff must have standing to quiet title to the remaining 5 percent. Simply put, the plaintiff's lack of an actual interest in the Church Parcel is fatal to its quiet title action, regardless of what other property interests the plaintiff has in the remaining portion of the Green. To hold otherwise would allow the holder of a conservation and preservation restriction on one property to interfere with a neighbor' suse of its property because the holder of the restriction finds the neighbor's use in some way offensive. There is simply no support in our statutes or common law for such a proposition. In fact, requiring a neighbor to respond to such a claim is inconsistent with the express language of § 47-31 (a) and the decisions of our Supreme Court. See, e.g., *Loewenberg* v. *Wallace*, supra, 147 Conn. 692.

The plaintiff's argument that § 47-31 (a) permits a quiet title action brought by any person claiming "any interest" in the property at issue, and that it satisfies that requirement because it has "an interest" in maintaining and preserving the historic character of the Green, does not persuade us otherwise. Our Supreme Court's decision in *Loewenberg* makes clear that not *all* interests are sufficient for standing under § 47-31 (a); instead, interests sufficient to convey standing under § 47-31 (a) must be *actual* interests. *Lowenberg* v. *Wallace*, supra, 147 Conn. 692; see also *Brill* v. *Ulrey*, supra, 159 Conn. 375–76 (executor lacked statutory interest in real property left to decedent's heirs sufficient to have standing to bring quiet title action, despite possible interest in property, in absence of allegation

and proof that property was necessary to meet claims of creditors). In fact, we have not found a single Connecticut case in which the plaintiff in a quiet title action who had standing had not alleged either title to, a present right to use, or a present right to restrict the use of the property at issue. We conclude, consistent with the decisions of our Supreme Court for more than one hundred years, that such an allegation is necessary to meet the "any interest" requirement of § 47-31 (a).[10] Consequently, the plaintiff's general interest in maintaining the public nature of the Green, including the Church Parcel, is not an actual interest sufficient for standing under § 47-31 (a).

We also are unpersuaded by the plaintiff's and the attorney general's contention that, if we determine that the plaintiff lacks standing in the present case, no one will ever have standing to protect the historic character of the Church Parcel. Indeed, there is no question that the town has standing to impose, and is the proper party to pursue, conservation and preservation restrictions on the Church Parcel. See *Cincinnati* v. *White's Lessee*, 31 U.S. (6 Pet.) 431, 437–38, 8 L. Ed. 452 (1832) (land informally dedicated to public use belonged to city of Cincinnati, not private party). In fact, in its counterclaim in the church's quiet title action, the town already has sought the imposition of conservation and preservation restrictions on the Church Parcel. As previously noted in this opinion, the church assented to

[10] We further note that accepting the plaintiff's interpretation of "any interest" in § 47-31 (a) would mean that another historical preservation society could be formed and allege that it also has an interest in the conservation and preservation of the Church Parcel, but believes that the restrictions sought by the plaintiff are inadequate, thereby entwining the church and the town in potentially lengthy and expensive litigation between entities that have no actual legal interest in the Church Parcel. We refuse to interpret § 47-31 (a) in a way that would lead to such an absurd result. See *Thames Talent, Ltd.* v. *Commission on Human Rights & Opportunities*, 265 Conn. 127, 138, 827 A.2d 659 (2003) (noting rule of construction that our appellate courts do not interpret statutes to reach bizarre or absurd results).

those restrictions, and moved the trial court to enter judgment quieting title to the Church Parcel in the church, subject to the restrictions that the town had requested. In light of that pending action, it is clear to us that the public's interest in the historic character and integrity of the Church Parcel can be protected without the involvement of the plaintiff.

The plaintiff further contends that the court's holding that it lacked standing was erroneous because it conflicts with the court's ruling in the town's first quiet title action, in which the court held that the Library and Town Hall Parcels could be quieted in the town, subject to the plaintiff's counterclaim that conservation and preservation restrictions be imposed on the two parcels. We are not persuaded. The plaintiff's standing to pursue its counterclaim was never litigated in that action, and there is no question that the town had standing to bring a quiet title action as to those parcels. The fact that the town, in that case, decided to enter into a conservation and preservation stipulation with the plaintiff has no bearing on whether the plaintiff has standing to bring the underlying action to quiet title to the Church Parcel.[11]

Finally, contrary to the plaintiff's contention, the general presumption favoring jurisdiction does not provide an independent basis for concluding that the plaintiff has standing to pursue the underlying action. The presumption does not do away with the requirement that the plaintiff must have standing to assert its claims. For

[11] The plaintiff further argues that, if we conclude that it lacks standing in the present case, the town's first quiet title action could be subject to collateral attack for lack of subject matter jurisdiction. We are unpersuaded by this contention because, as noted previously in this opinion, there is no question that the town had standing to quiet title to the Library and Town Hall Parcels in that action. See, e.g., *Cincinnati* v. *White's Lessee*, supra, 31 U.S. 437–38. Once it acquired title, it was free to enter into a conservation and preservation restriction with the plaintiff, regardless of whether the plaintiff filed a counterclaim.

the reasons previously set forth in this opinion, the facts alleged in the plaintiff's complaint simply are insufficient to support a conclusion that the plaintiff has standing in the present case.[12]

The judgment is affirmed.

In this opinion the other judges concurred.

ELISABETH M. CORBO *v.* CHRISTOPHER J. SAVLUK (AC 43727)

Alvord, Cradle and Lavine, Js.

Syllabus

The plaintiff sought to recover damages for personal injuries that she allegedly sustained during a motor vehicle accident as a result of the defendant's negligence. Several days after the accident, the plaintiff visited a walk-in clinic, where medical personnel conducted a physical examination of the plaintiff. The clinic's medical report noted that the plaintiff reported experiencing tenderness near her sternum and rib cage. Approximately one week later, the plaintiff had an initial appointment with a chiropractor, at which she presented with various other areas

[12] On appeal, the plaintiff further argues that the court erred when it failed to hold that it "had standing to seek the equitable imposition of conservation and preservation restrictions on the [Church] Parcel" through a declaratory judgment. As the church correctly notes, the plaintiff's amended complaint nowhere seeks a declaratory judgment. It is axiomatic that the plaintiff's claims are limited to the allegations of its complaint. See *Cellu Tissue Corp.* v. *Blake Equipment Co.*, 41 Conn. App. 413, 417, 676 A.2d 405 (1996) ("[i]t is fundamental in our law that the right of a plaintiff to recover is limited to the allegations of [its] complaint" (internal quotation marks omitted)). Furthermore, because this claim was not distinctly raised before the trial court, and because the court never decided this claim, we decline to address it on appeal. *See DeChellis* v. *DeChellis*, 190 Conn. App. 853, 860, 213 A.3d 1 ("Connecticut appellate courts generally will not address issues not decided by the trial court"), cert. denied, 333 Conn. 913, 215 A.3d 1210 (2019); *State* v. *McLaughlin*, 135 Conn. App. 193, 202, 41 A.3d 694 ("[w]e cannot pass on the correctness of a trial court ruling that was never made" (internal quotation marks omitted)), cert. denied, 307 Conn. 904, 53 A.3d 219 (2012); see also *Connecticut Bank & Trust Co.* v. *Munsill-Borden Mansion, LLC*, 147 Conn. App. 30, 37, 81 A.3d 266 (2013) ("[a] claim briefly suggested is not distinctly raised" (internal quotation marks omitted)).

of pain. At trial, the defendant's counsel cross-examined the plaintiff regarding alleged inconsistencies in the descriptions of her reported symptoms at her visit to the walk-in clinic and at the chiropractor, and sought to introduce evidence of the date that the plaintiff first contacted an attorney. The court permitted the defendant's counsel to introduce into evidence a letter that indicated that the plaintiff retained counsel in the period between her visit to the walk-in clinic and her appointment at the chiropractor to explain why her description of injuries to the chiropractor lacked credibility. Following the jury's verdict in favor of the defendant, the plaintiff filed a motion to set aside the verdict, claiming that the admission of the letter, was improper. The trial court denied the motion and rendered judgment in accordance with the verdict, from which the plaintiff appealed to this court. *Held*:

1. The trial court did not abuse its discretion when it allowed the defendant's counsel to question the plaintiff about the timing of her first consultation with counsel after the motor vehicle accident for purposes of impeachment: the examination of the plaintiff by the defendant's counsel as to that issue was relevant to the defendant's claim that the plaintiff lacked credibility due to her changing descriptions of her injuries between visiting a walk-in clinic and commencing treatment with a chiropractor; moreover, expert testimony was not required to determine that there was a potential factual discrepancy for the jury to resolve concerning the plaintiff's changing descriptions of her injuries.
2. The trial court did not abuse its discretion when it permitted the defendant's counsel to introduce a letter that indicated that the plaintiff had retained counsel to represent her in connection with the accident under the residual exception to the hearsay rule: there was a reasonable necessity for the admission of the letter into evidence because the plaintiff could not recall whether she had met with counsel prior to her initial visit with the chiropractor despite effort by the defendant's counsel to refresh her recollection, and the letter was relevant to the plaintiff's credibility due to her changing descriptions of her injuries; moreover, the letter bears the requisite indicia of trustworthiness and reliability.

Argued September 14–officially released December 21, 2021

Procedural History

Action to recover damages for personal injuries allegedly sustained as a result of the defendant's negligence, brought to the Superior Court in the judicial district of Hartford and tried to the jury before *Budzik*, *J.*; verdict for the defendant; thereafter, the court, *Budzik*, *J.*, denied the plaintiff's motion to set aside the verdict, and rendered judgment in accordance with the verdict,

from which the plaintiff appealed to this court. *Affirmed.*

William B. Wynne, for the appellant (plaintiff).

Jack G. Steigelfest, for the appellee (defendant).

