GLEN S. *v.* COMMISSIONER OF CORRECTION*
(AC 45655)

Suarez, Seeley and Norcott, Js.

Syllabus

The petitioner, who had been convicted, on a guilty plea entered pursuant to *North Carolina* v. *Alford* (400 U.S. 25), of sexual assault in a cohabiting relationship, sought a writ of habeas corpus, claiming that his trial counsel had provided ineffective assistance by allowing him to enter a

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

guilty plea while he was under the influence of prescription drugs that affected his ability to give a knowing and meaningful plea. At trial, when the petitioner's counsel attempted to call his first witness, R, to testify as to the petitioner's character for truthfulness, counsel for the respondent, the Commissioner of Correction, objected on the grounds of relevance. The court sustained the respondent's relevancy objection. The petitioner's habeas counsel never sought to recall R as a witness after the petitioner testified. The court rendered judgment denying the petition for habeas corpus and, thereafter, denied the petition for certification to appeal, and the petitioner appealed to this court. *Held* that the habeas court did not abuse its discretion in denying the petition for certification to appeal, the petitioner having failed to show that there was an issue that was debatable among jurists of reason, that a court could have resolved the issue in a different manner or that the question was adequate to deserve encouragement to proceed further: the habeas court properly determined that R's testimony, when R had no connection with the plea hearing, was not relevant to the petitioner's claim of ineffective assistance of counsel; moreover, at the time the petitioner's counsel called R to testify, the petitioner had not himself testified and, thus, his veracity had not been challenged or impeached and extrinsic evidence of his character for truthfulness was immaterial.

Argued October 5, 2023—officially released January 2, 2024

Procedural History

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland and tried to the court, *M. Murphy, J.*; judgment denying the petition; thereafter, the court, *M. Murphy, J.*, denied the petition for certification to appeal, and the petitioner appealed to this court. *Appeal dismissed.*

Vishal K. Garg, assigned counsel, for the appellant (petitioner).

Melissa E. Patterson, senior assistant state's attorney, with whom, on the brief, were *Maureen Platt*, state's attorney, and *Donna Marie Fusco*, assistant state's attorney, for the appellee (respondent).

Opinion

SUAREZ, J. The petitioner, Glen S., appeals following the denial of his petition for certification to appeal from the judgment of the habeas court denying his petition

for a writ of habeas corpus. The petitioner claims that the court (1) abused its discretion in denying his petition for certification to appeal and (2) improperly denied his petition for a writ of habeas corpus because the court erred in precluding evidence of his character for truthfulness.[1] We dismiss the appeal.

The following procedural history is relevant to this appeal. The petitioner was charged with one count of sexual assault in a cohabitating relationship in violation of General Statutes (Rev. to 2007) § 53a-70b (b)[2] and one count of assault in the third degree in violation of General Statutes § 53a-61. The charges resulted from a complaint by the petitioner's girlfriend, who alleged that the petitioner wanted her to ingest an antipsychotic

[1] In his appellate brief before this court, the petitioner also argues that, at the time he attempted to present testimony from his character witness, his character for truthfulness had been impeached in that the record before the court reflected that he had a prior felony conviction. The petitioner also makes other arguments in support of the admissibility of his character witness. Specifically, he claims that an exception to § 6-6 (a) of the Connecticut Code of Evidence for when a witness is a "stranger" applies. Moreover, the petitioner invites us to abandon the "impeachment first" rule of evidence as outlined in § 6-6 (a) of the Connecticut Code of Evidence. These arguments were not raised before the habeas court and, therefore, because they were not part of the petitioner's theory of admissibility at trial, they cannot be considered on appeal. "The theory of admissibility is germane to our consideration of whether the court properly exercised its discretion to exclude the proffered testimony on the basis of a correct view of the law. 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. . . . Error does not lie in the exclusion of evidence claimed on an inadmissible ground even though it might have been admissible had it been claimed on another and different ground [at trial]." (Internal quotation marks omitted.) *State* v. *Fernando V.*, 170 Conn. App. 44, 62, 153 A.3d 701 (2016), aff'd, 331 Conn. 201, 202 A.3d 350 (2019). Thus, we decline to review the petitioner's additional admissibility arguments because they are unpreserved.

[2] On July 9, 2019, § 53a-70b was repealed by Public Acts 2019, No. 19-189, § 44, effective October 1, 2019.

medication known as Seroquel, and, when she refused, he struck her numerous times with his fist, ordered her to bathe while he watched, and forced her to engage in penile-vaginal intercourse. Attorney TaShun Lake represented the petitioner at all relevant times in the underlying proceedings.

