U.S. BANK TRUST, NATIONAL ASSOCIATION *v.* GEORGE KENNETH SHUEY ET AL.
(AC 46985)

Alvord, Westbrook and Bear, Js

Syllabus

The defendants appealed from the trial court's judgment of foreclosure by sale rendered for the plaintiff. They claimed, inter alia, that the court improperly dismissed their counterclaim for lack of standing because, contrary to the conclusion reached by the court, they were not required to identify the counterclaim as an asset on a bankruptcy petition they had filed prior to the foreclosure proceeding. *Held*:

The trial court properly considered the defendants' special defense of unclean hands and determined that the defendants had not sustained their burden of producing evidence that supported that defense and created a genuine issue of material fact, there having been no basis in the record for the defendants' claim that the court determined that their defense had been pleaded insufficiently.

The trial court properly rendered summary judgment for the plaintiff, as the defendants did not meet their burden of providing an evidentiary basis to establish the existence of a genuine issue of material fact as to their unclean hands special defense.

The trial court properly determined that the counts of the defendants' counterclaim, sounding in a violation of the Connecticut Unfair Trade Practices Act (§ 42-110a et seq.), negligence, and misrepresentation and fraud, existed as recognized causes of action at the time the defendants filed their bankruptcy petition, and all counts of the counterclaim had accrued prior to the filing of their bankruptcy petition and, thus, remained property of the bankruptcy estate.

The trial court properly dismissed the defendants' counterclaim because the defendants were required to schedule the counterclaim as an asset when they filed their bankruptcy petition and their failure to do so deprived them of standing to assert the counterclaim in the foreclosure proceeding.

Argued October 9, 2024—officially released May 20, 2025

Procedural History

Action to foreclose a mortgage on certain real property owned by the defendants, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the defendants filed a counterclaim;

thereafter, the court, *Cirello*, *J.*, granted the plaintiff's motion for summary judgment with respect to liability only; subsequently, the court, *Spader*, *J.*, granted the plaintiff's motion to dismiss the defendants' counterclaim and rendered a judgment of foreclosure by sale, from which the defendants appealed to this court. *Affirmed.*

Ridgely Whitmore Brown, for the appellants (defendants).

Christa A. Menge, for the appellee (plaintiff).

Opinion

BEAR, J. The defendants, George Kenneth Shuey and Mary J. Shuey, appeal from the judgment of foreclosure by sale rendered in favor of the substitute plaintiff, U.S. Bank Trust, National Association, not in its individual capacity but solely as owner trustee for RCF 2 Acquisition Trust. On appeal, the defendants claim that the court (1) improperly rendered summary judgment as to liability in favor of the plaintiff[1] on the basis that the defendants failed to establish a genuine issue of material fact as to their special defense of unclean hands and, thereafter, (2) improperly dismissed their counterclaim for lack of standing because, contrary to the conclusion reached by the court, they were not

[1] The original plaintiff, Wilmington Savings Fund Society, FSB, doing business as Christiana Trust, as Trustee for Normandy Mortgage Loan Trust, Series 2015-1 (Wilmington), commenced this foreclosure action and filed the motion for summary judgment as to liability only. Wilmington thereafter assigned the mortgage to Normandy Mortgage Acquisition, which then assigned it to MTGLQ Investors, LP, which then assigned it to the substitute plaintiff. On December 13, 2021, the court granted the plaintiff's motion to substitute U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for RCF 2 Acquisition Trust, as plaintiff. In doing so, the court specified that its "order shall in no way affect prior pleadings." For ease of discussion, we will refer to U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for RCF 2 Acquisition Trust, as the plaintiff throughout this opinion unless otherwise noted.

required to identify their counterclaim as an asset on a bankruptcy petition they filed in 2012. We affirm the judgment and remand this case for the purpose of setting a new sale date.[2]

The record reveals the following facts and procedural history. On or about May 2, 2010, the defendants defaulted on a note they had executed in January, 2002, in favor of World Savings Bank, FSB, for the principal

[2] In their preliminary statement of issues on appeal, the defendants list seven issues, including that the court, *Cirello*, *J.*, improperly denied their September 2, 2021 motion to dismiss the complaint because, they claim, the plaintiff failed to comply with the "Connecticut Emergency Mortgage Assistance Program (EMAP) notice requirements" and thus failed to satisfy a mandatory condition precedent to the bringing of this foreclosure action. See, e.g., *KeyBank, N.A.* v. *Yazar*, 347 Conn. 381, 386, 297 A.3d 968 (2023). The "Statement of Issues" set forth in the defendants' appellate brief, however, identifies only two issues: (1) whether "the court's grant of summary judgment . . . [was] clearly erroneous" and (2) whether "the court err[ed] in dismissing the [defendants'] counterclaim." Even so, the last subsection of the argument the defendants advance in support of their challenge to the dismissal of their counterclaim is captioned: "The note and the mortgage both require notice by first class mail as a condition precedent to filing the foreclosure action." The defendants posit in that subsection that the plaintiff's mailing, which was sent "by certified mail return receipt requested" and which they claim not to have received, was not sufficient for notice purposes. Consequently, they aver that, "[e]ven though this [issue] is not technically jurisdictional . . . the plaintiff failed to give proper notice and . . . the action should be dismissed." They further aver, in the conclusion to their brief, that the judgment "in favor of the plaintiff and counterclaim defendant should be reversed and the case remanded with instructions to restore the case to the docket *or dismiss it for violating the proper notice condition precedent*." (Emphasis added.) Apart from these vague, conclusory assertions, however, the defendants have not identified expressly any error by the trial court in its assessment of the plaintiff's compliance with the notice requirements, nor have they explained how any such error should entitle them to the relief they are seeking on appeal. To the extent that the defendants have attempted to do so as part of their argument that the court should not have dismissed their counterclaim, their briefing is wholly inadequate, and we deem any such claim abandoned. See *Bank of New York Mellon* v. *Mangiafico*, 198 Conn. App. 722, 723 n.3, 234 A.3d 1115 (2020) ("We are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, 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.)).

amount of $241,000. The note was secured by a mortgage on real property located at 300 Mungertown Road in Madison (property), which the defendants owned. In August, 2010, one of the plaintiff's predecessors in interest initiated a foreclosure action against the defendants.[3]

On April 18, 2012, while that foreclosure action was pending, the defendants jointly filed for Chapter 7 bankruptcy protection in the United States Bankruptcy Court for the District of Connecticut, thereby invoking the stay provisions of 11 U.S.C. § 362 (a) (1) (2012).[4] The defendants identified their interests in the property on the Schedule A form they filed in support of their petition. They also indicated on the Schedule D form they filed that "Wells Fargo Bank" and "Bank of America" were creditors with claims secured by the property, by way of first and second mortgages, but they did not indicate that those claims were in any way disputed. Moreover, on the Schedule B form they filed, on which they were required to itemize their personal property, they checked "none" where asked to describe and estimate the value of "[o]ther contingent and unliquidated claims of every nature, including . . . *counterclaims of the debtor*[*s*], and rights to setoff claims." (Emphasis added.) The Bankruptcy Court issued an order of discharge on July 18, 2012, and the bankruptcy case was closed on August 10, 2012. The prior foreclosure action

[3] *Wells Fargo Bank, N.A.* v. *Shuey*, Superior Court, judicial district of New Haven, Docket No. CV-10-6013622-S.