Opinion

LAVINE, J. In this negligence action stemming from a motor vehicle collision, the plaintiff, Elisabeth M. Corbo, appeals from the judgment of the trial court rendered after a jury verdict for the defendant, Christopher J. Savluk. On appeal, she claims that the court improperly (1) permitted the defendant's attorney to question her regarding when she first contacted an attorney and (2) admitted into evidence a letter that indicated that the plaintiff had retained counsel to represent her in connection with the accident. We affirm the judgment of the trial court.

The jury reasonably could have found the following facts. On the evening of April 18, 2016, the defendant, while traveling in the southbound lane on Old County Road in Windsor Locks, rear-ended the vehicle in front of him, which was being operated by an individual who is not a party to this action, which resulted in that vehicle colliding with the plaintiff's vehicle as it traveled in the northbound lane on Old County Road. At the scene, a police officer asked the plaintiff if she needed medical attention, and she responded in the negative.[1] The following day, she went to the emergency room but left without seeing a doctor. On April 21, 2016, the plaintiff went to a Hartford Healthcare walk-in clinic. The medical report from the walk-in clinic states that

[1] The plaintiff testified at trial that she had explained to the officer that she did not want medical attention because her husband was at home and was sick. On cross-examination, she admitted that she had testified at a deposition that, when asked by a police officer at the scene whether she needed an ambulance, she responded "no, I'm okay."

the plaintiff had reported "some discomfort where the seatbelt was on her," that her "[a]ssociated symptoms include myalgias" and indicated that "[p]ertinent negatives include no neck pain." The walk-in clinic report also contained a musculoskeletal diagram under the heading "[p]hysical [e]xam," which noted tenderness near the plaintiff's sternum and right ribcage. A letter from the Adler Law Group, LLC (Adler Law), dated April 27, 2016, which was admitted as a full exhibit at trial with the name of the recipient redacted, states that the plaintiff had retained them to represent her in connection with the motor vehicle collision. On April 29, 2016, the plaintiff had an initial appointment with Gary Italia, a chiropractor. The report from that initial visit states that the plaintiff "presents to the office with neck pain, back pain, bilateral rib/flank pain and chest pain that began on 4/18/2016 from a motor vehicle accident."

The plaintiff brought the underlying action alleging negligence against the defendant in April, 2018. The defendant admitted in his answer that he had failed to keep a proper and reasonable lookout for other vehicles on the roadway, and trial proceeded on the issues of causation and damages only. The jury returned a verdict in favor of the defendant. This appeal followed.

I

The plaintiff claims that the court erred when it permitted the defendant's attorney to question her regarding when she first contacted an attorney after the accident. The plaintiff contends that "once the issues of fraud and deceit are presented to a jury, the trial becomes a Wild West Show. The trial is no longer about liability and damages but greedy plaintiffs, television lawyers, and insurance rates." We are not persuaded.

The following additional facts and procedural history are relevant to our disposition of this claim. The plaintiff

testified on direct examination that there had been no change in her injuries or the pain she had experienced from the time of the collision until her initial visit with Italia, at which time she reported neck pain, back pain, bilateral rib flank pain, and chest pain. On cross-examination, when questioned about the walk-in clinic report that indicated she had no neck pain, the plaintiff explained, "That's what he wrote, that's not what I said." When further asked regarding the musculoskeletal diagram in the walk-in clinic report that noted tenderness in two frontal locations and not on her back, she responded, "I don't know what that means. I don't even know that he asked me anything." When questioned whether her complaint to Italia of constant pain since the date of the collision was inconsistent with the symptoms indicated on the report from her visit at the walk-in clinic, she responded, "I wasn't there long enough for anyone to ask me all these questions from the walk-in clinic, which is part of the reason why I didn't feel any of them were effective at all." The defendant's counsel then requested a sidebar conference. The court noted on the record, outside the presence of the jury, that the defendant's counsel sought to question the plaintiff for credibility purposes regarding the date that she first contacted an attorney. The plaintiff's counsel objected, stating that the underlying presumption behind the question, that is, that the plaintiff's description of her symptoms was inconsistent, lacks a medical foundation because her testimony was consistent as she complained of neck and back pain when she visited the walk-in clinic. The court concluded that the defendant's counsel had, by establishing a discrepancy between the plaintiff's descriptions of her symptoms, laid a proper foundation to inquire whether the plaintiff had consulted counsel in between her visit to the walk-in clinic and her initial visit to the chiropractor for purposes of impeachment. It stated that the evidence

"at least arguably characterizes the plaintiff's symptoms one way and that is different than how she described her symptoms after she consulted counsel. Again, whether or not the jury chooses to credit any of that evidence, that's up to them. But I think he's laid a foundation to ask the question for purposes of impeachment and general credibility of the witness."

Our standard of review is well established. "Upon review of a trial court's decision, we will set aside an evidentiary ruling only when there has been a clear abuse of discretion. . . . The trial court has wide discretion in determining the relevancy of evidence and the scope of cross-examination and [e]very reasonable presumption should be made in favor of the correctness of the court's ruling in determining whether there has been an abuse of discretion." (Internal quotation marks omitted.) *McCrea* v. *Cumberland Farms, Inc.*, 204 Conn. App. 796, 804, 255 A.3d 871, cert. denied, 338 Conn. 901, 258 A.3d 676 (2021). "Cross-examination, in quest for the truth, provides a means for discrediting the testimony of a witness. When pursued for that purpose, the examination frequently and legitimately enters into matters collateral to the main issues. . . . Given that function of cross-examination in shedding light on the credibility of the witness' direct testimony, [t]he test of relevancy is not whether the answer sought will elucidate any of the main issues, but whether it will to a useful extent aid the . . . jury in appraising the credibility of the witness and assessing the probative value of the direct testimony." (Citation omitted; internal quotation marks omitted.) *Trumpold* v. *Besch*, 19 Conn. App. 22, 26–27, 561 A.2d 438, cert. denied, 212 Conn. 812, 565 A.2d 538 (1989), cert. denied, 494 U.S. 1029, 110 S. Ct. 1476, 108 L. Ed. 2d 613 (1990); see also Conn. Code Evid. §§ 4-1 and 4-3. "It is well established that [c]ross-examination is an indispensable means of

eliciting facts that may raise questions about the credibility of witnesses and, as a substantial legal right, it may not be abrogated or abridged at the discretion of the court to the prejudice of the party conducting that cross-examination." (Internal quotation marks omitted.) *McCrea* v. *Cumberland Farms, Inc.*, supra, 806.

In *Trumpold* v. *Besch*, supra, 19 Conn. App. 24, this court rejected a claim that the trial court improperly permitted the defendants' counsel to ask the plaintiffs when they first had contacted an attorney. The defendants argued that, because there was a disparity in evidence presented by the parties concerning the force of the impact and the severity of injuries, the trial court properly permitted evidence that Alfred Trumpold, the plaintiff who was involved in the motor vehicle collision, did not seek medical assistance immediately, but instead consulted an attorney. Id., 26. This court agreed with the defendants that such inquiry "was permissible on these particular facts. Under other factual circumstances, such evidence might be inadmissible" and reasoned that "[t]he trial court, in its discretion, could have concluded that the information was useful to the jury in assessing the parties' testimony concerning the nature of the accident, and on cross-examination the defendants were entitled to demonstrate to the jury apparent weaknesses in the plaintiffs' testimony educed during direct examination." Id., 26–27.

The mere fact, in and of itself, that someone is represented by counsel generally has no legal relevancy because it has no tendency to make a fact more probable or less probable. See Conn. Code Evid. § 4-1 (defining "[r]elevant evidence"). Nevertheless, under the facts of the present case, we conclude that the court did not abuse its discretion in determining that the defendant had established a proper foundation to ask, for purposes of credibility, when the plaintiff first contacted an attorney. The record from the plaintiff's April 21,

2016 visit to the walk-in clinic indicates that she had no neck or back pain. The plaintiff's testimony on direct examination as well as the report from the plaintiff's April 29, 2016 visit with Italia indicate that she had experienced constant pain in numerous areas, including her neck and back, since the date of the collision. Evidence that the plaintiff had retained counsel in between visiting the walk-in clinic and commencing treatment with Italia was relevant to the defendant's view of the evidence that the plaintiff's description of her injuries to Italia lacked credibility. See, e.g., *McCrea* v. *Cumberland Farms, Inc.*, supra, 204 Conn. App. 805–806 (evidence that plaintiff consulted attorney prior to seeking medical treatment was relevant to issue of plaintiff's credibility regarding claimed injuries).

The plaintiff argues, however, that "the trial court's error was, sua sponte, to assume the role of an expert and give an opinion that the medical complaints were inconsistent."[2] She contends that Italia's testimony establishes that her descriptions of her injuries to medical personnel at the walk-in clinic and to Italia were

[2] The plaintiff further argues that the proper procedural vehicle for the defendant to present a medical opinion concerning any alleged inconsistency in the plaintiff's descriptions of her injuries "was already established as the plaintiff filed a motion in limine. . . . The trial court then would have had the opportunity to rule on the motion and, if granted, the jury would never be tainted." Before proceeding with the start of evidence on October 29, 2019, the court explained that there had been a discussion in chambers regarding the plaintiff's motion in limine concerning the attorney-client relationship between the plaintiff and her counsel. The court explained that it had ruled as to how those issues would be dealt with at trial and asked the parties if they had anything further to put on the record. The plaintiff's counsel responded in the negative and further stated, "I think from our discussions at chambers, we'll deal with it through the evidence." The plaintiff, who had expressed agreement with the trial court's decision to address the issue during the presentation of evidence, cannot now claim on appeal that the ruling was in error. "It is well established that [w]hen a party consents to or expresses satisfaction with an issue at trial, claims arising from that issue are deemed waived and may not be reviewed on appeal." (Internal quotation marks omitted.) *Stratek Plastics, Ltd.* v. *Ibar*, 179 Conn. App. 721, 731–32, 178 A.3d 1135 (2018).

not inconsistent.[3] The plaintiff has not directed us to any case law, nor are we aware of any, that requires expert testimony in this context.[4] Rather, the court did not need such expert testimony in order to determine that there was a potential factual discrepancy for the jury to resolve concerning the plaintiff's complaint to Italia on April 29, 2016, that the pain in her neck, back, and other locations had begun on the date of the collision and the plaintiff's record from her visit with the walk-in clinic that indicated no neck or back pain. This is the sort of routine, straightforward determination that judges frequently are required to make. For the foregoing reasons, we conclude that, under the facts of the present case, the court did not abuse its discretion in permitting the defendant's counsel to inquire into the timing of the plaintiff's consultation with counsel for purposes of impeachment.