On August 13, 2008, the petitioner pleaded guilty, under the *Alford* doctrine,[3] to one count of sexual assault in a cohabitating relationship in violation of General Statutes (Rev. to 2007) § 53a-70b (b). The court, *Fasano*, *J.*, canvassed the petitioner when he entered his plea and accepted the plea after finding that it was made knowingly and voluntarily. On that same day, the petitioner was sentenced by the court pursuant to an agreed upon recommendation to serve a total effective sentence of fifteen years of incarceration, suspended after five years, followed by fifteen years of probation.

On June 26, 2017, the petitioner initiated the present habeas petition. On December 28, 2021, the petitioner's habeas counsel filed an amended petition on the petitioner's behalf. In the December 28, 2021 amended petition, the petitioner claimed that his trial counsel was ineffective for allowing him to plead guilty while under the influence of prescription drugs that affected his ability to give a knowing and meaningful plea. The petitioner further alleged that, but for trial counsel's ineffective assistance, he would have gone to trial and been

[3] "Under *North Carolina* v. *Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970), a criminal defendant is not required to admit his guilt, but consents to being punished *as if he were guilty* to avoid the risk of proceeding to trial. . . . A guilty plea under the *Alford* doctrine is a judicial oxymoron in that the defendant does not admit guilt but acknowledges that the state's evidence against him is so strong that he is prepared to accept the entry of a guilty plea nevertheless. . . . The entry of a guilty plea under the *Alford* doctrine carries the same consequences as a standard plea of guilty." (Citation omitted; emphasis in original; footnote omitted; internal quotation marks omitted.) *State* v. *Faraday*, 268 Conn. 174, 204–205, 842 A.2d 567 (2004).

acquitted of all charges. On January 3, 2022, the respondent, the Commissioner of Correction, filed a return, leaving the petitioner to his proof and asserting procedural default as a special defense.

On January 19, 2022, a trial was held before the court, *M. Murphy*, *J.*, at which the petitioner attempted to call his first witness, Sam Romowi,[4] to testify regarding his character for truthfulness. The respondent objected to Romowi's testimony on the grounds of relevance. After hearing arguments by counsel, the court sustained the respondent's relevancy objection. Thereafter, only the petitioner testified at the trial. The evidence before the court consisted only of the petitioner's testimony and the transcript of the August 13, 2008 plea hearing. Following the trial, both parties submitted posttrial briefs.

On May 18, 2022, in a memorandum of decision, the court denied the petitioner's petition for a writ of habeas corpus. The court concluded that "the petitioner failed to demonstrate deficient performance by showing that trial counsel's representation fell below an objective standard of reasonableness." The court found that "[t]he evidence presented failed to prove that the prescribed medication the petitioner received affected his ability to give a knowing and meaningful plea and that counsel was therefore ineffective in allowing the petitioner to plead guilty. Furthermore, even if counsel's performance was deficient, this court does not find the petitioner's testimony that he would have otherwise pleaded not guilty and insisted on going to trial to be credible." The habeas court further found that "the trial court thoroughly canvassed the petitioner when he entered his plea. When the court asked the petitioner

[4] The habeas trial transcript contains multiple spelling variations of Romowi's last name. In this opinion we will use the spelling "Romowi" when referring to the petitioner's proposed character witness.

if he was presently under the influence of any substance, the petitioner responded that he was on medication but that it would not interfere with his plea, and that he understood the proceedings and knew what he was doing despite taking the medication. . . . The petitioner then informed the court that the charges he faced carried a maximum sentence of twenty years and indicated the corrections he wished to be made to the state's recitation of facts. The petitioner also provided specific details about another case, informing the court that he also had to plead guilty to a violation of probation . . . ."

Thereafter, the petitioner filed a petition for certification to appeal, which the court denied. In the petition for certification to appeal, the petitioner set forth the grounds for his appeal, including the issue of whether the court erred by precluding his character witness from testifying.[5] This appeal followed. Additional procedural history will be provided as necessary.

I

We first address the petitioner's claim that the habeas court abused its discretion in denying his petition for

[5] In his petition for certification to appeal, the petitioner set forth the following grounds for his appeal: "(1) Whether the petitioner has a legal right to call character witnesses on his own behalf? (2) Whether the petitioner has a legal right to call a character witness to testify as to whether the petitioner was honest, credible, and trustworthy, when the petitioner's honesty and credibility are [issues] in the case? (3) Whether the habeas court erred when it failed to allow a character witness [to] testify as to the character of the petitioner? (4) Whether the habeas court erred when it failed to allow a character witness to testify as to whether the petitioner was honest and trustworthy, when the truthfulness of the petitioner was an issue in the case? (5) Whether the habeas court erred when it failed to credit the petitioner's testimony as to how the medication affected his ability to understand his plea agreement? (6) Whether the habeas court erred when it credited the testimony of Attorney Lake when Attorney Lake did not testify in this trial? (7) Whether the habeas court wrongfully found the petitioner's testimony not credible?" And "(8) [a]ny other issues found on appeal . . . ." On appeal, the petitioner is claiming only that the court erred in precluding his character witness from testifying.

certification to appeal. We conclude that the habeas court's ruling did not constitute an abuse of its discretion.