[4] Title 11 of the United States Code, § 362 (a), provides in relevant part: "[A] petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of—

"(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . . ."

ultimately was dismissed thereafter on December 12, 2014.[5]

The present foreclosure action was commenced in August, 2015, by way of a one count foreclosure complaint. See footnote 1 of this opinion. On October 12, 2016, after participation in the foreclosure mediation program terminated, the defendants filed an answer, special defenses, and a three count counterclaim. The defendants asserted two special defenses: (1) laches, predicated on the allegation that the plaintiff had not "properly and diligently prosecuted this foreclosure action" and (2) unclean hands, predicated on allegations that the defendants entered into a mortgage modification agreement in 2009 with "the plaintiff's predecessor in interest Wachovia," which "the plaintiff" then breached; the loan in question was "predatory"; and the "plaintiff has not properly and diligently prosecuted this case."[6] In their counterclaim, the defendants asserted the following three counts: (1) violation of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq., (2) negligence, and (3) misrepresentation and fraud. As relief, the defendants sought, inter alia, "compensatory damages," "common-law practice damages," and "CUTPA compensatory double and treble damages."

On February 11, 2020, the plaintiff filed a motion for summary judgment as to liability only on its foreclosure complaint and as to all issues related to the defendants' counterclaim. In support of its motion, the plaintiff filed a memorandum of law, an affidavit of Kerry Walthall

[5] The parties agree in their briefs to this court that this dismissal was for "dormancy" and/or "failure to prosecute."

[6] When the defendants filed their special defenses on October 12, 2016, Wilmington Savings Fund Society, FSB, doing business as Christiana Trust, as Trustee for Normandy Mortgage Loan Trust, Series 2015-1, was still the named plaintiff.

with appended exhibits,[7] and a copy of the mortgage and assignments. The plaintiff argued that it had established its prima facie case for foreclosure and that the defendants' special defenses raised no genuine issue of material fact relative to their liability on the note. The plaintiff further argued that the counts of the counterclaim were not "viable." As such, the plaintiff argued that it was entitled to judgment as a matter of law as to liability on its foreclosure complaint and as to the counterclaim.

More than two years later, on April 1, 2022, the defendants filed an objection to the plaintiff's motion for summary judgment,[8] a two page memorandum of law in support thereof, and an affidavit of the defendant George Kenneth Shuey.[9] The defendants asserted that "this case pended for years before it was ultimately dismissed for lack of due diligence," that "[t]here is . . . damage to credit and other such claims as described in *U.S. Bank National Assn.* v. *Blowers*, 332 Conn. 656,

[7] Walthall was an employee of the loan servicer for the plaintiff's predecessor in interest, MTGLQ Investors, LP. See footnote 1 of this opinion. A "true and correct" copy of the note and a copy of the notice of default issued to the defendants were attached as exhibits to Walthall's affidavit.

[8] The record reflects that, before they filed their April 1, 2022 objection to the motion for summary judgment, the defendants filed four motions for extension of time to respond thereto, a motion to dismiss the complaint, and an objection to the court considering the plaintiff's motion for summary judgment before it addressed, among other things, their motion to dismiss the complaint. Moreover, the defendants acknowledge in their brief that "[t]he interruption of the COVID-19 pandemic . . . delayed the prosecution of the foreclosure action." See, e.g., *CT Freedom Alliance, LLC* v. *Dept. of Education*, 346 Conn. 1, 5–6, 287 A.3d 557 (2023) (Governor Ned Lamont issued, on March 10, 2020, declaration of public health and civil preparedness emergencies due to COVID-19 which was renewed multiple times).

[9] In his affidavit, George Kenneth Shuey averred, inter alia, that the "loan has been in default since May 1, 2010," that, "[s]ince the date of default, interest has accrued at various rates," and that, on the basis of "[a] blended approximate rate of 6 [percent]," interest in the amount of $173,520 accrued "during delays caused by the plaintiff's lack of diligence." He further averred that he and the codefendant, Mary J. Shuey, "have both suffered damage to [their] credit."

[212 A.3d 226] (2019)," and that "[t]here are disputes as of record and this case does not meet the criteria for summary judgment because these facts are in dispute . . . ."

On April 4, 2022, the court, *Cirello*, *J.*, held a hearing on the plaintiff's motion for summary judgment. During the hearing, the court asked the defendants' counsel to "summarize why there is a genuine issue of material fact here," and counsel stated, in reply, that "[t]here was a prior suit that was filed and never pursued. It was dismissed for lack of diligence in prosecution. It pended for a long period of time. And then it was dismissed. They waited to refile. And . . . some of this is due to the pandemic, but it's still ultimately going to be a question of fact as to who bears the burden of delay.

"Under [*U.S. Bank National Assn.* v.] *Blowers*, [supra, 332 Conn. 656], I filed a special defense that alleges the delay and the dismissal for lack of due diligence. And we have years and years of interest . . . ."

The court interjected by stating that "any motion for summary judgment that's filed in foreclosure court is based on liability. And you are making arguments that there may be a . . . defense with regard to the amount that's due." After the defendants' counsel explained, in response to the court's observation, that his "clients' credit and money out of pocket for my fees and interest are very substantial amounts of money," and referred to cases that "resulted in interest adjustments," the court reiterated that "we're getting back to the amount of money that's owed, and not the underlying liability on the debt." The following colloquy then ensued:

"[The Defendants' Counsel]: I don't think it should be postured that way, Your Honor. It's not the amount that's owed because it's not just an offset. It's damages. My clients have been damaged by having to pay me. And . . . it's . . . the offset to the debt is that would

just reduce the debt. The liability on that, equitable or under *Blowers* is liability. It's a counter liability. It's a question of fact for the ultimate fact finder.

"The Court: So because they weren't diligent in pursuing their claim, you are claiming that . . . your client is no longer liable for the debt? Is that what you're saying?

"[The Defendants' Counsel]: That would be to take my argument to the extreme. . . . [T]his case for years and years [was] . . . just sitting there and [was] dismissed . . . for failure to prosecute [which is] tantamount to unclean hands. . . .

"Judges certainly have the discretion to do an offset on the debt so you wind up with the same debt owed . . . and just an offset as you postured. But . . . the courts could find that my clients' house has been under water for quite some time and that this case pending against them precluded [the] possibility of . . . other credit, refinancing, any of the things that people commonly do.

"The Court: Well, we're . . . not here for purposes of speculation as to what genuine issues of material fact might be out there. It's your burden to show—well, it's the plaintiff's burden to show that there's no genuine issue of material fact. But in your objection . . . you cite some case law but you are not outlining . . . what those genuine issues of material fact are that you just speculated about a moment ago."

After hearing from the plaintiff's counsel, the court again asked the defendants' counsel, during his rebuttal argument, to "outline the exact facts that you believe that are in dispute because you don't . . . do it [in your memorandum in support of your objection]." The defendants' counsel stated, in response, that "[o]ne of the fact[s] that counters their arguments on liability is

the fact that we have a *Blowers* situation here.[10] . . . How much . . . my fees are. Should . . . there be sanctions? Should there be a finding of unclean hands? All . . . those are the related interest computations."

Following the hearing, the court granted the plaintiff's motion for summary judgment with respect to liability only and denied it as to the defendants' counterclaim. In its April 4, 2022 order, after acknowledging that it was required "to 'view the evidence in the light most favorable to the nonmoving party,' " the court noted that "[t]his does not mean . . . that the nonmoving party can prevail simply by invoking the mantra 'genuine issue of material fact' over and over . . . . " It then stated that the plaintiff "has shown that there are no genuine issues of material fact as to the defendants' . . . liability.

"The defendants' objection to the motion . . . is merely a recitation of law and conclusions of fact. The court fails to find that the defendants raised any specific facts that are in dispute regarding the defendants' liability to [the plaintiff]." With respect to the counts of the counterclaim, the court explained that the claims of a "[v]iolation of [CUTPA]; negligence, and misrepresentation and fraud . . . are fact intensive and cannot be determined as a matter of law."