II

The plaintiff also claims that the court erred in admitting into evidence a letter to an undisclosed recipient from Adler Law, the law firm that represented the plaintiff at trial, that indicated that the plaintiff had retained

[3] Specifically, the plaintiff highlights the portion of Italia's testimony in which he explains that "myalgia" is a medical term for muscle pain and that it is not uncommon for an individual to experience localized pain from an injury and "not really feel anything," but then one or more weeks later, experience irritation in the surrounding tissues caused by a spreading of the inflammation. The report from the plaintiff's initial visit with Italia as well as her testimony at trial reveal that the plaintiff, during her initial visit with Italia, stated that she had experienced pain in her neck, back, and other locations since the date of the collision.

[4] As the plaintiff aptly points out, "[e]xpert testimony should be admitted when: (1) the witness has a special skill or knowledge directly applicable to a matter in issue, (2) that skill or knowledge is not common to the average person, and (3) the testimony would be helpful to the court or jury in considering the issues. . . . [T]o render an expert opinion the witness must be qualified to do so and there must be a factual basis for the opinion." (Internal quotation marks omitted.) *Gostyla* v. *Chambers*, 176 Conn. App. 506, 512, 171 A.3d 98 (2017), cert. denied, 327 Conn. 993, 175 A.3d 1244 (2018).

counsel to represent her in connection with the accident. We disagree.

The following additional facts and procedural history are relevant. After unsuccessfully attempting to refresh the plaintiff's recollection as to whether she consulted an attorney prior to her initial chiropractic visit with Italia on April 29, 2016, the defendant's counsel showed the plaintiff exhibit D, which was marked for identification. Exhibit D was a redacted version of a letter from Adler Law dated April 27, 2016, which stated that the plaintiff had retained them to represent her in connection with injuries she had sustained as a result of the collision. The defendant's counsel inquired whether, to the best of the plaintiff's knowledge, the information contained in exhibit D was accurate. The plaintiff responded, "I guess so," and further stated, "I don't know numbers. I don't know names. I don't know any of those things. I can't verify the accuracy of the sheet." The defendant's counsel then offered exhibit D as a full exhibit. The plaintiff's counsel objected on the basis that the document contained hearsay, and that the plaintiff had not identified the document. The court overruled the plaintiff's objection and, outside the presence of the jury, stated that it had admitted the document under the residual exception to the hearsay rule, reasoning that there was a reasonable necessity for the admission into evidence of exhibit D, and that the April 27, 2016 letter, which is a business record, was trustworthy and reliable.

The following legal principles are relevant. "An [out-of-court] statement is hearsay when it is offered to establish the truth of the matters contained therein. . . . As a general rule, hearsay evidence is not admissible unless it falls under one of several well established exceptions." (Internal quotation marks omitted.) *State* v. *Bennett*, 324 Conn. 744, 762, 155 A.3d 188 (2017). The residual exception to the hearsay rule "admits into

evidence statements that are technically hearsay and which do not fit within any traditional exception." *State* v. *Dollinger*, 20 Conn. App. 530, 539, 568 A.2d 1058, cert. denied, 215 Conn. 805, 574 A.2d 220 (1990). The residual exception to the hearsay rule provides that "[a] statement that is not admissible under any of the foregoing exceptions is admissible if the court determines that (1) there is a reasonable necessity for the admission of the statement, and (2) the statement is supported by equivalent guarantees of trustworthiness and reliability that are essential to other evidence admitted under traditional exceptions to the hearsay rule." Conn. Code Evid. § 8-9. "Reasonable necessity is established by showing that unless the hearsay statement is admitted, the facts it contains may be lost, either because the declarant is dead or otherwise unavailable, or because the assertion is of such a nature that evidence of the same value cannot be obtained from the same or other sources." (Internal quotation marks omitted.) *State* v. *Abernathy*, 72 Conn. App. 831, 852, 806 A.2d 1139, cert. denied, 262 Conn. 924, 814 A.2d 379 (2002).

"It is well settled that [w]e review the trial court's decision to admit [or exclude] evidence, if premised on a correct view of the law . . . for an abuse of discretion. . . . Under the abuse of discretion standard, [w]e [must] make every reasonable presumption in favor of upholding the trial court's ruling, and only upset it for a manifest abuse of discretion." (Citation omitted; internal quotation marks omitted.) *Filippelli* v. *Saint Mary's Hospital*, 319 Conn. 113, 119, 124 A.3d 501 (2015). "A court's conclusion as to whether certain hearsay statements bear the requisite indicia of trustworthiness and reliability necessary for admission under the residual exception to the hearsay rule is reviewed for an abuse of discretion." *State* v. *Faison*, 112 Conn. App. 373, 384, 962 A.2d 860, cert. denied, 291 Conn. 903, 967 A.2d 507

(2009). "We review the trial court's conclusion regarding reasonable necessity for the admission of the hearsay statements under an abuse of discretion standard." *In re Tayler F.*, 296 Conn. 524, 537, 995 A.2d 611 (2010).

The plaintiff argues that the court made no findings that there was a reasonable necessity for the admission of the letter or that the letter was trustworthy or reliable.[5] The court, however, stated on the record that there was a reasonable necessity for the admission of the April 27, 2016 letter into evidence and that the letter was trustworthy and reliable. As we have explained in part I of this opinion, the date that the plaintiff retained counsel was relevant to the credibility of the plaintiff's changing description of her injuries. Despite the effort by the defendant's counsel to refresh the plaintiff's recollection, the plaintiff stated that she could not recall whether she had met with Adler Law prior to her initial visit with Italia. The court reasonably could have determined that permitting the April 27, 2016 letter to be admitted under the residual exception was preferable to the potential ethical complications that could arise if the defendant's counsel were to call the plaintiff's counsel or another employee from Adler Law to testify at trial regarding the date that the plaintiff had retained the firm to represent her. We conclude that the court did not abuse its discretion in determining that there was a reasonable necessity for the introduction of the

[5] The plaintiff argues that, because the letter was not authenticated by the keeper of the records at Adler Law, but, rather, was admitted on the basis of the testimony of the plaintiff, who did not recall having seen the document previously, that it was not admissible pursuant to the business records exception to the hearsay rule, General Statutes § 52-180. Although the court stated in front of the jury that the document "appears on its face as plainly a business record," the court later, outside the presence of the jury, stated that it was admitting the letter under the residual exception to the hearsay rule and that it "didn't want to comment to that effect in front of the jury." We conclude that the court properly admitted the letter under the residual exception to the hearsay rule and, therefore, do not address this argument.

April 27, 2016 letter and that the letter bears the requisite indicia of trustworthiness and reliability.

The judgment is affirmed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* WILLIAM MCKINNEY (AC 43611)

Bright, C. J., and Alvord and Harper, Js.

Syllabus

The defendant appealed to this court from the judgments of the trial court rendered in accordance with the jury's verdict of guilty of the crime of assault of an elderly person in the second degree and the court's finding that the defendant had violated his probation. The defendant was involved in a verbal disagreement with the victim during which he punched the victim repeatedly, which resulted in serious injuries to the victim. The defendant raised a claim of self-defense in which he asserted that he suffered injuries when the victim attacked him first with a sock that had a rock inside it. At the time of the incident with the victim, the defendant was serving a probationary sentence as a result of a previous conviction. Prior to trial, the court denied a motion he filed to correct an illegal sentence in which he challenged the validity of the prior conviction. The defendant thereafter appealed to this court from that denial but subsequently withdrew the appeal. At the sentencing proceeding on the defendant's assault conviction, the trial court declined to consider a second motion the defendant filed to correct the sentence imposed on the prior conviction. *Held*:

1. This court declined to review the merits of the defendant's claim that the prior trial court abused its discretion in denying his first motion to correct an illegal sentence, the defendant having waived any claims relating to that motion when he withdrew his appeal challenging its denial; there was no merit to the defendant's assertion, which contravened the well established law of waiver, that his filing of the second motion to correct an illegal sentence negated the withdrawal of the prior appeal and, thus, allowed him to renew his challenge to the prior trial court's denial of his first motion to correct an illegal sentence.
2. The defendant's claim that the trial court erred in certain of its evidentiary rulings was unavailing:
   a. The defendant's assertion that the trial court erred in excluding relevant testimony from a police detective as to whether a sock with a rock inside it was a weapon was rendered unreviewable as a result of the defendant's failure to make an offer of proof at trial; because the defendant gave no

explanation as to why the evidence was relevant, the trial court did not know the specific theory that supported the admission or nature of the proposed evidence, and, thus, this court could not determine whether the trial court's ruling was harmful, as an assessment of the defendant's claim would require a record that reflects the substance of the detective's expected testimony.

b. The trial court did not abuse its discretion in determining that a physician's testimony about an incident more than six years earlier in which a police officer allegedly hit the defendant with a baton was relevant: notwithstanding the state's contention that the defendant's claim was unpreserved for appellate review because he raised a theory of relevancy on appeal that he did not argue at trial, which was that the physician was not the appropriate witness to testify because he had no knowledge of the prior incident, the defendant's attempt to assert a new argument that was premised on a different perspective of the evidence did not render his claim unpreserved, as this court was limited to assessing the relevancy of the testimony exclusively within the confines of the defendant's arguments at trial; moreover, because the defendant raised the defense of self-defense, it was relevant for the state to present evidence that would allow the jury to infer that the injuries from which he allegedly suffered were not the result of an attack by the victim but, rather, were caused when he previously was hit with the baton, which was a material issue of fact for the jury's consideration in evaluating whether the defendant's use of physical force against the victim was justified under the circumstances.

c. The defendant could not prevail on his unpreserved claim that the trial court improperly struck certain of his counsel's statements during closing argument to the jury and thereby violated his sixth amendment right to the effective assistance of counsel because those statements were essential to his self-defense claim: although the record was adequate for review and the claim was of constitutional magnitude, the defendant failed to demonstrate that the alleged constitutional violation existed, as the inference counsel sought to draw, which was that the victim attacked at least one other person with the sock that had a rock in it, was unreasonable and not based on facts in evidence, as was counsel's statement that the evidence supported the inference that the defendant probably had been struck by the sock with the rock in it; moreover, even though only certain DNA evidence could possibly have supported a conclusion that the sock with a rock in it was used to hit someone other than the defendant, no facts were adduced at trial to indicate how or when such an incident could have occurred, there was no evidence to support a conclusion that the DNA on the sock was the result of an attack, and, thus, counsel's argument required expansive speculation as to facts not in evidence to permit a conclusion that the victim used the sock with the rock in it to attack a third party; accordingly, the defendant's right to present a closing argument was not abridged.