The following legal principles are relevant to our resolution of the petitioner's claim. "General Statutes § 52-470 (g) provides: No appeal from the judgment rendered in a habeas corpus proceeding brought by or on behalf of a person who has been convicted of a crime in order to obtain such person's release may be taken unless the appellant, within ten days after the case is decided, petitions the judge before whom the case was tried or, if such judge is unavailable, a judge of the Superior Court designated by the Chief Court Administrator, to certify that a question is involved in the decision which ought to be reviewed by the court having jurisdiction and the judge so certifies.

"Faced with the habeas court's denial of certification to appeal, a petitioner's first burden is to demonstrate that the habeas court's ruling constituted an abuse of discretion. . . . A petitioner may establish an abuse of discretion by demonstrating that the issues are debatable among jurists of reason . . . [the] court could resolve the issues [in a different manner] . . . or . . . the questions are adequate to deserve encouragement to proceed further. . . . The required determination may be made on the basis of the record before the habeas court and applicable legal principles. . . . If the petitioner succeeds in surmounting that hurdle, the petitioner must then demonstrate that the judgment of the habeas court should be reversed on its merits. . . .

"In determining whether the habeas court abused its discretion in denying the petitioner's request for certification, we necessarily must consider the merits of the petitioner's underlying [claim] to determine whether the habeas court reasonably determined that the petitioner's appeal was frivolous. In other words, we review

the petitioner's substantive [claim] for the purpose of ascertaining whether [that claim satisfies] one or more of the three criteria . . . adopted by [our Supreme Court] for determining the propriety of the habeas court's denial of the petition for certification." (Citations omitted; internal quotation marks omitted.) *Ayuso* v. *Commissioner of Correction*, 215 Conn. App. 322, 331–32, 282 A.3d 983, cert. denied, 345 Conn. 967, 285 A.3d 736 (2022).

For the reasons set forth in part II of this opinion, we conclude, on the basis of our review of the record and applicable legal principles, that the petitioner has failed to demonstrate that the claim of error related to the habeas court's denial of his petition for a writ of habeas corpus involves an issue that is debatable among jurists of reason, that a court could resolve the issue in a different manner, or that the question is adequate to deserve encouragement to proceed further. Accordingly, we dismiss the appeal.

II

On appeal, the petitioner claims that the habeas court improperly precluded evidence of his character for truthfulness. Specifically, he claims that the court abused its discretion by excluding Romowi's testimony on relevancy grounds because that testimony was relevant to a central issue in the petitioner's ineffective assistance of counsel claim. The petitioner argues that his credibility was relevant because it pertains to the prejudice prong under *Strickland* v. *Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).[6]

[6] "[I]n order to satisfy the prejudice requirement [under *Strickland* when the conviction resulted from a guilty plea], the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. . . . It is clear enough that a defendant must make more than a bare allegation that he would have pleaded differently and gone to trial . . . but it is not clear how much more is required of him." (Citation omitted; internal quotation marks omitted.) *Carraway* v. *Commissioner of Correction*, 144 Conn.

The petitioner avers that the court's assessment of the prejudice prong of *Strickland* involves a credibility determination regarding his assertion that he would have insisted on going to trial but for his trial counsel's deficient performance in connection with his plea. We are not persuaded.

The following additional procedural history is relevant to the present claim. At the outset of the habeas trial and before the petitioner was called to testify, the petitioner's attorney sought to present testimony from Romowi about the petitioner's alleged character for truthfulness and honesty. The following colloquy between the court, the petitioner's counsel, and the respondent's counsel took place:

"[The Petitioner's Counsel]: Petitioner calls Mr. Sam Romowi . . . .

"[The Respondent's Counsel]: Your Honor . . . I would ask for [an] offer of proof on this witness. We're here on [an] ineffective assistance of counsel claim. I'm unclear as to what Mr. Romowi would be testifying to or what his relevance would be to this [claim] . . . .