Thereafter, this matter was scheduled for a court trial, to take place on April 6, 2023. While the plaintiff's

[10] In *U.S. Bank National Assn.* v. *Blowers*, supra, 332 Conn. 675, our Supreme Court determined that "allegations that the mortgagee has engaged in conduct that wrongly and substantially increased the mortgagor's overall indebtedness, caused the mortgagor to incur costs that impeded the mortgagor from curing the default, or reneged upon modifications are the types of misconduct that are 'directly and inseparably connected' . . . to enforcement of the note and mortgage," and that "[s]uch allegations, therefore, provide a legally sufficient basis for special defenses in [a] foreclosure action," even though such conduct occurred after the origination of the loan. Id., 676. Notably, despite their many references during the trial court proceedings to *Blowers*, the defendants have not cited to *Blowers* in their brief to this court.

counsel was preparing for trial, she became aware of the defendants' 2012 bankruptcy action and learned that the defendants had not scheduled their counterclaim, or claimed any rights to offset claims, on their bankruptcy petition. On March 3, 2023, following that discovery, the plaintiff filed a motion to dismiss the defendants' counterclaim for lack of subject matter jurisdiction, a memorandum of law in support of that motion and supporting exhibits. The plaintiff argued in support of that motion that, because the defendants had not scheduled their counterclaim in their bankruptcy filings, the claims belonged to the bankruptcy estate, and the defendants did not have standing to pursue them. The plaintiff also argued, in the alternative, that the counterclaim was barred by judicial estoppel and the relevant statutes of limitations.

The defendants filed an objection to the motion to dismiss and a supporting memorandum of law on April 21, 2023. They argued that they were not required to schedule their counterclaim when they filed for bankruptcy in 2012 because (1) "Connecticut had not recognized 'predatory lending' as a defense or affirmative counterclaim and, therefore, any such claim was not a recognized cause of action that would qualify as 'property' " they had to disclose; (2) even if the counts of their counterclaim were recognized as causes of action in 2012, the counterclaim was not their "property" at that time because their interests therein had not yet accrued; and (3) it would have run counter to the policies underlying the United States Bankruptcy Code to consider their counterclaim to be property they had to disclose.

The plaintiff filed a reply to the defendants' objection and, following a hearing, the trial court, *Spader*, *J.*, granted the plaintiff's motion and issued an order on May 16, 2023, dismissing the defendants' counterclaim for lack of standing. In doing so, the court concluded

that the defendants' counterclaim should have been scheduled as part of their bankruptcy petition and that, because it was not, the counterclaim was an asset of the defendants' bankruptcy estate and the defendants did not have standing to pursue it. Further, the court rejected the defendants' counter arguments, determining, instead, that the defendants had alleged "CUTPA, negligence and misrepresentation/fraud [as counts of their counterclaim]—not 'predatory lending,' " that causes of action generally accrue at the time the conduct giving rise to the claim occurs, and that requiring the defendants to litigate their counterclaim during an adversarial bankruptcy proceeding was consistent with policy.

Thereafter, on September 18, 2023, the trial court, *Spader*, *J.*, rendered a judgment of foreclosure by sale in favor of the plaintiff and set a sale date of January 13, 2024.[11] This appeal followed. Additional facts will be set forth as necessary.

I

The defendants first claim that the court improperly rendered summary judgment against them as to liability on the foreclosure complaint because their "special defense of unclean hands based on failure to prosecute a foreclosure with diligence is a recognized defense to foreclosure, and [they] presented uncontroverted evidence to the court that the plaintiff had failed to prosecute a previous foreclosure action based on the same

[11] The plaintiff had filed a motion for judgment of strict foreclosure on September 1, 2023. At the September 18, 2023 hearing on the motion, however, the court determined, and the plaintiff's counsel agreed, that there was sufficient equity in the property for a sale. As such, the court rendered a judgment of foreclosure by sale and set a January 13, 2024 sale date. Neither party disputes the form of the judgment.

alleged default for nearly five years until it was dismissed for dormancy, resulting in the accrual of approximately $172,000 in interest on the debt during that period."[12] We are not persuaded.

We begin by setting forth the relevant standard of review and legal principles that guide our analysis. "Although the party seeking summary judgment has the burden of showing the nonexistence of any material fact . . . a party opposing summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact together with the evidence disclosing the existence of such an issue. . . . A material fact is one that makes a difference in the outcome of a case. . . .

"Summary judgment shall be granted if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . The trial court must view the evidence in the light most favorable to the nonmoving party. . . .

"[T]o establish a prima facie case in a mortgage foreclosure action, the plaintiff must prove by a preponderance of the evidence that it is the owner of the note and mortgage, that the defendant mortgagor has defaulted on the note and that any conditions precedent to foreclosure . . . have been satisfied. . . . Thus, a

[12] As stated previously in this opinion, the defendants asserted two special defenses, laches and unclean hands, both of which were predicated, at least in part, on the plaintiff's alleged failure to diligently prosecute its claim for foreclosure. We note, however, that, apart from making two passing references to "laches" in challenging the court's decision to grant summary judgment as to their liability, they focus exclusively on "unclean hands." We therefore deem any claim the defendants may have had regarding the court's treatment of their laches special defense abandoned as a result of the defendants' inadequate briefing. See *Bank of New York Mellon* v. *Mangiafico*, 198 Conn. App. 722, 723 n.3, 234 A.3d 1115 (2020).

court may properly grant summary judgment as to liability in a foreclosure action if the complaint and supporting affidavits establish an undisputed prima facie case and the defendant fails to assert any legally sufficient special defense. . . .

"[T]he party raising a special defense has the burden of proving the facts alleged therein. . . . If the plaintiff in a foreclosure action has shown that it is entitled to foreclose, then the burden is on the defendant to produce evidence supporting its special defenses in order to create a genuine issue of material fact . . . . Legally sufficient special defenses alone do not meet the defendant's burden. The purpose of a special defense is to plead facts that are consistent with the allegations of the complaint but demonstrate, nonetheless, that the plaintiff has no cause of action. . . . Further . . . [t]he applicable rule regarding the material facts to be considered on a motion for summary judgment is that the facts at issue are those alleged in the pleadings. . . . [B]ecause any valid special defense raised by the defendant ultimately would prevent the court from rendering judgment for the plaintiff, a motion for summary judgment should be denied when any [special] defense presents significant fact issues that should be tried. . . .

"On appeal, [w]e must decide whether the trial court erred in determining that there was no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . Because the trial court rendered judgment for the [plaintiff] as a matter of law, our review is plenary and we must decide whether [the trial court's] conclusions are legally and logically correct and find support in the facts that appear in the record." (Citation omitted; internal quotation marks omitted.) *Deutsche Bank National Trust Co.* v. *Bretoux*, 225 Conn. App. 455, 462–63, 317 A.3d 152 (2024).

A

The first argument the defendants make in support of their claim that the court improperly granted the plaintiff's motion for summary judgment is that they "sufficiently plead[ed] a special defense for . . . unclean hands on the basis of the failure to prosecute with diligence" and that, "[t]o the extent that [the court's decision to grant summary judgment] may have been based on a determination that the defendants had not sufficiently plead[ed] a defense of unclean hands . . . that decision was clearly erroneous." Our plenary review of the court's order granting the motion for summary judgment, however, reveals that the court properly considered the defendants' special defense of unclean hands; see, e.g., *Homebridge Financial Services, Inc.* v. *Jakubiec*, 223 Conn. App. 517, 539, 309 A.3d 1223 ("[b]ecause an action to foreclose a mortgage is an equitable proceeding, the doctrine of unclean hands may be applicable" (internal quotation marks omitted)), cert. denied, 349 Conn. 909, 314 A.3d 602 (2024); and rejected it because the defendants had not sustained their burden of producing evidence that supported that defense and created a genuine issue of material fact. See *Deutsche Bank National Trust Co.* v. *Bretoux*, supra, 225 Conn. App. 462–63; see also *Iadanza* v. *Toor*, 226 Conn. App. 736, 749, 320 A.3d 979 (interpretation of trial court judgment is question of law), cert. denied, 350 Conn. 908, 323 A.3d 1092 (2024).