Argued October 4—officially released December 21, 2021

Procedural History

Two substitute informations charging the defendant, in the first case, with the crimes of assault of an elderly person in the first degree and assault of an elderly person in the second degree, and, in the second case, with violation of probation, brought to the Superior Court in the judicial district of New Haven, where the first case was tried to the jury before *B. Fischer*, *J.*, and the second case was tried to the court; verdict and judgment of guilty of assault of an elderly person in the second degree and judgment revoking the defendant's probation, from which the defendant appealed to this court. *Affirmed.*

Raymond L. Durelli, assigned counsel, for the appellant (defendant).

Timothy J. Sugrue, assistant state's attorney, with whom, on the brief, were *Patrick J. Griffin*, state's attorney, and *Sean P. McGuinness*, assistant state's attorney, for the appellee (state).

Opinion

ALVORD, J. The defendant, William McKinney,[1] appeals from the judgment of conviction, rendered after a jury trial, of one count of assault of an elderly person in the second degree in violation of General Statutes § 53a-60b (a) (1).[2] The defendant also appeals from the court's

[1] At various times throughout the trial court proceedings, the defendant was self-represented.

[2] General Statutes § 53a-60b (a) provides in relevant part that "[a] person is guilty of assault of an elderly . . . person . . . in the second degree when such person commits assault in the second degree under section 53a-60 . . . and (1) the victim of such assault . . . has attained at least sixty years of age . . . ."

General Statutes § 53a-60 (a) provides in relevant part that "[a] person is guilty of assault in the second degree when . . . (7) with intent to cause physical injury to another person, the actor causes such injury to such person by striking or kicking such person in the head while such person is in a lying position."

judgment finding him in violation of his probation pursuant to General Statutes § 53a-32. The defendant claims that the court erred in (1) denying his first motion to correct an illegal sentence that he filed and (2) its rulings on several evidentiary objections during trial. We affirm the judgments of the trial court.

The following facts, which the jury reasonably could have found, and procedural history are relevant to the defendant's appeal. At about 11 p.m. on July 13, 2017, on the New Haven Green (Green), about fifty yards in from the street, near a fountain in the middle of the lower Green, the defendant became involved in a verbal disagreement with the victim.[3] The argument quickly became physical, and the victim fell to the ground. Although the victim was on the ground, the defendant did not walk away. Instead, the defendant straddled the victim and punched him repeatedly in the head and face. The defendant hit the victim "well over ten times." Each punch made a "wet, slapping sound." The victim soon became motionless. After a few minutes, the defendant stood up and walked away.

The defendant walked away from the scene along Chapel Street, where New Haven Police Officer John Moore stopped him because he matched the description of someone involved in an assault on the Green. Although the defendant was not hostile toward Moore, he was visibly irate. The defendant had blood on his hands and forearms. When asked if he had been in a fight, the defendant told Moore, "I fucked that guy up." The defendant claimed that he had cut his hand, had been hit in the head, and may have broken a knuckle. The officer requested an ambulance. Once the ambulance arrived, an emergency medical technician (EMT) cleaned the victim's blood off the defendant's hands and checked him for injuries.[4]

[3] According to the defendant, the two men did not know each other.

[4] EMTs cleaned the blood off of the defendant's hands and arms, assuming that the blood belonged to the defendant, while searching for injuries. Once

The defendant then told Moore his version of what happened:[5] He was waiting at the bus stop on Temple Street, near the Green, when the victim attacked him with what the defendant thought was a blackjack but later claimed was a rock inside of a sock. The two men began to fight and shortly thereafter the victim slipped, allowing the defendant to get the upper hand. The defendant then got on top of the victim and punched him "over fifty times." When informed that the victim was in serious condition, the defendant said, "good, I hope that motherfucker dies." The defendant then was taken to the police station for questioning.

Earlier, during the confrontation, two passersby observed the defendant repeatedly punching the victim while he lay on the ground, and the passersby stopped to call the police.[6] By the time they called 911, the defendant had begun to walk away. The passersby observed that the victim's breathing was labored, he was not moving, he had blood on his face, and his "skull was crushed in."

New Haven Police Officer Daophet Sangxayarath was the first to arrive at the scene. He saw the victim, later identified as Robert Haynes, aged sixty-two, lying face down on the ground, bleeding from the head. Shortly thereafter, New Haven Police Officers Evan Kelly and Nicole Motzer arrived at the scene. Kelly, who previously was an EMT, tended to the victim. The victim was semiconscious and unable to follow any commands. He had bruising along the right side of his head from his forehead down to his cheekbone, his right eye

the blood was removed from the defendant's hands, he informed the EMTs that the blood belonged to the victim. Aside from an abrasion on his left cheek and some bruising on his arms, the defendant had no injuries. The defendant was later taken to the emergency department where X-rays confirmed the lack of serious injuries.

[5] The defendant gave the same account during his police interview.

[6] Both passersby testified at trial. Neither observed the start of the fight, and they had no information as to how or why the fight began.

was swollen shut, and there were abrasions on his face. Concerned about the victim's breathing, Kelly turned him onto his back. In doing so, he discovered "a sock with some kind of blunt object inside" (the sock with a rock inside it) beneath the victim and handed the item to Sangxayarath.[7] An ambulance arrived soon after and transported the victim to Yale-New Haven Hospital. The victim was treated for, inter alia, a life-threatening skull fracture likely caused by blunt force trauma.

The victim remained hospitalized for three months, after which he was transferred to a rehabilitation facility where he remained for at least twenty-two months. The victim was unable to communicate verbally until about three months after the incident. Since the altercation, he has been unable to walk, has lost sight in his right eye, has had difficulty using his hands, and has an indentation in his head.

The defendant ultimately was charged, by way of a two count information, with assault of an elderly person in the first degree in violation of General Statutes § 53a-59a (a) (1)[8] and assault of an elderly person in the second degree in violation of § 53a-60b (a) (1) (2017 assault charges). At the time of the assault, the defendant was serving a probationary sentence imposed as a result of a 2012 conviction. In April, 2012, the defendant had pleaded guilty to robbery in the second degree

[7] The sock with a rock inside it was sent to the state forensics laboratory for DNA analysis.

[8] General Statutes § 53a-59a (a) provides in relevant part that "[a] person is guilty of assault of an elderly . . . person . . . in the first degree, when such person commits assault in the first degree under section . . . 53a-59 (a) (3) . . . and (1) the victim of such assault has attained at least sixty years of age . . . ."

General Statutes § 53a-59 (a) provides in relevant part that "[a] person is guilty of assault in the first degree when . . . (3) under circumstances evincing an extreme indifference to human life he recklessly engages in conduct which creates a risk of death to another person, and thereby causes serious physical injury to another person . . . ."

in violation of General Statutes (Rev. to 2011) § 53a-135 and larceny in the sixth degree in violation of General Statutes § 53a-125b,[9] and was sentenced to eight years of incarceration, execution suspended after thirty-six months, and three years of probation (2012 sentence). Thus, as a consequence of his arrest on the 2017 assault charges, the defendant was charged in a separate docket with violation of probation.

During the pretrial proceedings, on July 30, 2018, the defendant filed a motion to correct an illegal sentence (first motion to correct), arguing that his 2012 sentence was illegal, and requesting "an order reopening the judgment of conviction and vacating his plea to the charges therein, and scheduling the case for trial." The court, *Clifford*, *J.*, denied the motion. The defendant appealed the ruling but withdrew the appeal before any briefs were filed.

On May 31, 2019, evidence was presented at a hearing on the probation violation charge. At the conclusion of the hearing, the court stated that it would "wait to hear on the jury on the underlying information" before issuing a decision on the probation violation. A jury trial on the assault charges was held over the course of four days in May and June, 2019. On June 4, 2019, the jury found the defendant not guilty of assault of an elderly person in the first degree in violation of § 53a-59 (a) (3) and guilty of assault of an elderly person in the second degree in violation of § 53a-60b (a) (1). On the same day, after accepting the verdict, the court determined that the defendant had violated the terms of his probation in violation of § 53a-32 "by committing an assault against [the victim] on July 13, 2017."

[9] The defendant subsequently filed a motion to withdraw his plea, asserting that he "unknowingly and involuntarily and unintelligently accepted [the] plea." The court denied the motion, noting that the defendant had been thoroughly canvassed before his plea was accepted.