"[The Petitioner's Counsel]: Mr. Romowi is a . . . friend of [the petitioner]. He's going to testify solely as a character witness as to my client. A lot of this comes down to my client's credibility versus [the] credibility of his attorney. It's . . . how the judge perceives him as to be truthful and honest, I think it would be relevant to that because Mr. Romowi is a character witness, and so I think it is relevant to this case. . . .

"[The Respondent's Counsel]: Again, Your Honor, we're here on an ineffective assistance of counsel claim. I'm unsure of what relevance this would have. Unless Mr. Romowi is going to testify to being present at the

App. 461, 472–73, 72 A.3d 426 (2013), appeal dismissed, 317 Conn. 594, 119 A.3d 1153 (2015).

[plea] hearing . . . on the August [13] date, I see no real relevance . . . as to having this other character witness. Again, this is . . . an ineffective assistance [of counsel] claiming at the time of the plea, [the petitioner] was under the influence of prescription medication. This has nothing to do with his character or anything of the sort, so, I'm not sure what relevance this witness could have. Nor do I see it adding anything to the trier of fact.

"The Court: So, [Counsel], was Mr. Romowi . . . at the hearing on August 13?

"[The Petitioner's Counsel]: No. I do not believe he was, Your Honor. . . . [H]e's a friend of the petitioner. He's known him for a while and they still remain in contact, and he would be testifying solely as to the [petitioner's] character. It wouldn't be a long witness but, again, I think honesty is a character issue that he would be testifying about because truly it is really the truthfulness, and the honesty of my client versus the honesty . . . of his attorney.

"The Court: All right. So, I'm going to sustain the objection. I don't see his relevance. You're not telling me that he knows the attorney or was at the [plea] hearing. So, I'm going to sustain the objection with regard to the testimony of Mr. Romowi. So, I don't think we need to hear from him."

We begin by setting forth the following relevant legal principles. "We review the [habeas] court's decision to admit [or exclude] evidence, if premised on a correct view of the law . . . for an abuse of discretion. . . . We will make every reasonable presumption in favor of upholding the [habeas] court's ruling, and only upset it for a manifest abuse of discretion. . . . The [habeas] court has wide discretion to determine the relevancy [and admissibility] of evidence . . . . In order to establish reversible error on an evidentiary impropriety . . .

the [petitioner] must prove both an abuse of discretion and a harm that resulted from such abuse. . . .

"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. Conn. Code Evid. § 4-1. As it is used in our code, relevance encompasses two distinct concepts, namely, probative value and materiality. . . . Conceptually relevance addresses whether the evidence makes the existence of a fact material to the determination of the proceeding more probable or less probable than it would be without the evidence. . . . In contrast, materiality turns upon what is at issue in the case, which generally will be determined by the pleadings and the applicable substantive law. . . . If evidence is relevant and material, then it may be admissible." (Citation omitted; internal quotation marks omitted.) *Ayuso* v. *Commissioner of Correction*, supra, 215 Conn. App. 381–82.

"Relevance does not exist in a vacuum. . . . To determine whether a fact is material . . . it is necessary to examine the issues in the case, as defined by the underlying substantive law, the pleadings, applicable pretrial orders, and events that develop during the trial. Thus, relevance of an offer of evidence must be assessed against the elements of the cause of action, crime, or defenses at issue in the trial. The connection to an element need not be direct, so long as it exists. *Once a witness has testified to certain facts, for example, his credibility is a fact that is of consequence to* [*or material to*] *the determination of the action, and evidence relating to his credibility is therefore relevant*—but only if the facts to which *the witness has already testified* are themselves relevant to . . . [a] cause of action, or [a] defense in the case." (Emphasis altered; internal quotation marks omitted.) *Ulanoff* v. *Becker Salon, LLC*, 208 Conn. App. 1, 13, 262 A.3d 863 (2021).

As stated by this court in *Ulanoff*, a witness' credibility becomes relevant only after they have testified to facts that are connected to an element of the cause of action, the crime, or a defense. In the present case, the record reflects that the petitioner called Romowi to testify at the outset of the trial before the petitioner had taken the stand and testified to any fact whatsoever. The petitioner's veracity had not yet been challenged, and, therefore, any extrinsic evidence of his character for truthfulness was immaterial at the time he attempted to call Romowi. Although the petitioner subsequently testified, habeas counsel never sought to recall Romowi as a witness.[7]

The petitioner's credibility was not materially relevant to his ineffective assistance of counsel claim at the time that he attempted to present Romowi's testimony. Accordingly, the petitioner is unable to demonstrate that the court abused its discretion in precluding Romowi from testifying with respect to the petitioner's character for truthfulness.

The appeal is dismissed.

In this opinion the other judges concurred.