Indeed, the court stated that the plaintiff had "shown that there are no genuine issues of material fact as to the defendants' . . . liability" and that it did not "find that the defendant[s] raised any specific facts that are in dispute, regarding [their] liability to [the plaintiff]." The court had made repeated attempts during the oral argument regarding the motion for summary judgment to have the defendants' counsel "summarize why there is a genuine issue of material fact here" and to "outline

the exact facts that you believe that are in dispute" and, ultimately, stated in its order that the party opposing summary judgment cannot "prevail simply by invoking the mantra 'genuine issue of material fact' over and over . . . ." There is simply no basis in the record to conclude that the court granted summary judgment because it determined that the defendants' unclean hands special defense was pleaded insufficiently and, thus, the predicate for the defendants' first argument fails. See *Iadanza* v. *Toor*, supra, 749 ("to determine the meaning of a judgment, we must ascertain the intent of the court from the language used and, if necessary, the surrounding circumstances" (internal quotation marks omitted)).

B

We turn next to the defendants' argument that they "presented sufficient evidence in George Kenneth Shuey's affidavit to establish a genuine issue of material fact with respect to the failure to prosecute diligently." We do not agree that the defendants established that a genuine issue of material fact existed with respect to their unclean hands special defense and, thus, we conclude that the court properly rendered summary judgment in favor of the plaintiff.

At the outset, we note that, in their appellate brief, the defendants take issue with the plaintiff for presenting "no affidavits to sustain its burden of proving that no genuine issue of material fact existed with respect to the special defenses." The defendants posit that they "submitted an affidavit showing that there were genuine issues of material fact with regard to the special defenses . . . [and that] [b]ecause [the] plaintiff did not otherwise submit affidavits showing that there was no genuine issue of material fact with regard to the special defenses to counter the [defendants' affidavit], the plaintiff failed to sustain its burden of showing that

there was no genuine issue of material fact with regard to the special defenses. Therefore, the trial court's granting of the plaintiff's motion for summary judgment was clearly erroneous and legally and logically incorrect." (Footnote omitted.)

The plaintiff, however, did not have to demonstrate that a genuine issue of material fact existed with respect to the defendants' special defense; the defendants did. See *Deutsche Bank National Trust Co.* v. *Bretoux*, supra, 225 Conn. App. 463. It was the plaintiff's burden to establish its prima facie case and to show that it was entitled to foreclose, and the defendants have not claimed on appeal that the plaintiff failed to do so. See id., 462–63. As such, it became *the defendants' burden* to produce evidence supporting their special defense in order to establish that a genuine issue of material fact existed with respect to the plaintiff's purported unclean hands, and we conclude that they failed to do so. See id., 463.

"It is a fundamental principle of equity jurisprudence that for a complainant to show that he is entitled to the benefit of equity he must establish that he comes into court with clean hands. . . . The clean hands doctrine is applied not for the protection of the parties but for the protection of the court. . . . It is applied not by way of punishment but on considerations that make for the advancement of right and justice. . . . The doctrine of unclean hands expresses the principle that where a plaintiff seeks equitable relief, he must show that his conduct has been fair, equitable and honest as to the particular controversy in issue. . . . Unless the plaintiff's conduct is of such a character as to be condemned and pronounced wrongful by honest and fair-minded people, the doctrine of unclean hands does not apply. . . . The party seeking to invoke the clean hands doctrine to bar equitable relief must show that his opponent engaged in wilful misconduct with regard to the

matter in litigation. . . . The trial court enjoys broad discretion in determining whether the promotion of public policy and the preservation of the courts' integrity dictate that the clean hands doctrine be invoked. . . . Wilful misconduct has been defined as intentional conduct designed to injure for which there is no just cause or excuse. . . . [Its] characteristic element is the design to injure either actually entertained or to be implied from the conduct and circumstances. . . . Not only the action producing the injury but the resulting injury also must be intentional." (Internal quotation marks omitted.) *Homebridge Financial Services, Inc.* v. *Jakubiec*, supra, 223 Conn. App. 539–40.

The only evidence the defendants submitted in support of their opposition to the plaintiff's motion for summary judgment was George Kenneth Shuey's affidavit, which the defendants claim "establish[ed] a genuine issue of material fact with respect to the failure to prosecute diligently" and, thus, their unclean hands special defense. The contents of that affidavit can be summarized as follows. The defendants defaulted on their loan on May 1, 2010, and interest has been accruing since then "at various rates." Since the default, two foreclosure actions have been instituted. The first foreclosure action "was ultimately dismissed by the court on December 12, 2014."[13] The second foreclosure action is the present action. On the basis of a "blended approximate [interest] rate of 6 percent," $173,520 in interest had accrued "during delays caused by the plaintiff's lack of diligence." Moreover, George Kenneth Shuey had paid nearly $22,000 in legal fees to defend the foreclosure actions, and he and Mary J. Shuey have "both

[13] We note that, although the parties appear to agree in their briefs to this court that the initial foreclosure action was dismissed for "dormancy" and/or "failure to prosecute"; see footnote 5 of this opinion; George Kenneth Shuey's affidavit merely references the dismissal without a description as to the basis therefor.

suffered damage to [their] credit." Those bare allegations do not support an inference that the plaintiff engaged in wilful misconduct with the purpose of prejudicing the defendants' rights. Indeed, apart from averring that the plaintiff instituted two foreclosure actions based on the defendants' admitted default on their loan, those allegations do not aver that the plaintiff engaged in any conduct whatsoever.

Although George Kenneth Shuey averred that there were "delays caused by the plaintiff's lack of diligence," he provided no explanation as to what those delays were or to otherwise support that conclusory allegation. This is particularly significant given that the record reflects that there were delays in the plaintiff's pursuit of foreclosure, but that the majority of those delays, i.e., the automatic bankruptcy stay, the length of time it took the defendants to respond to the plaintiff's motion for summary judgment and delays attendant to the COVID-19 pandemic; see footnote 6 of this opinion; involved circumstances that were out of the plaintiff's control.

Moreover, the assertion regarding damage the defendants allegedly sustained to their credit is equally unsupported, and the blind reliance on an unexplained "blended approximate" rate of 6 percent, during unspecified periods of alleged delays, to calculate the amount of interest that purportedly accrued during those alleged delays is pure, unsubstantiated speculation. As such, the defendants' unsupported and speculative allegations are insufficient to raise a genuine issue of material fact. See, e.g., *Hoskins* v. *Titan Value Equities Group, Inc.*, 252 Conn. 789, 793–94, 749 A.2d 1144 (2000) ("[a] conclusory assertion . . . does not constitute evidence sufficient to establish the existence of a disputed material fact for purposes of a motion for summary judgment"); see also *CitiMortgage, Inc.* v. *Coolbeth*, 147 Conn. App. 183, 194, 81 A.3d 1189 (2013) (affidavit

"rooted in surmise" is insufficient to raise genuine issue of material fact), cert. denied, 311 Conn. 925, 86 A.3d 469 (2014). Because the defendants did not meet their burden of providing an evidentiary basis to establish the existence of a genuine issue of material fact as to their unclean hands special defense, the court properly rendered summary judgment as to liability for the plaintiff.

II

We now turn to the defendants' claim that the court, *Spader*, *J.*, improperly dismissed their counterclaim upon concluding that it remained an asset of the defendants' bankruptcy estate and that, consequently, the defendants lacked standing to pursue it. We disagree.

We begin by setting forth our standard of review and the general legal principles that are germane to our analysis. "The issue of standing implicates subject matter jurisdiction and is therefore a basis for granting a motion to dismiss. . . . [I]t is the burden of the party who seeks the exercise of jurisdiction in his favor . . . clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute. . . . In addition, because standing implicates the court's subject matter jurisdiction, the issue of standing is not subject to waiver and may be raised at any time." (Citation omitted; internal quotation marks omitted.) *Rubin* v. *Brodie*, 228 Conn. App. 617, 630–31, 325 A.3d 1096 (2024).