A sentencing hearing was held on August 28, 2019. At the start of the hearing, the court noted that the defendant had filed a second motion to correct an illegal sentence[10] in July, 2019 (second motion to correct).[11] Although the defendant filed the motion while acting in a self-represented capacity, he was represented by counsel at the hearing.[12] The court, *B. Fischer*, *J.*, did not consider the second motion to correct, regarding the 2012 sentence, noting "[i]t's not in front of this [c]ourt. So . . . I'm not taking any action on it." The defendant was then sentenced to five years of incarceration for the assault and five years of incarceration for the violation of probation, to run consecutively. This appeal followed.

I

The defendant's first claim on appeal is that the court abused its discretion in denying his first motion to correct an illegal sentence. For the following reasons, we decline to reach the merits of this argument.

The following procedural history is relevant to our resolution of this claim. On July 30, 2018, the defendant filed his first motion to correct an illegal sentence and requested that the court open the 2012 judgment of conviction, vacate his pleas, and schedule the case for trial.[13] On October 9, 2018, Judge Clifford heard oral

[10] Although we refer to this as the second motion to correct for clarity, in actuality, the defendant filed at least five motions to correct, many while acting in a self-represented capacity. None of these motions is relevant to this appeal.

[11] The court also addressed various other motions that the defendant filed, including a motion for a mistrial and a motion for a new trial, both of which the court denied.

[12] After the trial, on June 27, 2019, the court granted the defendant's motion to dismiss his trial counsel. New counsel was subsequently appointed.

[13] Although Attorney Paul V. Carty represented the defendant at the time of the filing of the first motion to correct, prior to oral argument on that motion, Judge Clifford granted the defendant's request to represent himself after a lengthy canvassing. Thus, the defendant represented himself during oral argument on the first motion to correct.

argument on the first motion to correct. At the hearing, the defendant argued that the 2012 sentence was illegal because the plea agreement on which his guilty plea was based had been violated.[14] After lengthy discussion, Judge Clifford, in an oral ruling, determined that the plea agreement was not violated and, therefore, denied the defendant's first motion to correct.[15] On March 13, 2019, the defendant appealed to this court from Judge Clifford's denial of the motion to correct. On August 13, 2019, however, before any briefs were filed, the defendant withdrew the appeal.

After trial on the 2017 assault charges and prior to sentencing, on August 2, 2019, the defendant, acting in a self-represented capacity, filed his second motion to correct, arguing that the 2012 sentence was "ambiguous and contradictory." On August 28, 2019, prior to sentencing, Judge Fischer, who had presided over the trial, addressed the defendant's motion. Following arguments from each side, wherein the defendant was again represented by counsel, Judge Fischer stated: "I'm not going to take any action on the motion to correct [an] illegal sentence. He has remedies on that. It's not in front of this court. . . . I'm not taking any action on it."

On appeal, the defendant claims that the court erred in denying his first motion to correct an illegal sentence because his 2012 sentence was both ambiguous and contradictory. He contends that the case should be remanded for the trial court to correct the illegal sentence and vacate his sentence for violation of probation.

[14] In the written motion, however, the defendant asserted that "[i]t is unconstitutional to banish someone from a state. As such, the defendant accepted the plea agreement under false pretense/representation. The condition of banishing this defendant from the state has no rehabilitative purpose. The purpose of probation is to rehabilitate. The state never intended to honor its agreement with the defendant, as it is illegal to do so."

[15] Judge Clifford later filed a signed transcript of his oral decision as a memorandum of decision.

The state, however, asserts, inter alia, that this claim is not reviewable because "(1) the defendant abandoned any claim with respect to Judge Clifford's denial of his [first] motion to correct an illegal sentence when he withdrew his appeal of that decision, and (2) Judge Fischer never issued a ruling on the matter."

The defendant responds that "[t]he state's argument minimizes the fact that the defendant renewed the motion to correct before Judge Fischer. Although Judge Fischer did not make a ruling on that motion, he most certainly let Judge Clifford's ruling stand and sentenced the defendant to five years to serve on the violation of probation . . . predicated on the 2012 sentence. These facts make Judge Clifford's ruling an intricate component of this appeal." We agree with the state that the defendant waived this claim when he withdrew his appeal of Judge Clifford's ruling on the first motion to correct.

At the outset, it is important that we determine the subject of the defendant's appeal as it relates to this claim. The defendant's principal brief is devoid of any reference to his second motion to correct and to Judge Fischer's treatment of it. Although the defendant indicated on his appeal form that the appeal pertains to Judge Fischer, the defendant identified the action that constitutes the appealable judgment as: "Judgment of Convictions C.G.S. Sec. 53a-60b, 53a-32." He did not identify any judicial action with respect to either of his motions to correct. The defendant begins his analysis by noting that the "trial court was correct in concluding it had jurisdiction to consider the merits of the defendant's motion." Importantly, the issue of jurisdiction was considered by Judge Clifford and not Judge Fischer. Additionally, the defendant notes that the "trial court recognized the ambiguity in the sentencing agreement: 'Right, but that's where you're mixing it up. Your

issue was, you weren't able to set up another residency.' " Again, it was Judge Clifford who "recognized the ambiguity," not Judge Fischer.

Further, the defendant includes copies of his first motion to correct an illegal sentence and Judge Clifford's ruling on that motion in his appendix but does not include a copy of the second motion to correct. The defendant's principal brief to this court reads only as an appeal of Judge Clifford's denial of the first motion to correct—a claim he has waived. The defendant first mentions the second motion to correct in his reply brief, only to argue that the second motion to correct constituted a renewal of the first motion to correct.[16] Similarly, during oral argument before this court, the defendant's appellate counsel referred to the second motion to correct as renewing the first motion and contended that Judge Fischer "let Judge Clifford's ruling stand," allowing the defendant to again appeal from Judge Clifford's ruling. Counsel's position further supports the conclusion that the defendant is appealing only from Judge Clifford's denial of the first motion to correct. Finally, if the defendant were appealing from Judge Fischer's ruling, he would be claiming that it was error for Judge Fischer to decide that the issue was "not in front of this court"; this was not his claim.[17] Thus, the defendant is undoubtedly appealing from Judge Clifford's denial of his first motion to correct.

"It is well established that when a party brings a subsequent appeal, it cannot raise questions which were

[16] Further, in addressing the merits of the claim in his reply brief, the defendant again focuses only on what Judge Clifford said and did.

[17] At oral argument before this court, counsel for the defendant expressly stated that the defendant was not arguing that Judge Fischer erred in determining that the issue was "not in front of this court." Specifically, counsel argued that, because Judge Fischer did not hear the motion or the basis of the motion, it would be unreasonable to appeal as to Judge Fischer pertaining to this issue.

or could have been answered in its former appeals. . . . Failure to raise an issue in an initial appeal to this court constitutes a waiver of the right to bring the claim." (Internal quotation marks omitted.) *Disciplinary Counsel* v. *Evans*, 159 Conn. App. 343, 356, 123 A.3d 69 (2015). "Waiver is an intentional relinquishment or abandonment of a known right or privilege." (Internal quotation marks omitted.) *Gagne* v. *Vaccaro*, 80 Conn. App. 436, 445, 835 A.2d 491 (2003), cert. denied, 268 Conn. 920, 846 A.2d 881 (2004). "It is axiomatic, however, that this principle applies only when the issue that a party seeks to raise in a subsequent appeal was one that the party actually litigated *prior to the initial appeal* such that the issue *could have been raised in the initial appeal*." (Emphasis in original; internal quotation marks omitted.) *Disciplinary Counsel* v. *Evans*, supra, 356. "Failure to follow this rule would lead to the bizarre result . . . that a party who has chosen not to argue a point on a first appeal should stand better as regards the law of the case than one who had argued and lost." (Citation omitted; internal quotation marks omitted.) *Harris* v. *Bradley Memorial Hospital & Health Center, Inc.*, 306 Conn. 304, 319–20, 50 A.3d 841, cert. denied, 569 U.S. 918, 133 S. Ct. 1809, 185 L. Ed. 2d 812 (2012).

For example, in *Evans*, the defendant appealed from the trial court's order suspending him from the practice of law, but that appeal was dismissed because he failed to file a preliminary statement of issues, as required by Practice Book § 63-4 (a) (1). See *Disciplinary Counsel* v. *Evans*, supra, 159 Conn. App. 355–56. The defendant later appealed the court's order denying his motion for reinstatement and raised several claims that were also raised in the first appeal. Id., 353, 355. Due to the fact that the defendant had already raised the same claims in the first appeal, this court determined that the claims were waived and declined to review them. Id., 356–57.

Likewise, in the present case, the defendant waived his claim regarding his first motion to correct when he withdrew his appeal challenging Judge Clifford's ruling on that first motion. His claims as to that ruling could have been addressed in that appeal. See id. The defendant cannot now revive that earlier claim, as he has waived it.

In an attempt to obscure the fatality of this defect, the defendant raised a new argument in his reply brief and during oral argument before this court. Without providing any legal support, the defendant contended that, because Judge Fischer declined to rule on his second motion to correct, Judge Fischer had "let Judge Clifford's ruling stand," thereby resurrecting Judge Clifford's ruling on the first motion to correct while simultaneously creating an entirely new ruling on an entirely new motion to correct. Therefore, he asserts that, despite the fact that he waived his claims regarding the first motion to correct, he can argue in this appeal that Judge Clifford incorrectly denied his first motion to correct. The defendant's counsel conceded that, "if the defendant hadn't renewed the motion then the withdrawal of his appeal would have been an abandonment of that issue in this appeal." Yet, the defendant argues that the filing of the second motion to correct somehow renewed the first motion to correct and negated the withdrawal of the prior appeal, thereby allowing him to renew his challenge to Judge Clifford's determination. The defendant's argument is meritless, as it contravenes the well established law of waiver. See *Harris* v. *Bradley Memorial Hospital & Health Center, Inc.*, supra, 306 Conn. 319; *Disciplinary Counsel* v. *Evans*, supra, 159 Conn. App. 356–57; *Gagne* v. *Vaccaro*, supra, 80 Conn. App. 445–46. Because he has waived any claims relating to the first motion to correct and cannot resurrect those claims through Judge Fischer's determi-

nation that the second motion to correct was not properly before him, we decline to review the merits of this claim.