[7] We note that, even if the petitioner had testified to material facts in connection with his claim of ineffective assistance of counsel before calling his character witness, extrinsic evidence of his character for truthfulness would have been admissible only if he had been impeached. Section 6-6 (a) of the Connecticut Code of Evidence provides: "The credibility of a witness may be impeached or supported by evidence of character for truthfulness or untruthfulness in the form of opinion or reputation. Evidence of truthful character is admissible only after the character of the witness for truthfulness has been impeached." Moreover, this court has previously stated that, "[w]here a witness has not been impeached, it is not in general permissible to support his testimony by other evidence, corroborative in its nature, which bears on the credibility of the witness rather than on the issues in the cause . . . ." (Internal quotation marks omitted.) *State* v. *Suckley*, 26 Conn. App. 65, 72, 597 A.2d 1285, cert. denied, 221 Conn. 901, 600 A.2d 1028 (1991). See E. Prescott, Tait's Handbook of Connecticut Evidence (6th Ed. 2019) § 6.23.2 (a), p. 370 ("[e]vidence accrediting or supporting a witness's honesty or integrity is not admissible until after the witness's credibility has first been attacked").

NANCY CIARA *v.* ATLANTIC MOTORS, LLC, ET AL. (AC 45491)

JERYD GRIFFIN *v.* ATLANTIC MOTORS, LLC, ET AL. (AC 45492)

Elgo, Cradle and Seeley, Js.

Syllabus

The plaintiffs, N and J, filed separate actions, which were later consolidated for trial, alleging, inter alia, that the defendants misrepresented the mileage on the odometers of two motor vehicles that the plaintiffs allegedly purchased from one of the defendants. Several of the defendants were defaulted for failure to appear, and the plaintiffs withdrew their complaints against several other defendants. At the time of trial, the defendants consisted of N Co. and three individual defendants. On the first day of trial, counsel for the plaintiffs, T, indicated his intention to present the testimony of the plaintiffs and the individual defendants. C, who appeared at trial on behalf of N Co., subsequently filed an appearance on behalf of each of the individual defendants and indicated that they had no intention of testifying in this case, that he did not plan to put them on the stand, and that T had not subpoenaed them, deposed them, or tried to interview them. On the second day of trial, T indicated to the court that the day before he had subpoenaed the individual defendants through C, who he claimed had indicated on his appearance that he agreed to accept service of all documents. C responded that T had sent him emails asking him to serve his clients with subpoenas and, therefore, had not properly subpoenaed the defendants. The court ruled that T's emails to C were not sufficient to comply with the requirement for the service of a subpoena and declined to enforce the subpoenas. During the trial, T attempted to introduce two Carfax reports related to the motor vehicles at issue. T attempted to admit evidence contained in the first report through the testimony of N. C objected on the basis that the report was hearsay, and the court sustained the objection. T showed the second report to J during his testimony but indicated that he was using the report to refresh J's memory, not to enter it into evidence. After the trial, the court rendered judgments for the defendants, finding that the plaintiffs failed to prove by a preponderance of the evidence any of their claims against the defendants, that they failed to offer evidence that any of the defendants were involved in the motor vehicle purchases or subsequent dealings the plaintiffs had concerning the vehicles, and that they failed to meet their burdens of proof as to

damages because they presented no evidence as to specific damages they claim to have suffered. On the plaintiffs' appeals to this court, *held*:

1. The trial court did not err when it declined to enforce the subpoenas to compel the attendance of the individual defendants at trial; contrary to the plaintiffs' claim that emailing subpoenas to the attorney for the individual defendants constituted proper service on those individuals pursuant to the rules of practice (§§ 10-12 and 10-13), the plain and unambiguous language of those rules of practice reveals that neither provision applies to the service of subpoenas, and, consequently, delivery of a subpoena to counsel under one of the methods described in Practice Book § 10-13 was not sufficient service pursuant to the statute (§ 52-143) governing the proper service of subpoenas for witnesses, and the subpoenas were not properly served.
2. This court declined to review the plaintiffs' unpreserved claim that the trial court abused its discretion in failing to admit into evidence the Carfax reports pertaining to the two motor vehicles at issue: because the plaintiffs did not attempt to introduce their respective Carfax reports into evidence, the court did not issue a ruling to exclude them; moreover, no articulation was sought from the court as to the basis for sustaining the defendants' hearsay objection, and, accordingly, any claim related to the admission of the Carfax reports was not preserved for this court's review.