"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. . . . When standing is put in issue, the question is whether the person whose standing is challenged is a proper party

to request an adjudication of the issue . . . . Because a determination regarding the trial court's subject matter jurisdiction raises a question of law, [the standard of] review is plenary." (Internal quotation marks omitted.) *U.S. Bank, National Assn.* v. *Madison*, 196 Conn. App. 267, 272, 229 A.3d 1104 (2020), appeal dismissed, 341 Conn. 809, 268 A.3d 64 (2022).

"In considering the standing issue raised in this case . . . we first are guided by certain fundamental principles of bankruptcy law. When a debtor files for bankruptcy protection, a bankruptcy estate is created. . . . Title 11 of the United States Code, § 541, prescribes the property interests of the debtor that comprise the bankruptcy estate. Subject to a few exceptions, such property is defined as 'all legal or equitable interests of the debtor in property *as of the commencement of the case*.' . . . 11 U.S.C. § 541 (a) (1) (2012). It is well settled that such property includes causes of action possessed by the debtor at that time. . . . A bankruptcy debtor does not have standing to pursue claims that constitute property of a bankruptcy estate." (Citations omitted; emphasis in original; footnote omitted.) *Weiss* v. *Smulders*, 313 Conn. 227, 239–40, 96 A.3d 1175 (2014).

"As noted by our Supreme Court, the integrity of the bankruptcy system depends on full and honest disclosure by debtors of all their assets. The courts will not permit a debtor to obtain relief from the [B]ankruptcy [C]ourt by representing that no claims exist and then subsequently to assert those claims for his own benefit in a separate proceeding. . . .

"The act of filing a bankruptcy petition transfers a debtor's assets to the bankruptcy estate, and these assets remain assets of the bankruptcy estate unless returned to the debtor by the operation of law. . . . [I]t is a basic tenet of bankruptcy law . . . that all

assets of the debtor, *including all* [*prepetition*] *causes of action belonging to the debtor*, are assets of the bankruptcy estate that must be scheduled for the benefit of creditors . . . . [A]n asset must be properly scheduled in order to pass to the debtor through abandonment under 11 U.S.C. § 554 (c).[14] . . .

"[W]here a debtor fails to list a claim as an asset on a bankruptcy petition, the debtor is without legal capacity to pursue the claim on his or her own behalf [postdischarge]. . . . This is so regardless of whether the failure to schedule causes of action is innocent." (Citation omitted; emphasis in original; footnote in original; internal quotation marks omitted.) *U.S. Bank, National Assn* v. *Madison*, supra, 196 Conn. App. 272–73.

There is no dispute in the present case that the defendants did not list their counterclaim as an asset on their bankruptcy petition. Rather, the defendants dispute the propriety of their having to do so, either because the counts of their counterclaim purportedly were not legally cognizable causes of action in 2012, or because they had not yet accrued by 2012. Specifically, they argue, as they did in the trial court, that, when they filed their petition, "predatory lending" was not recognized as "a defense or affirmative counterclaim and therefore, any such CUTPA claim based on predatory lending was not a recognized cause of action that would qualify as 'property' " under the bankruptcy code. They

[14] "Title 11 of the 2012 edition of the United States Code, § 554 (c), provides: 'Unless the court orders otherwise, any property scheduled under section 521 (a) (1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.'

"Title 11 of the 2012 edition of the United States Code, § 521 (a), provides in relevant part: 'The debtor shall— (1) file— (A) a list of creditors; and (B) unless the court orders otherwise— a schedule of assets and liabilities . . . .' " *U.S. Bank, National Assn* v. *Madison*, supra, 196 Conn. App. 273 n.6.

further argue that a requirement to schedule an unrecognized cause of action runs afoul of the "fresh start" policy underlying the bankruptcy code and would "potentially embroil the Bankruptcy Court in costly, time consuming adversary proceedings that would further delay the distribution of the estate and the debtor's fresh start."[15] Finally, they argue that, even if the counts of their counterclaim were recognized as causes of action in 2012 when they initiated their bankruptcy action, they did not constitute their "property" at that time because their claims had not yet accrued.[16]

The plaintiff argues, in response, that the defendants' failure to identify their counterclaim as an asset when they filed for bankruptcy deprives them of standing to pursue it. We agree with the plaintiff.

A

With respect to the defendants' argument that their "counterclaim counts sound in a claim for predatory lending and therefore assert a cause of action that simply did not exist in 2012" when they filed their petition for bankruptcy, they posit that "Connecticut first recognized a *defense* of 'predatory lending' in *Bank of America, N. A.* v. *Aubut*, 167 Conn. App. 347, 381–82,

[15] More specifically, they posit that, "[i]n this case, the counterclaim plaintiffs' cause of action was not recognized by the state when the bankruptcy petition was filed. If they had scheduled the cause of action and the bankruptcy trustee chose to pursue it in an adversary proceeding, the Bankruptcy Court would have been required to apply Connecticut law. Because Connecticut had not recognized the defense or affirmative cause of action for predatory lending, the Bankruptcy Court would not have been able to adjudicate that claim. The only real practical effect of such an ancillary proceeding would be to add to the costs and delay of the discharge of the bankruptcy estate."

[16] The defendants also argue in their brief to this court that their counterclaim was not barred by the doctrine of judicial estoppel and that the plaintiff-counterclaim defendant's argument that the counterclaim was barred by statutes of limitations was improper. The trial court did not dismiss the defendants' counterclaim for either of these reasons, however, and, thus, we do not address these arguments.

143 A.3d 638 (2016),[17] four years after [they] had filed their bankruptcy petition" and that, consequently, they "did not have at [the] time [they filed their bankruptcy petition] 'a legally cognizable interest in the cause of action . . . under the applicable state law' " to list or schedule. (Emphasis in original; footnote added.) Moreover, they argue that, had they scheduled an unrecognized claim, the Bankruptcy Court ultimately "would not have been able to adjudicate" it and, thus, "[t]he only real effect [of their doing so] would be to add to the costs and delay of the discharge of the bankruptcy estate," which runs counter to the purposes of the bankruptcy code.

To this end, the defendants take issue with the court's conclusion that "the [counterclaim counts] are CUTPA, negligence and misrepresentation/fraud—not 'predatory lending' " and they focus on the court's treatment of "the CUTPA claim" in particular. "The interpretation of pleadings is always a question of law for the court . . . . Our review of the trial court's interpretation of the pleadings therefore is plenary." (Internal quotation marks omitted.) *Asnat Realty, LLC* v. *United Illuminating Co.*, 204 Conn. App. 313, 322, 253 A.3d 56, cert. denied, 337 Conn. 906, 252 A.3d 366 (2021).

We begin by noting that, although the defendants posit that the "court's description of the CUTPA claim mischaracterizes the counterclaim," they expressly acknowledge that their claim "*is a CUTPA claim* based on 'predatory lending' as a necessary element of the first prong of the CUTPA action, i.e., a claim based on

[17] In *Bank of America* v. *Aubut*, supra, 167 Conn. App. 376–83, this court analyzed the equitable special defenses available in a foreclosure action. In doing so, this court did not expressly recognize a defense entitled "predatory lending" but, rather, determined that the factual underpinnings of the "predatory lending" defense the defendants alleged in that case fell within the legal ambit of the recognized equitable defenses of fraud, unclean hands, unconscionability, and equitable estoppel and was, therefore, viable.

'immoral, unscrupulous, oppressive' conduct." (Emphasis added.) In other words, they describe their CUTPA claim in a manner that is consistent with, and in fact supports, the court's interpretation thereof.