II

The defendant also claims that the court erred as to three rulings made during the trial on the 2017 assault charges. Specifically, the defendant claims that the court erred in (1) excluding testimony from the lead detective regarding his opinion as to whether a sock with a rock inside it is a weapon, (2) admitting testimony from a Department of Correction physician regarding an alleged 2011 incident in which the police hit the defendant in the head with a baton, and (3) striking certain statements defense counsel made regarding the victim during closing argument in violation of the defendant's constitutional right to present a defense.[18] We address each claim in turn.

[18] Although the defendant provides distinct arguments on each point, he presents these claims as one claim of error in his appellate brief. The state, however, responds to these claims separately. Similarly, we address them as such.

We also note that, in the opening paragraph of part II of his brief, the defendant maintains that the court's action "constituted an abuse of discretion and deprived the defendant of his constitutional right to present a defense as guaranteed by the sixth and fourteen amendments to the United States constitution. Specifically, the defendant claims that the trial court improperly excluded evidence and closing argument comments material to his claim of self-defense."

In the first two subsections of his argument, however, the defendant makes no mention of the constitution and provides no argument as to how the court's exclusion or admission of the evidence at issue violated his constitutional rights. Only in the final subpart, in which the defendant contests the exclusion of certain statements during defense counsel's closing argument, does the defendant provide any basis for a constitutional claim. See part II C of this opinion. Finally, in his reply brief, with respect to his first evidentiary claim, the defendant argues that, "[t]he state overlook[ed] the fact that the defendant has also claimed the trial court deprived him of his constitutional right to present a defense," again without providing any analysis to support his alleged claim of constitutional violation.

To the extent that the defendant is seeking to raise constitutional claims related to his first two evidentiary claims, any such claim is inadequately briefed. See, e.g., *Grimm* v. *Grimm*, 276 Conn. 377, 393, 886 A.2d 391 (2005)

A

The defendant first claims that the court erred in excluding testimony from Detective Matthew Collier as to his opinion as to whether a sock with a rock inside it is a weapon. Specifically, the defendant argues that, despite the court's ruling to the contrary, the testimony was relevant under § 4-1 of the Connecticut Code of Evidence.[19] The state contends that this claim is not reviewable because the defendant failed to make an offer of proof. We agree with the state.

The following additional facts are relevant to our resolution of this claim. At trial, the defendant did not deny that he hit the victim but asserted that he acted in self-defense. On May 30 and 31, 2019, the state presented the testimony of Collier, the lead detective on the case. Through Collier, the state presented video footage of the defendant's statement to the police immediately following his arrest on July 13, 2017. In the statement, the defendant asserted several times that the victim began the altercation when he hit the defendant in the head with a sock with a rock inside it.

On cross-examination, the following exchange occurred:

"[Defense Counsel]: Let me ask you this, detective. If that rock inside a sock had swung at someone's head, do you consider it a deadly weapon?

("It is well settled that claims on appeal must be adequately briefed . . . . Claims that are inadequately briefed generally are considered abandoned." (Citations omitted.)), cert. denied, 547 U.S. 1148, 126 S. Ct. 2296, 164 L. Ed. 2d 815 (2006); *Ward* v. *Greene*, 267 Conn. 539, 546, 839 A.2d 1259 (2004) ("[a]nalysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly" (internal quotation marks omitted)).

[19] Section 4-1 of the Connecticut Code of Evidence provides: " 'Relevant evidence' means evidence having any tendency to make the existence of any fact that is material to the determination of the proceeding more probable or less probable than it would be without the evidence."

"[The Prosecutor]: Objection, Judge. It's irrelevant.

"The Court: Yeah. *How is that relevant there, Attorney Carty?* Are you claiming that?

"[Defense Counsel]: I'm claiming it, yes.

"The Court: All right. I'm going to—I'm going to sustain the objection. It's not relevant." (Emphasis added.) Defense counsel then proceeded with further questioning.

On appeal, the defendant now asserts that the court's ruling was erroneous. The state responds that, because "the relevance of any testimony that [Collier] may have given is not obvious based on the question" and because the defendant's claim is "based on speculation concerning how [Collier] *may* have replied to defense counsel's inquiries," the claim is not reviewable without an offer of proof, which was not provided. (Emphasis in original.) In response, the defendant contends that the "[s]tate's [argument] misses the mark because (1) police officers, based on their training and experience, have been routinely permitted to provide opinions; and (2) the defendant was charged with assault and claimed he acted in self-defense; [t]wo of the elements of self-defense require the jurors to determine (a) whether the defendant used such degree of force that he reasonably believed necessary to defend himself; and (b) whether the defendant's actual belief about the degree of force necessary to defend himself was a reasonable belief. [General Statutes] § 53a-19 (a). Had Collier been permitted to respond to defense counsel's question it would have assisted the jurors in determining whether the defendant's belief was reasonable. Defense counsel's question was relevant and admissible and [went] directly to the core of his defense strategy that he acted in self-defense." Despite the fact that the defendant prefaces this argument by stating that it responds to the state's position, the defendant's assertions fail to do so. In fact,

the defendant merely argues the merits of his claim to support his position that it is reviewable. For the following reasons, we conclude that the claim is not reviewable.

Although an offer of proof is not a strict prerequisite for appellate review; see *State* v. *Holley*, 327 Conn. 576, 595–96, 175 A.3d 514 (2018) ("[b]ecause [*State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015)] does not excuse an inadequate record, the absence or inadequacy of an offer of proof *may* prevent a criminal defendant from proving on appeal that the trial court's preclusion of certain evidence violated his right to present a defense" (emphasis added; footnote omitted)); *Burns* v. *Hanson*, 249 Conn. 809, 824, 734 A.2d 964 (1999) (no offer of proof necessary because "[i]t [was] clear from the record what the [witness'] answer would have been"); in certain circumstances the failure to make an offer of proof renders a claim unreviewable on appeal. See, e.g., *State* v. *Gooch*, 186 Conn. 17, 24, 438 A.2d 867 (1982) (claim not reviewable without offer of proof because witness could have provided multiple answers, one of which being admissible and other not); *State* v. *Papineau*, 182 Conn. App. 756, 771–72, 190 A.3d 913 (failure to make offer of proof by asking court to hear witness' response outside presence of jury left record inadequate to review claim of evidentiary error), cert. denied, 330 Conn. 916, 193 A.3d 1212 (2018).

"[A] reviewing court may be unable to determine the propriety or effect of the excluded facts unless the substance of the proffered evidence is disclosed in the record. . . . Accordingly, [a]n offer of proof is the accepted procedure to preserve the record for appeal if evidence is excluded. . . . An offer of proof, properly presented, serves three purposes. First, it should inform

the court of the legal theory under which the offered evidence is admissible. Second, it should inform the trial judge of the specific nature of the offered evidence so the court can judge its admissibility. Third, it thereby creates a record adequate for appellate review. . . . Without an adequate record to review the ruling of the trial court, this court must assume that the trial court acted properly." (Citations omitted; internal quotation marks omitted.) *State* v. *Johnson*, 171 Conn. App. 328, 350–51, 157 A.3d 120, cert. denied, 325 Conn. 911, 158 A.3d 322 (2017).

As stated, in certain circumstances the failure to provide an offer of proof renders an evidentiary ruling unreviewable on appeal. For example, in *State* v. *Papineau*, supra, 182 Conn. App. 771–72, this court determined that the failure to provide an offer of proof rendered the defendant's claim unreviewable. In that case, the state objected to proposed testimony as hearsay, and defense counsel provided an explanation as to why the challenged evidence was admissible but did not provide an offer of proof. See id., 766. Because of the lack of an offer of proof, this court declined to review the claim, holding: "The record does not contain the substance of the excluded testimony, and, thus, leaves us without a basis on which to evaluate its relevance. In Connecticut, our appellate courts do not presume error on the part of the trial court. . . . Rather, the burden rests with the appellant to demonstrate reversible error. . . . The defendant bears the burden of providing this court with an adequate record to review his claims. Practice Book § 61-10. The present claim depends on a record that reflects the substance of [the witness'] testimony concerning the conversation that he allegedly overheard. This is necessary not merely to determine whether the court properly excluded the testimony, but *whether the court's ruling was harmful to the defense*." (Citation omitted; emphasis added;

internal quotation marks omitted.) *State* v. *Papineau*, supra, 771–72.

In the present case, the defendant's failure to make an offer of proof renders his claim unreviewable. Because the defendant did not provide an offer of proof and gave no explanation as to why the evidence was relevant, despite the court's specific request for an explanation, the court did not know the specific theory that supported the admission of the evidence or the nature of the proposed evidence. See *State* v. *Johnson*, supra, 171 Conn. App. 350–51. Not only could the court not make a full assessment of the evidence, but, without an offer of proof in the record, we cannot review the defendant's claim. Assessment of the present claim would require a record that reflects the substance of Collier's expected testimony regarding his opinion of the sock with a rock inside it, a record that we do not have. Moreover, without an offer of proof, we are not able to determine whether the court's ruling was harmful to the defense.[20] See *State* v. *Papineau*, supra, 182 Conn. App. 772. Therefore, we decline to review the substance of the defendant's claim.

[20] The defendant argues that, despite the lack of an offer of proof, "harm can be shown regardless of Collier's response to defense counsel's question. . . . If Collier had responded in the affirmative, it would support the defendant's theory of the case that he believed he had to use deadly force against [the victim] to [defend] himself, and that belief was reasonable. If Collier responded in the negative . . . it would support an inference that, although deadly force may not have been warranted in defending himself from [the victim], some level of force was justified, and that belief was reasonable." We are not persuaded. Such a harm analysis improperly requires pure speculation, assumes that Collier could have responded only "yes" or "no," and relies on suspect reasoning. As the state aptly observes, "[the defendant's] assertion fails to remove the defendant's claim from the realm of speculation because Collier may not have provided a simple 'yes' or 'no' response. This is especially so given counsel's use of the phrase 'deadly weapon,' which carries independent legal significance, and may have given Collier pause. . . . Without knowing what Collier would have said, the defendant cannot meet his burden of showing harm." (Citation omitted.)