Argued October 19, 2023—officially released January 2, 2024

Procedural History

Action, in each case, to recover damages for, inter alia, fraud, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the cases were consolidated for trial; thereafter, the named defendant et al. in each case were defaulted for failure to appear; subsequently, the plaintiff in each case withdrew the action as against the defendant Uncle and Nephews, LLC, et al.; thereafter, the court, *Hon. Robert B. Shapiro*, judge trial referee, rendered judgment in each case for the defendant New England Property, LLC, et al., from which the plaintiffs appealed to this court. *Affirmed.*

Clifford S. Thier, for the appellants (plaintiff in each case).

Leonard M. Crone, for the appellees (defendant New England Property, LLC, et al. in each case).

Opinion

CRADLE, J. These two appeals arise from consolidated cases. The plaintiffs in the respective actions, Nancy Ciara and Jeryd Griffin, appeal from the judgments of the trial court in favor of the defendants New England Property, LLC (New England Property), Edmond Ferati, Balkiz Ferati, and Rini Ferati.[1] On appeal, the plaintiffs claim that the court erred in (1) declining to enforce subpoenas to compel the attendance of the defendants at trial and (2) failing to admit Carfax reports into evidence at trial. We affirm the judgments of the trial court.

The following procedural history is relevant to this appeal. On November 30, 2017, the plaintiffs filed these actions arising "from the alleged purchases of used motor vehicles in 2017 at Atlantic Motors, LLC [Atlantic Motors] . . . which [the plaintiffs] claim[ed] were defective in various ways." The alleged defect most pertinent to this appeal is the plaintiffs' claim that the defendants had "[m]isrepresent[ed] the mileage" on the

[1] Atlantic Motors, LLC; Dritero Ferati; Anthony Pinheiro; 911 Motorsports, LLC; Betim Ferati; Uncle and Nephews, LLC; Dr. Auto; Save the Children Foundation Company, LLC; Edmond Ferati; New England Property; Balkiz Ferati; Rini Ferati; and Erkan Aydar were the original defendants in both of these actions.

The following defendants were defaulted for failure to appear: Dritero Ferati; 911 Motorsports, LLC; New England Property; Balkiz Ferati; Atlantic Motors, LLC; Uncle and Nephews, LLC; Betim Ferati; Edmond Ferati; and Rini Ferati. On August 27, 2018, the court, *Hon. Patty Jenkins Pittman*, judge trial referee, granted the plaintiffs' motions for judgment of default and rendered judgments thereon as to the defendants Atlantic Motors, LLC; 911 Motorsports, LLC; New England Property; Dritero Ferati; Betim Ferati; Edmond Ferati; and Balkiz Ferati. On September 5, 2018, the plaintiffs withdrew their complaints against the defendants Uncle and Nephews, LLC; Save the Children Foundation Company, LLC; Dr. Auto; Anthony Pinheiro; and Erkan Aydar. On April 29, 2019, the court, *Sheridan, J.*, granted the motions to open the judgments filed by the defendants New England Property, Edmond Ferati, and Balkiz Ferati. Any reference to the defendants herein is to New England Property, Edmond Ferati, Balkiz Ferati, and Rini Ferati.

odometers of the vehicles.[2] The plaintiffs sought compensatory and punitive damages, fees, and costs.

A remote bench trial was held on March 8 and 9, 2022. On April 27, 2022, the court, *Hon. Robert B. Shapiro*, judge trial referee, issued a memorandum of decision rendering judgments for the defendants. The court reasoned that "the plaintiffs failed to prove by a preponderance of the evidence any of their claims against any of the defendants" and that they "failed to offer evidence that any of the defendants were involved in the motor vehicle purchases or subsequent dealings the plaintiffs had concerning the vehicles. While there was some evidence that Edmond Ferati supervised and managed operations at Atlantic Motors . . . the plaintiffs failed to prove that he knew about or was involved in the 2017 purchases or subsequent events concerning the vehicles." (Citation omitted.) The court further found that "the plaintiffs presented no evidence as to specific damages they claim to have suffered," so they had "failed to meet their burdens of proof as to damages." This appeal followed. Additional procedural history will be set forth as necessary.

I

The plaintiffs first claim that the trial court erred in failing to enforce subpoenas to compel the attendance of the individual defendants at trial. We disagree.