Indeed, the first count of the counterclaim bears the title "Connecticut Unfair Trade Practices" and it includes "allegations" which, according to the defendants, "constitute violations of [CUTPA] . . . on the part of . . . the [plaintiff] and its predecessor in title and assignors in that said actions . . . by the [plaintiff] were immoral, oppressive and unscrupulous . . . ." It makes reference to "fraudulent predatory real estate lending practices" by the plaintiff and alleges, among other things, that "it is plain that the practice of issuing a loan with reckless disregard of the risk of foreclosure was within at least the penumbra of some common-law, statutory, or other established concept of unfairness and, therefore, an unfair trade practice under [CUTPA]." It concludes by alleging that the alleged "unlawful, unfair, unscrupulous or fraudulent practices are a substantial factor in proximately causing . . . [the defendants] substantial damages" and seeks "double or treble damages and such other relief as may be afforded under CUTPA."

It is clear to us, on the basis of our plenary review of these allegations, that the first count of the defendants' counterclaim is a CUTPA claim, the basis for which includes alleged unfair or deceptive predatory lending practices by the plaintiff and/or its predecessors in interest, as the defendants acknowledge and as the court found. See, e.g., *Bank of America, N.A.* v. *Aubut*, supra, 167 Conn. App. 373 ("[t]he public policy underlying CUTPA is to encourage litigants to act as private attorneys general and to engage in bringing actions that have as their basis unfair or deceptive trade practices" (internal quotation marks omitted)); see also *Coppola*

Construction Co. v. *Hoffman Enterprises Ltd. Partnership*, 157 Conn. App. 139, 197, 117 A.3d 876 ("[t]o prevail on a CUTPA claim, the [counterclaim] plaintiffs must [plead and] prove that (1) the [counterclaim] defendant engaged in unfair or deceptive acts or practices in the conduct of any trade or commerce . . . and (2) each class member claiming entitlement to relief under CUTPA has suffered an ascertainable loss of money or property" (citation omitted; internal quotation marks omitted)), cert. denied, 318 Conn. 902, 122 A.3d 631 (2015), and cert. denied, 318 Conn. 902, 123 A.3d 882 (2015). Given that CUTPA was enacted originally in 1973; see Public Acts 1973, No. 73-615, § 1; the defendants asserted a recognized cause of action that existed in 2012 and could have been scheduled as part of their bankruptcy petition. Thus, we reject their argument to the contrary.[18]

B

Finally, the defendants contend that, even if the counts of their counterclaim were recognized as causes of action in 2012, the counterclaim was not their "property" at that time. Relying on *Butner* v. *United States*, 440 U.S. 48, 55, 99 S. Ct. 914, 59 L. Ed. 2d 136 (1979), in which the United States Supreme Court held that "[p]roperty interests are created and defined by state law," the defendants maintain that they did not acquire any interest in their counterclaim until that claim accrued, and that this "did not occur until the foreclosure judgment was entered" because they had not suffered any injury, or harm, until then. As such, the defendants maintain that their counterclaim accrued after the commencement of the bankruptcy case, and they have standing to pursue the postpetition claim. The

[18] In reaching this conclusion, we express no opinion as to whether a cause of action for "predatory lending" existed in Connecticut in 2012 and/or exists presently. We simply conclude that the defendants asserted a cause of action that was recognized in 2012.

plaintiff responds that the defendants' counterclaim accrued prepetition and thus, remains property of the bankruptcy estate by virtue of the defendants' failure to schedule it. We agree with the plaintiff.

In *Weiss* v. *Smulders*, supra, 313 Conn. 227, our Supreme Court addressed "whether a cause of action that was instituted postpetition constitutes the property of the debtor *at the time the bankruptcy case has commenced, namely, by the filing of the petition.*" (Emphasis in original.) Id., 240. In doing so, it explained that "[t]he federal courts are split on the proper approach to resolve this question. Some courts, relying on *Butner* v. *United States*, [supra] 440 U.S. 48 . . . have determined that applicable state law determines when a cause of action accrues and therefore consider that date in relation to the date on which the petition was filed. . . . These courts reason that [a]lthough federal bankruptcy law determines the outer boundary of what may constitute property of the estate, state law determines the nature of a debtor's interest in a given item. . . . Therefore, whereas federal law instructs us that [a cause of action] *may* constitute property of [the debtor's] estate, state law determines whether [the debtor's] interest in the cause of action is sufficient to confer on the estate a property right in the action. . . . The Second Circuit, whose decisions carry particularly persuasive weight in our resolution of issues of federal law . . . follows this approach. . . .

"Other courts, relying on *Segal* v. *Rochelle*, 382 U.S. 375, 86 S. Ct. 511, 15 L. Ed. 2d 428 (1966), deem the purposes of federal bankruptcy law controlling, namely, to secure for creditors everything of value the debtor may possess in alienable or leviable form when he files his petition, while leaving the debtor free after the petition date to accumulate new wealth in the future. . . . These courts consider whether, even if a cause of action

accrued postpetition under state law, that action nonetheless was sufficiently rooted in the pre-bankruptcy past and so little entangled with the bankrupt's ability to make an unencumbered fresh start that it should be regarded as property of the bankruptcy estate. . . . Under this approach, if the claim has sufficient roots in the prebankruptcy past but does not materially impair the bankrupt's ability to obtain the fresh start intended under bankruptcy law, the claim belongs exclusively to the estate." (Citations omitted; emphasis in original; footnotes omitted; internal quotation marks omitted.) *Weiss* v. *Smulders*, supra, 313 Conn. 240–43.

In *Weiss*, our Supreme Court expressly declined to resolve this split of authority and determine which approach is correct because the claim presented in that case failed under both approaches.[19] Likewise, in the present case, under either approach, the defendants' claim that their interests in their counterclaim did not accrue until after they filed their petition for bankruptcy fails.

As previously stated, the first approach requires us to look to applicable state law. See id., 241. "A plaintiff acquires an interest in a cause of action at the time it accrues. If, as of the [p]etition [d[ate, the [counterclaim] had accrued under Connecticut law, [it] became property of the estate and the [t]rustee, standing 'in the shoes' of the [d]ebtors, has standing to assert [it]. On the other hand, if the [counterclaim] did not accrue until after the petition was filed, it is property of the [d]ebtors, not the estate, and the [d]ebtors have standing to pursue it." *In re de Hertogh*, 412 B.R. 24, 30 (Bankr. D. Conn. 2009). "In Connecticut, a cause of action accrues when a plaintiff suffers actionable

[19] We note that, in *Weiss*, it was the defendants' challenge to the plaintiff's standing to bring a promissory estoppel claim the defendants claimed belonged to the plaintiff's bankruptcy estate that failed. *Weiss* v. *Smulders*, supra, 313 Conn. 237–47.

harm. . . . Actionable harm occurs when the plaintiff discovers or should discover, through the exercise of reasonable care, that he or she has been injured and that the defendant's conduct caused such injury." (Citation omitted.) *Champagne* v. *Raybestos-Manhattan, Inc.*, 212 Conn. 509, 521, 562 A.2d 1100 (1989).

In the present case, the defendants allege, as support for each count of their counterclaim, that, prior to an "*October 2006*" merger between Golden West Financial Corporation, including its subsidiary World Savings Bank (Golden West) and the plaintiff's predecessor in interest, Wachovia Corporation, Golden West "engaged in a pattern of unlawful, unfair or fraudulent predatory real estate lending practices causing the counterclaimant and other victims of such behavior throughout the state of Connecticut, *to lose or be in jeopardy of losing* their homes through foreclosure." (Emphasis added.) They further allege to "have suffered substantial damages including but not limited to compensatory damages from payment of the terms of the predatory loan, foreclosure, payment of mortgage broker and other fees . . . emotional distress . . . and other monetary and special damages." They expressly attribute these alleged damages, in each count of their counterclaim, to "*Golden West*'s unlawful, unfair, unscrupulous or fraudulent practices." (Emphasis added.) Golden West, however, is alleged to have "ceased operations" following the October, 2006 merger. The defendants, therefore, have plainly alleged that they suffered actionable harm prior to October, 2006, well before they filed their bankruptcy petition on April 18, 2012. Accordingly, under the first approach, we conclude that the defendants' counterclaim accrued prepetition and, given that it was not scheduled, it remains property of the bankruptcy estate.