B

The defendant next claims that the court erred in allowing the state to cross-examine James Elderkin, a physician at the Department of Correction who treated the defendant in September, 2017, about a 2011 incident in which a police officer allegedly hit the defendant in the head with a baton. Specifically, the defendant argues that the court improperly rejected his arguments that the testimony was irrelevant. We disagree.

Before we address the substance of this claim, we set forth the applicable standard of review. "We review a trial court's evidentiary rulings for abuse of discretion. . . . We will make every reasonable presumption in favor of upholding the trial court's ruling, and only upset it for a manifest abuse of discretion. . . . [Thus, our] review of such rulings is limited to the questions of whether the trial court correctly applied the law and reasonably could have reached the conclusion that it did." (Citation omitted; internal quotation marks omitted.) *State* v. *Gonzalez*, 315 Conn. 564, 593, 109 A.3d 453, cert. denied, 577 U.S. 843, 136 S. Ct. 84, 193 L. Ed. 2d 73 (2015).

The following additional facts are relevant to our resolution of this claim. At trial, the defense presented Elderkin's testimony to support the inference that the victim was the initial aggressor whose attacks caused the defendant head trauma. On cross-examination, the following colloquy took place between the prosecutor and Elderkin:

"Q. Are you aware whether or not [the defendant] has ever suffered a head injury in the past?

"A. Only what he reported to me and I recorded on this note of 9-22-17.

"Q. And what—and what was that?

"A. . . . He reported to me that he had intermittent headaches since head injury in July of 2017.

"Q. Okay. So he didn't report to you whether or not he had a head injury in February of 2011?

"A. Not that I recall and not that I recorded in the record.

"Q. So you don't have any information as to whether or not [the defendant] suffered a head injury in February of 2011; fair to say?

"A. Yes.

"Q. Okay. Are you aware that [the defendant] is currently suing the Middletown Police Department?

"A. No.

"Q. He didn't tell you that?

"A. No.

"Q. Are you aware that he's suing them because he's alleging—

"[Defense Counsel]: Objection.

"Q. —excessive force? . . .

"[Defense Counsel]: Objection is relevance."

After the court excused the jury from the courtroom, defense counsel argued that the evidence was not relevant, stating, "[t]his is New Haven, and it has nothing to do with Middletown in this case." The court then requested an offer of proof before ruling on the objection. Outside of the presence of the jury, the prosecutor proceeded to ask Elderkin about the lawsuit, which the defendant had brought, asserting that, in 2011, a Middletown police officer hit him in the head with a baton, causing injury. Elderkin was not aware of the lawsuit or the alleged incident. During the offer of proof,

defense counsel, in turn, emphasized that the alleged incident occurred six and one-half years prior to the 2017 altercation and asked Elderkin, "would it be likely that [the defendant] would still be suffering from the injuries from six and a half years earlier . . . ?" Elderkin replied that he did not think he could say.[21]

In arguing that the evidence was admissible, the prosecutor asserted that the evidence "allows [the jury] to draw yet another inference for how these injuries could have occurred." Defense counsel responded that, "[p]articularly, since he can't say that, you know, that the injuries would be lasting six and a half years, it would be purely speculative for counsel to try to elicit some information about something that's totally unrelated to this incident both in time and in terms of circumstances." The court, however, disagreed and allowed the prosecutor to inquire about the 2011 incident.

[21] The entirety of the offer of proof was as follows:

"[The Prosecutor]: So you're not aware that he's suing the Middletown Police Department?

"[Elderkin]: Correct. . . .

"[The Prosecutor]: And that he was forced to go to the hospital?

"[Elderkin]: Correct.

"[The Prosecutor]: And that was during a struggle inside of his cell? You're not aware of that?

"[Elderkin]: No.

"[The Prosecutor]: Okay. Could hitting someone in the head with a baton potentially cause a concussion?

"[Elderkin]: Yes.

"The Court: What time frame on that?

"[The Prosecutor]: 2011.

"The Court: Oh, 2011. Did you want to inquire on the offer?

"[Defense Counsel]: Yes. . . .

"[Defense Counsel]: Good morning, Doctor. That February, 2011 incident was approximately six and a half years prior to the July 17 incident; is that correct?

"[Elderkin]: Yes.

"[Defense Counsel]: All right. And would—would it be likely that [the defendant] would be still suffering from the injuries from six and a half years earlier and complaining about that in 2017?

"[Elderkin]: I don't think I could say."

On appeal, the defendant maintains that the evidence is irrelevant. Now, however, he newly asserts that the evidence was irrelevant because "the doctor did not have any personal knowledge with respect to the prosecutor's line of questioning" and that "the only evidence [regarding the 2011 incident] before the jurors was the doctor's testimony that hitting someone in the head with a baton could potentially cause a concussion. But because the prosecutor's questions are not in evidence, and because the doctor had no personal knowledge of the 2011 incident, there was no evidence before the jury that the defendant had even been hit with a baton."

The state, however, contends that the defendant failed to preserve his claim because his relevancy argument on appeal differs from the argument made at trial. Although we disagree with the state as to preservation, we do agree that the defendant's change in argument impacts our review, as we cannot assess an evidentiary ruling using a theory of relevancy that was not presented to the trial court.

"[I]t is well settled that [o]ur review of evidentiary rulings made by the trial court is limited to the specific legal ground raised in the objection [to the trial court]. . . . This court reviews rulings solely on the ground on which the party's objection is based." (Internal quotation marks omitted.) *State* v. *Raynor*, 175 Conn. App. 409, 449, 167 A.3d 1076 (2017), aff'd, 334 Conn. 264, 221 A.3d 401 (2019). For example, a party who at trial objects to evidence only because its probative value is outweighed by its prejudicial effect cannot on appeal argue that the evidence was irrelevant because that specific legal ground of objection was not raised at trial. See id. However, these precepts do not render a claim unpreserved on appeal where a party merely changes the argument in support of the objection without attempting to change the grounds on which the objection was based. In the present case, the defendant

maintains that the evidence is inadmissible because it is irrelevant—the same ground of inadmissibility raised at trial. The fact that he is attempting to assert a new argument does not render his claim unpreserved.

His claim is, however, confined to the relevancy arguments made before the trial court. "An appellant who challenges on appeal a trial court's exclusion of evidence is limited to the theory of admissibility that was raised before and ruled upon by the trial court. A court cannot be said to have refused improperly to admit evidence during a trial if the specific grounds for admission on which the proponent relies never were presented to the court when the evidence was offered." (Internal quotation marks omitted.) *State* v. *Papineau*, supra, 182 Conn. App. 769–70. This principle extends to situations in which an appellant asserts new arguments in support of unchanged grounds of objection. Therefore, on appeal, "[w]e must evaluate relevancy in accordance with the theory of admissibility and/or relevancy argued at trial, not on appeal." *State* v. *Watson*, 192 Conn. App. 353, 377 n.9, 217 A.3d 1052 (2019) (confining review to relevancy arguments made at trial despite fact that state provided additional arguments to justify trial court's determination that excluded evidence was irrelevant), aff'd, 339 Conn. 352, 261 A.3d 706 (2021).

Although the defendant insists that his claim on appeal asserts the same argument as his objection at trial, his argument on appeal is premised on a very different perspective of the evidence. On appeal, the defendant asserts that, because Elderkin had no knowledge of the incident and because the state did not produce any other proof as to the 2011 incident, Elderkin was not the appropriate witness to testify as to that incident—rejecting the conclusion that there was any incident in 2011. At trial, however, the defendant's objection focused on the fact that Elderkin could not

speculate as to whether injuries from the 2011 incident could persist through 2017—not challenging that the defendant was hit on the head with a baton in 2011. Although these two arguments are based on the same objection, that of relevancy, on close inspection they are dissimilar, as one asserts that the state failed to properly prove the 2011 incident while the other accepts that the incident occurred. If we were to consider the defendant's arguments on appeal regarding this evidence, we would be rejecting well established law and would be overstepping the well-defined role of an appellate court. See, e.g., *State* v. *Papineau*, supra, 182 Conn. App. 769–70; *State* v. *Raynor*, supra, 175 Conn. App. 448–49. Therefore, we are limited to assessing the relevancy of the testimony exclusively within the confines of the defendant's arguments before the trial court.

During the offer of proof, the state represented that the evidence would allow the jury to infer that the head injuries from which the defendant allegedly suffered were not the result of an attack by the victim on July 13, 2017, but, rather, were caused when a police officer hit the defendant on the head with a baton in 2011. Defense counsel argued that the evidence was not relevant because the incidents were six and one-half years apart and were unrelated "both in time and in terms of circumstances." Presented with these arguments, the court did not abuse its discretion in determining that the evidence was relevant.

Relevant evidence is evidence that has "any tendency to make the existence of any fact that is material to the determination of the proceeding more probable or less probable than it would be without the evidence." Conn. Code Evid. § 4-1. "One fact is relevant to another if in the common course of events the existence of one, alone or with other facts, renders the existence of the other either more certain or more probable. . . . Evidence is not rendered inadmissible because it is not

conclusive. All that is required is that the evidence *tend to support* a relevant fact even to a slight degree, [as] long as it is not prejudicial or merely cumulative." (Emphasis in original; internal quotation marks omitted.) *Ulanoff* v. *Becker Salon, LLC*, 208 Conn. App. 1, 13, A.3d (2021).