The following additional procedural history is relevant to our resolution of this claim. At the outset of trial, Attorney Clifford Thier, counsel for the plaintiffs,

[2] The plaintiffs alleged four counts of odometer fraud in violation of 49 U.S.C. §§ 32703 (2) and (4) and 32705 (a) (2) and General Statutes § 14-106b; two counts of breach of warranty; and claims of common-law fraud; negligent misrepresentation; unjust enrichment; negligence; violation of General Statutes § 42-225; violation of the Connecticut Unfair Trade Practices Act, General Statutes § 42-110a et seq.; violation of General Statutes § 42-110b and related state regulations; and civil conspiracy.

indicated his intention to present the testimony of the plaintiffs and the defendants. Attorney Leonard Crone, who appeared at trial on behalf of New England Property, also filed an appearance after the commencement of trial on behalf of the three individual defendants, Edmond Ferati, Balkiz Ferati, and Rini Ferati. Crone indicated that "none of [the individual defendants] ha[d] any intention of testifying in this case," that he did not plan to "put them on the stand," and that Thier "ha[d] not subpoenaed them . . . deposed them . . . [or] tried to interview them . . . ." On the second day of trial, Thier indicated to the court: "I subpoenaed, yesterday, three of the defendants within the eighteen hour—less than eighteen hour time frame called for by the statute, and utilizing their attorney, who has on his appearance . . . agreed to accept service of all documents." Crone responded that Thier had sent him emails asking him to serve his clients with subpoenas and, therefore, had not properly subpoenaed the defendants. The court, *Hon. Robert B. Shapiro*, judge trial referee, ruled that Thier's email to Crone was "not sufficient to comply with the requirement for the service of a subpoena."

On appeal, the plaintiffs argue that the court should have enforced the subpoenas because they were timely served on the defendants' counsel, who, by virtue of filing an appearance on behalf of the defendants, had agreed to accept service of all documents on their behalf.

To resolve the plaintiffs' claim, we examine the law related to the proper service of subpoenas for witnesses. General Statutes § 52-143 (a) provides in relevant part: "Subpoenas for witnesses shall be . . . served by an officer [or] indifferent person . . . not less than 18 hours prior to the time designated for the person summoned to appear, unless the court orders otherwise." It is undisputed that the plaintiffs did not

comply with § 52-143 in their attempt to subpoena the defendants to testify at trial. In fact, the plaintiffs acknowledge that "[i]t [is] true that an attorney does not ordinarily have to accept subpoena service on behalf of a client." The plaintiffs argue, however, that counsel for the defendants agreed to accept service of the subpoenas by virtue of his filing an appearance on behalf of the defendants.[3] In support of this argument, they refer to the appearance form filed by Crone, which provided that he "agree[s] to accept papers (service) electronically in this case under Practice Book Section 10-13." On that basis, the plaintiffs contend that emailing the subpoenas to counsel for the defendants constituted proper service pursuant to Practice Book §§ 10-12 and 10-13[4] and, therefore, was sufficient to compel the defendants' attendance at trial.

"Our interpretation of the rules of practice is a question of law subject to plenary review." (Internal quotation marks omitted.) *Riley* v. *Travelers Home & Marine*

[3] To be clear, the plaintiffs do not claim that counsel for the defendants expressly agreed to accept service of the subpoenas.

[4] Practice Book § 10-12, entitled "Service of the Pleading and Other Papers; Responsibility of Counsel or Self-Represented Party: Documents and Persons To Be Served," provides in relevant part: "It is the responsibility of counsel . . . filing the same to serve on each other party who has appeared one copy of every pleading subsequent to the original complaint, every written motion other than one in which an order is sought ex parte and every paper relating to discovery, request, demand, claim, notice or similar paper, except a request for mediation under General Statutes § 49-31*l*. . . ."

Practice Book § 10-13, entitled "Method of Service," provides in relevant part: "Service upon the attorney . . . may be by delivering a copy or by mailing it to the last known address of the attorney . . . . Delivery of a copy within this section means handing it to the attorney . . . or leaving it at the attorney's office with a person in charge thereof; or if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the usual place of abode. Delivery of a copy within this rule may also mean electronic delivery to the last known electronic address of the attorney . . . provided that electronic delivery was consented to in writing by the person served. . . ."

Ins. Co., 333 Conn. 60, 81, 214 A.3d 345 (2019). "[When] the meaning of a statute [or rule] is plain and unambiguous, the enactment speaks for itself and there is no occasion to construe it. Its unequivocal meaning is not subject to modification by way of construction. . . . If a statute or rule is ambiguous, however, we construe it with due regard for the authors' purpose and the circumstances surrounding its enactment or adoption." (Internal quotation marks omitted.) *Brown* v. *Commissioner of Correction*, 345 Conn. 1, 9, 282 A.3d 959 (2022). "[A]lthough [t]he Superior Court is empowered to adopt and promulgate rules regulating pleading, practice and procedure . . . [s]uch rules shall not abridge, enlarge or modify any substantive right . . . ." (Internal quotation marks omitted.) *In re Ryan C.*, 220 Conn. App. 507, 523, 299 A.3d 308, cert. denied, 348 Conn. 901, 300 A.3d 1166 (2023).