With respect to the second approach, courts that have employed it "have indicated that a cause of action does

not become property of the bankruptcy estate merely because it has *some* prepetition roots; rather, the facts forming the cause of action determine whether it is sufficiently rooted in the prepetition past. . . . Some courts have strictly construed the test to require that all or most of the facts constituting the cause of action exist at the commencement of the bankruptcy case . . . while other courts have applied the test expansively to include contingent and unripe claims as property of the estate." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Weiss* v. *Smulders*, supra, 313 Conn. 245–46. As stated previously, the defendants *expressly* have predicated their counterclaim on acts and omissions that preceded the commencement of their bankruptcy case by nearly six years. As such, under either construction of the second test, their counterclaim remains property of the bankruptcy estate.

For these reasons, we conclude that the defendants were required to schedule their counterclaim when they filed their bankruptcy petition and that their failure to do so deprives them of standing to pursue it now. As such, the court properly dismissed their counterclaim.

The judgment is affirmed and the case is remanded for the purpose of setting a new sale date.

In this opinion the other judges concurred.

CAPITAL FOR CHANGE, INC. *v.* WALL STREET ASSOCIATES, LLC, ET AL.
(AC 47420)

Alvord, Cradle and DiPentima, Js.*

Syllabus

The defendants, W Co. and D, appealed from the trial court's judgment of strict foreclosure rendered for the plaintiff. The defendants claimed, inter

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

alia, that the court improperly rendered summary judgment as to liability only because the court improperly concluded as a matter of law that the defendants could not prevail with respect to their special defense alleging a violation of the Connecticut Unfair Trade Practices Act (CUTPA) (§ 42-110a et seq.).

This court concluded that D, as a guarantor who was not a party to the notes, amended notes, mortgages, or mortgage modification agreement, lacked standing to challenge the trial court's judgment of strict foreclosure, and, accordingly, this court dismissed the appeal from the judgment of strict foreclosure as to D.

The trial court properly determined that a CUTPA violation may not be asserted as a special defense in a foreclosure action and did not preclude the rendering of summary judgment in the plaintiff's favor.

This court declined to review W Co.'s claim that the trial court should have construed its special defense alleging a CUTPA violation as alleging unclean hands, as W Co. failed to plead or raise a claim of unclean hands at any time before the trial court and, thus, the claim was not properly before this court.

Argued November 19, 2024—officially released May 20, 2025

Procedural History

Action to foreclose a mortgage on certain real property owned by the named defendant, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the court, *Hon. Charles T. Lee*, judge trial referee, granted the plaintiff's motion for summary judgment as to liability only; thereafter, the court, *Hon. Robert L. Genuario*, judge trial referee, rendered a judgment of strict foreclosure, from which the defendants appealed to this court. *Appeal dismissed in part*; *affirmed*.

Igor G. Kuperman, for the appellants (defendants).

Philip G. Kent, for the appellee (plaintiff).

Opinion

ALVORD, J. In this commercial foreclosure action, the defendants, Wall Street Associates, LLC (Wall Street

Associates), and Ganga Duleep,[1] appeal following the trial court's judgment of strict foreclosure rendered in favor of the plaintiff, Capital for Change, Inc.[2] On appeal, the defendants claim that the court improperly rendered summary judgment as to liability only in favor of the plaintiff because the court (1) improperly concluded as a matter of law that the defendants could not prevail with respect to their special defense alleging a violation of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq., and (2) failed to construe their special defense alleging a CUTPA violation as alleging unclean hands. We dismiss the appeal as to Duleep and affirm the judgment of the trial court.

The following undisputed facts and procedural history are relevant to this appeal. From March 24, 2017, through August 27, 2019, the plaintiff provided financing to Wall Street Associates to rehabilitate and to reconstruct commercial properties owned by Wall Street Associates (project). This financing was secured by mortgages on the project property, as well as another property owned by Wall Street Associates (additional property). Wall Street Associates defaulted on its payments. The plaintiff accelerated the notes and made demand for payment on August 30, 2021, from Wall Street Associates, as a borrower and mortgagor, and Duleep, as a guarantor.

In March, 2022, the plaintiff commenced this foreclosure action against the defendants. The plaintiff sought to foreclose the mortgages on the project property and the additional property under the loan documents and to enforce the guarantees given by Duleep. On March 1, 2023, the defendants filed an amended answer and three special defenses, alleging (1) lack of proper notice

[1] We refer to Wall Street Associates and Duleep collectively as the defendants, and we refer to them individually by name where appropriate.

[2] The plaintiff, a nonprofit corporation, is a community development financial institution.

and specificity as to the 2019 loan documents, (2) failure to plead the remedy of strict foreclosure in any of the complaint's counts, and (3) violation of CUTPA. The plaintiff filed its reply on March 13, 2023.

The plaintiff subsequently filed a motion for summary judgment. In its memorandum of law in support of the motion, the plaintiff argued that the defendants were liable as a matter of law because there was no genuine issue of material fact as to the making, validity, and enforcement of the loan documents. Furthermore, the plaintiff asserted that summary judgment was proper because the defendants' special defenses lacked merit. The defendants then filed their opposition to the motion for summary judgment and an accompanying memorandum of law.

On October 27, 2023, the court, *Hon. Charles T. Lee*, judge trial referee, issued a memorandum of decision wherein it rendered summary judgment as to liability only in favor of the plaintiff. The court found that the plaintiff had established a prima facie case for its foreclosure action and rejected the defendants' three special defenses. With respect to the CUTPA special defense, the court concluded that "controlling authority plainly holds that CUTPA may not be asserted as a special defense in a foreclosure action." On January 31, 2024, the plaintiff filed a motion for judgment of strict foreclosure, which the court, *Hon. Robert L. Genuario*, judge trial referee, granted on February 28, 2024. The court rendered a judgment of strict foreclosure with the law days commencing on March 26, 2024. This appeal followed.

I

We first address a threshold jurisdictional question. Following oral argument, this court sua sponte asked the parties to provide supplemental memoranda addressing whether the appeal should be dismissed only

as to Duleep because a guarantor lacks standing to appeal from the judgment of strict foreclosure; see *JP Morgan Chase Bank, N.A.* v. *Winthrop Properties, LLC*, 312 Conn. 662, 682–83, 94 A.3d 622 (2014); *Benchmark Municipal Tax Services, Ltd.* v. *899 ETG Associates, LLC*, 227 Conn. App. 474, 480–81, 322 A.3d 1118 (2024); *World Business Lenders, LLC* v. *526-528 North Main Street, LLC*, 197 Conn. App. 269, 272–79, 231 A.3d 386 (2020); and because it appears that at least two counts of the complaint remain pending to the extent the plaintiff seeks to enforce personal guarantees against Duleep. See *World Business Lenders, LLC* v. *526-528 North Main Street, LLC*, supra, 279–80; see also *Deutsche Bank National Trust Co.* v. *Thompson*, 163 Conn. App. 827, 831, 136 A.3d 1277 (2016) ("the question of subject matter jurisdiction, because it addresses the basic competency of the court, can be raised . . . by the court sua sponte, at any time" (internal quotation marks omitted)). Having received the parties' briefing on these issues, we conclude that the appeal must be dismissed as to Duleep. We examine each issue in turn.