Because the defendant raised the defense of self-defense, the issue of whether his alleged head injuries were caused by the victim was a material issue of fact for the jury's consideration in evaluating whether his use of physical force was justified under the circumstances. Section 53a-19 (a), which sets forth the defense of self-defense, provides: "Except as provided in subsections (b) and (c) of this section, a person is justified in using reasonable physical force upon another person to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force, and he may use such degree of force which he reasonably believes to be necessary for such purpose; except that deadly physical force may not be used unless the actor reasonably believes that such other person is (1) using or about to use deadly physical force, or (2) inflicting or about to inflict great bodily harm." Evidence that the defendant's head injury occurred in 2011 and not during the July, 2017 altercation with the victim, has a tendency to make it less probable that the defendant had a reasonable belief as to the use or imminent use of physical force against his person, as it discredits the defendant's claim that the victim struck him on the head with the sock with a rock inside it. The fact that Elderkin, who examined the defendant in 2017, could not say conclusively that the 2011 incident caused the head injury does not render the evidence irrelevant.

C

Finally, the defendant claims that the trial court erred in striking from defense counsel's closing arguments

statements that the evidence presented at trial supported an inference that the victim attacked "at least one other person" with the sock with a rock inside it. Specifically, the defendant asserts that the court violated his sixth amendment right to the effective assistance of counsel by precluding defense counsel's remarks because the excluded statements were essential to his claim of self-defense. The defendant admits that this claim was not properly preserved but asserts that it is reviewable under *State* v. *Golding*, supra, 213 Conn. 239–40. Although the claim is reviewable, the defendant has failed to show that a constitutional violation actually occurred.

Under *Golding*, "a defendant can prevail on a claim of constitutional error not preserved at trial only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt." (Emphasis in original; footnote omitted.) Id. "The first two [prongs of *Golding*] involve a determination of whether the claim is reviewable; the second two . . . involve a determination of whether the defendant may prevail." (Internal quotation marks omitted.) *State* v. *LaFontaine*, 128 Conn. App. 546, 550 n.3, 16 A.3d 1281 (2011).

In the present case, we review the defendant's claim because the record is adequate for our review, and the claim is of constitutional magnitude. See, e.g., *State* v. *Cunningham*, 168 Conn. App. 519, 530–32, 146 A.3d 1029, cert. denied, 323 Conn. 938, 151 A.3d 385 (2016); id., 530 (claim that "the court violated [defendant's]

sixth amendment right to argue [during closing arguments] that the state had failed to satisfy its burden to prove an essential element of the crime charged beyond a reasonable doubt" is constitutional in nature for purpose of second prong of *Golding*); see also *State* v. *Gonzalez*, 338 Conn. 108, 130, 257 A.3d 283 (2021) ("[t]he courts of this state 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").

The following facts are relevant to our resolution of this claim. During trial, the state entered two stipulations into evidence. The first stipulation provided: "On December 9, 1998, [the victim] was convicted of [a]ssault in the [f]irst [d]egree, in violation of Connecticut General Statutes [§] 53a-59 (a) (1)." The second stipulation provided that, on July 13, 2017, the night of the assault, "[t]he [victim's] ethanol level was the equivalent of a [b]lood [a]lcohol [c]ontent of .07."

Jillian Echard, a DNA technician at the forensic science laboratory of the Department of Emergency Services and Public Protection, testified at trial on behalf of the state as to DNA testing performed on the sock with a rock inside it. The sock was tested at three points: the bottom of the sock, the middle of the sock (where the rock was located), and the sock opening (which was tied in a knot). Testing showed the presence of DNA from three different individuals at the bottom of the sock. The victim's DNA profile was present.[22] The results were inconclusive as to whether the defendant was a contributor. As to the middle of the sock, testing showed the presence of DNA from two individuals: the victim was identified as a contributor and the

[22] Specifically, Echard testified: "[A]t least 100 billion times more likely to occur if [the DNA] originated from [the victim] and 2 unknown individuals as opposed from it originating from 3 unknown individuals."

results were inconclusive as to whether the defendant was a contributor.[23] At the sock opening, testing showed that only the victim's DNA was present; the defendant was not a source.[24] In addition, the prosecutor elicited testimony regarding how DNA is transferred. Specifically, Echard testified that "the force in which an object touches someone can . . . impact whether or not their DNA ends up on the object" and that, "the more frequent the contact that someone has with an object, the more likely it is that their DNA would end up on the object . . . ."

On cross-examination, defense counsel inquired further into how DNA can be transferred to an object when the object is used to strike someone. Specifically, defense counsel asked Echard, "if someone was struck on the face or the arm or wherever, that might cause DNA to be transferred . . . to the item that you examined; correct?" Echard responded: "Yes. If somebody was struck in the area with skin in such rigor, that would expect to transfer cells over. . . . If you're striking somebody, then there's a little bit more rigor to it than just a casual."

During closing argument, defense counsel argued that the victim started the fight when he attacked the defendant at the bus stop. Defense counsel further argued that the bruises on the defendant's arms were evidence of his having attempted to block the victim's attacks. He also argued that the DNA evidence supported a conclusion that the defendant "probably was the guy on [the rock] end." Defense counsel continued: "But the other thing is that they had a third person's

[23] Specifically, Echard testified: "[A]t least 100 billion times more likely to occur if [the DNA] originated from [the victim] and 1 unknown individual as opposed to it originating from 2 unknown individuals."

[24] Specifically, Echard testified: "[A]t least 100 billion times more likely to occur if [the DNA] originated from [the victim] than if it originated from an unknown individual."

DNA on the rock end of the sock. From this we can infer at least one other person was struck, attacked." At this point, the prosecutor objected. The court sustained the objection and ordered the statement stricken. Moments later, defense counsel stated that, "[w]hile the results of the right rock end of the—the sock are inconclusive as to [the defendant], he's not eliminated, and he has—as he [had] been from the handle of the rock. From this you can infer that he was at least one of two people struck with the rock." The prosecutor did not object to this statement.

Later during his closing argument, defense counsel stated, "[n]ow, we wouldn't even be here but for the actions of [the victim]. The state and defense stipulated that in 1998 [the victim] was convicted of assault in the first degree. Now, at that time he was a man of about 40, 41, 42, and now some 20 years later, he's a 62 year old man, he apparently still hadn't learned his lesson. He's still engaging in assaultive behavior. We know that his attack on [the defendant] was not an isolated incident because of the DNA of the third person." The prosecutor then objected. Again, the court sustained the objection and ordered the statement stricken. The defendant now asserts that these rulings were in error.

Despite our determination that the defendant's claim is reviewable, we conclude that the court did not violate the defendant's right to present a closing argument, and, therefore, the defendant's claim fails under the third prong of *Golding*. In support of his claim, the defendant argues that his right to present a closing argument was violated because, in precluding the statement regarding the inference that the victim attacked other people with the sock with a rock inside it, the court prohibited him from arguing a significant issue that bore directly on his theory of defense, which was

that the victim was the initial aggressor and the defendant acted in self-defense. In response, the state contends that the defendant "received an unfettered opportunity to raise every significant issue bearing directly on his theory of defense," and that the contested statements were based on facts not in evidence and on unreasonable inferences, and were, therefore, impermissible. We agree with the state that the inferences were unreasonable and were based on facts not in evidence; therefore, the defendant's rights were not violated.

"We review the limits that the trial court imposes on a defendant's closing argument for an abuse of discretion. The presiding judge must be and is given great latitude in controlling the duration and limiting the scope of closing summations. He [or she] may limit counsel to a reasonable time and may terminate argument when continuation would be repetitive or redundant. He [or she] may ensure that argument does not stray unduly from the mark, or otherwise impede the fair and orderly conduct of the trial. . . . 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." (Internal quotation marks omitted.) *State* v. *Cunningham*, supra, 168 Conn. App. 533–34. Further, "[c]ounsel may comment upon facts properly in evidence and upon *reasonable* inferences to be drawn from them. . . . Counsel may not, however, comment on or suggest an inference from facts not in evidence." (Citation omitted; emphasis in original; internal quotation marks omitted.) *State* v. *Arline*, 223 Conn. 52, 58, 612 A.2d 755 (1992).

The defendant points out that the "[t]rial court permitted the prosecutor to ask the jurors to infer that

because no witnesses saw [the victim] attack the defendant, they could infer the defendant was the initial aggressor.[25] But the trial court precluded the defendant [from] asking the jurors to infer, that based on facts in evidence, [the victim] had previously attacked a third person, and therefore more likely than not he also attacked the defendant." (Footnote added.) The defendant relies on the evidence presented at trial that (1) the victim had been convicted of assault in the first degree, (2) the victim had a blood alcohol content of 0.07 at the time of the incident underlying that assault conviction, (3) there was DNA belonging to individuals aside from the victim on the sock, (4) DNA could transfer if someone was struck with rigor, and (5) the defendant consistently maintained that the victim had struck him on the head several times with the rock in the sock. The defendant argues that, taken together, this evidence supports the inference that the victim "attacked 'another' or 'third' person . . . ." We reject this argument, as it would require reliance on facts not in evidence; furthermore, the inference the defendant draws is far from reasonable. See *State* v. *Arline*, supra, 223 Conn. 58.

Of the facts to which the defendant points, only the DNA evidence could possibly support a conclusion that the sock with a rock inside it was used to hit someone other than the defendant. Significantly, however, there were no facts adduced at trial to indicate how or when such an incident could have occurred. Further, there was no evidence to support a conclusion that the DNA was on the sock as a result of an attack—the DNA could have been present for any number of reasons. Defense counsel's argument requires expansive speculation as to facts not in evidence in order to permit a conclusion that the victim used the sock with the rock

[25] We note that defense counsel made no objections during the prosecutor's closing arguments.

inside it to attack a third party. Expressed differently, defense counsel's statements constituted an entirely unreasonable inference from the facts in evidence. For these reasons, the court did not abuse its discretion in excluding defense counsel's arguments, and, therefore, the defendant's right to present a closing argument was not abridged. Accordingly, the defendant's claim fails *Golding*'s third prong because the alleged constitutional violation does not exist.

The judgments are affirmed.

In this opinion the other judges concurred.