The plaintiffs contend that Practice Book §§ 10-12 and 10-13 "apply to subpoenas, meaning that serving a subpoena on the attorney constitutes service on the client." The plain and unambiguous language of those rules of practice reveals that neither provision applies to the service of subpoenas. Practice Book § 10-13 describes the acceptable methods of service of the documents identified in Practice Book § 10-12. The list of documents in Practice Book § 10-12 consists of pleadings, "every written motion other than one in which an order is sought ex parte and every paper relating to discovery, request, demand, claim, notice or similar paper . . . ." A subpoena to compel a witness' presence at trial is not a pleading or a paper relating to discovery, request, demand, claim, notice or similar paper and, therefore, does not fall within the ambit of Practice Book §§ 10-12 and 10-13. Consequently, delivery of a subpoena to counsel under one of the methods described in Practice Book § 10-13 is not sufficient service under § 52-143. Because the subpoenas were not

properly served, the court did not err in declining to enforce them.

II

The plaintiffs also claim that the court erred in failing to admit into evidence the Carfax reports pertaining to the two vehicles at issue. We disagree.

The following additional procedural history is relevant to the resolution of this claim. During the first day of trial, Thier asked Ciara, on direct examination, how she had attempted "to find out what . . . the true mileage [of the vehicle allegedly purchased from Atlantic Motors] was." Ciara answered that she had done "a Carfax inquiry." Thier then asked, "And what did you learn from that inquiry?" Crone objected, and the court sustained the objection. Thier argued that "Carfax is a recognized provider of service history for vehicles all over the United States" and that it is "like an encyclopedia or a dictionary." He asked the court that "it be recognized as an impartial source of information. It is the only source of information, and . . . the only way it's admissible is [Ciara's] reading of it." Crone responded that he "would never be able to . . . cross-examine the person who propounded the actual . . . report. . . . [He] could never find out what the basis was." The court again sustained the objection.

Griffin, on direct examination, testified about the vehicle he had allegedly purchased from Atlantic Motors. Related to a line of questioning about Griffin's attempt to trade in that vehicle at another dealership, Thier asked permission to show Griffin a copy of a Carfax report related to that vehicle, "not to enter it into evidence, but to refresh his memory . . . ." Crone again objected "because it's hearsay [and] whoever completed that document is no one you're going to put on the stand and it's no one that I'm going to be able to cross-examine." The court responded that the Carfax

report is not necessarily "admissible by showing it to [Griffin]. So, it's been marked for identification . . . ." Thier then asked the court for clarification, stating that he was not "introducing it for the truth, but [for] what [Griffin] was told was the reason for the dealership saying, '*We're not going to buy your truck from you*.' " (Emphasis in original.) The court ruled that Griffin could tell the court what he understood about why the dealership would not purchase the vehicle. Griffin answered that he "understood . . . [that] the vehicle needed a lot of work and [that] the odometer was not correct." Thier showed the Carfax report to Griffin and the court confirmed that it was "not being offered in[to] evidence at this time."

On appeal, the plaintiffs argue that the court abused its discretion when it "excluded the Carfax reports and ruled that the plaintiffs would have to obtain certified letters from the multiple out-of-state government agencies and repair shops that had performed odometer readings during the life and travels of the automobiles." Our review of the record reveals that the court never made such a ruling. In fact, the plaintiffs did not attempt to introduce their respective Carfax reports into evidence. In Ciara's case, the offer as to the Carfax report was limited to Thier's attempt to have Ciara testify about its contents; the report itself was never offered into evidence. In Griffin's case, the record is clear that the report was being used to refresh Griffin's recollection and it was "not being offered at [that] time." Because the plaintiffs failed to move for the admission of the Carfax reports into evidence, the court did not issue a ruling to exclude them. Moreover, no articulation was sought from the court as to the basis for sustaining the defendants' objection. Accordingly, any claim as to the admission of the Carfax reports is not preserved for our review.[5] See, e.g., *State* v. *Warren*,

[5] Even if the plaintiffs had preserved their claim as to the admission of the Carfax reports, they did not demonstrate that the alleged error was

83 Conn. App. 446, 451, 850 A.2d 1086 (unpreserved evidentiary claims are not reviewable on appeal), cert. denied, 271 Conn. 907, 859 A.2d 567 (2004).

The judgments are affirmed.

In this opinion the other judges concurred.

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harmful. They do not offer any argument as to how the Carfax reports would overcome the court's finding that the plaintiffs "failed to offer evidence that any of the defendants were involved in the motor vehicle purchases or subsequent dealings . . . ."