"[I]n *World Business Lenders, LLC*, this court observed that the guarantor in that case was not a party to the mortgage or the note and had neither a legal interest in the property securing the note, nor an equitable or statutory right of redemption in the property. . . . As such, this court held that, [b]ecause [the guarantor] was not and could not be a party to the foreclosure claim, she [had] no standing to challenge the foreclosure judgment on appeal." (Citation omitted; internal quotation marks omitted.) *Benchmark Municipal Tax Services, Ltd.* v. *899 ETG Associates, LLC*, supra, 227 Conn. App. 480–81; id., 481 (determining guarantor defendants did not have standing as they were not party to note, mortgage, or modification agreement). In addition, this court determined that there was no judgment rendered as to the count relating to the claims against

the guarantor.[3] *World Business Lenders, LLC* v. *526-528 North Main Street, LLC*, supra, 197 Conn. App. 279–80. Specifically, the appeal was dismissed "because the court did not render a judgment with respect to the claim against [the guarantor defendant] under the guarantee in [that count] and the matter concerning [that count was] still pending before the court . . . ." Id., 280.

In the present case, it is undisputed that Duleep is not a party to the notes, amended notes, mortgages, or mortgage modification agreement.[4] Duleep concedes in her supplemental memorandum that, "to the extent that she was named as a guarantor in the proceedings below, she does not have standing to challenge the trial court's judgment of strict foreclosure on counts one, three and four of the plaintiff's complaint." In accordance with this court's precedents, we conclude that Duleep lacks standing to challenge the trial court's judgment of strict foreclosure and, thus, we dismiss Duleep's appeal from the judgment of strict foreclosure against Wall Street Associates.

In addition, as to the plaintiff's claim against Duleep, the record does not reveal any judgment rendered by the trial court with respect to the second and fifth counts of the complaint.[5] Because the court did not

[3] That count "alleged that '[the guarantor defendant] is liable to the . . . plaintiff for payment of the debt due under the note, pursuant to the guarant[ee]' and that '[the guarantor defendant] has refused to pay the debt due to the . . . plaintiff.' " *World Business Lenders, LLC* v. *526-528 North Main Street, LLC*, supra, 197 Conn. App. 271.

[4] Although Duleep signed all of these documents, she did so on behalf of Wall Street Associates.

[5] The second count alleged that "[t]he note and the amended note as well as all future loans, advances, liabilities, indebtedness, charges and expenses chargeable against [Wall Street Associates] are unconditionally, jointly and severally guaranteed by Ganga Duleep" and that "[t]he plaintiff has been damaged as a result of [Duleep's] failure to pay sums due under the first guaranty." The fifth count alleged that "[t]he construction loan agreement, construction note, amended construction note, as well as all future loans, advances, liabilities, indebtedness, charges and expenses chargeable against

render a judgment with respect to the claim against Duleep under the guarantee in the second and fifth counts and the matter concerning both counts is still pending before the court, the appeal must be dismissed as to those counts for lack of a final judgment. Accordingly, we dismiss the appeal as to Duleep.

II

Having resolved the threshold jurisdictional question, we turn to the merits of Wall Street Associates' claims on appeal. Wall Street Associates first claims that the court erred in concluding that its CUTPA special defense was not legally viable. We disagree.

We begin by setting forth our standard of review and other relevant legal principles. "Appellate review of the trial court's decision to grant summary judgment is plenary. . . . [W]e must [therefore] decide whether [the trial court's] conclusions are legally and logically correct and find support in the facts that appear in the record." (Internal quotation marks omitted.) *Bayview Loan Servicing, LLC* v. *Park City Sports, LLC*, 180 Conn. App. 765, 774, 184 A.3d 1277, cert. denied, 330 Conn. 901, 192 A.3d 426 (2018).

This court has stated: "[A] special defense operates as a shield, to defeat a cause of action, and not as a sword, to seek a judicial remedy for a wrong. Against this backdrop, we readily conclude that a CUTPA violation may not be asserted as a special defense. In reaching this conclusion, we are mindful that, by its express terms, CUTPA provides a cause of action for its violation, but it does not expressly provide a defense by invalidating, or otherwise rendering unenforceable,

[Wall Street Associates], including but not limited to the pledge, bridge note, amended bridge note, loan agreement and modification, and bridge loan modification agreement, are unconditionally, jointly, and severally guaranteed by Ganga Duleep" and that "[t]he plaintiff has been damaged as a result of [Duleep's] failure to pay sums due under the second guaranty."

agreements that are the product of unfair trade practices." *Bank of America, N.A.* v. *Aubut*, 167 Conn. App. 347, 374, 143 A.3d 638 (2016); see also *Bayview Loan Servicing, LLC* v. *Park City Sports, LLC*, supra, 180 Conn. App. 779 n.5 ("[t]his court [in *Bank of America, N.A.* v. *Aubut*, supra, 374] held that a CUTPA violation may not be asserted as a special defense in a foreclosure action").

Wall Street Associates first argues that this court should reconsider its holding in *Aubut*. Wall Street Associates did not, however, file a motion requesting that this court hear its appeal en banc. "[I]t is axiomatic that one panel of this court cannot overrule the precedent established by a previous panel's holding. . . . As we often have stated, this court's policy dictates that one panel should not, on its own, [overrule] the ruling of a previous panel. The [overruling] may be accomplished only if the appeal is heard en banc." (Internal quotation marks omitted.) *Bank of New York Mellon* v. *Mangiafico*, 198 Conn. App. 722, 729, 234 A.3d 1115 (2020). Accordingly, we decline the invitation to revisit our precedent.

Wall Street Associates also contends that, under the reasoning of *Connecticut National Bank* v. *Voog*, 233 Conn. 352, 659 A.2d 172 (1995), CUTPA can be asserted as a special defense in this foreclosure action. In *Voog*, the plaintiff sought to recover the balance due on two promissory notes executed by the defendant. Id., 353–54. The defendant filed "his amended answer, in which he set forth a general denial, four special defenses and a three count counterclaim. [The defendant] claimed in his special defenses that: (1) [the plaintiff] had conspired with employees of [a limited partnership] to offer financing in order to sell investments in a partnership that it knew to be valueless; (2) the notes that are the subject of the complaint were given without consideration; (3) [the plaintiff] violated . . . CUTPA; and (4)

[the plaintiff] is equitably estopped from enforcing the notes that are the subject of this action. On the basis of the conduct alleged in his first special defense, [the defendant] claimed that he had suffered damages as a result of [the plaintiff's] fraudulent misrepresentations, and that [the plaintiff's] activities constituted a violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) and CUTPA.

"[The plaintiff] objected to the amendment, primarily on the grounds that the allegations were prejudicial and would unnecessarily delay the proceedings. . . . [T]he trial court, *Austin*, *J.*, sustained [the plaintiff's] objections, not on the grounds [the plaintiff] had asserted, but on the basis that '[t]he issues attempted to be raised by [the defendant] may be raised in a separate cause of action, unrelated to this case, as they are not proper in this cause of action.' . . . [The defendant] filed a motion to stay the case pending a decision by the court regarding his request to transfer the case into [a] related litigation program. The court denied both requests." (Footnotes omitted.) Id., 356–59.

The court later rendered judgment in favor of the plaintiff. Id., 362. The defendant appealed, raising four issues, including that the trial court abused its discretion "in sustaining [the plaintiff's] objection to his request for leave to amend." Id., 363. The Supreme Court concluded that "the special defenses and the counterclaim were material to the [defendant's] defense of [the plaintiff's] action on the note." Id., 369. In concluding that the trial court's denial of the defendant's request to amend his pleadings "was not premised on 'sound reason,' " the Supreme Court reversed the judgment and remanded the case. Id.

Contrary to Wall Street Associates' contentions, *Voog* is factually and procedurally distinguishable from the case before us. At the outset, *Voog* was not a foreclosure

case. Rather, *Voog* was a collection action that arose from a debtor's execution of two promissory notes in favor of a bank. Id., 353–54. Furthermore, in response to the action commenced by the bank, the defendant in *Voog* asserted *both* a special defense based on CUTPA and a CUTPA counterclaim; id., 356–57; whereas Wall Street Associates solely asserted a special defense alleging a violation of CUTPA. As a result of the defendant's decision to assert a CUTPA counterclaim parallel to his special defense, the procedural posture of the case was different from the present case. In addition, the Supreme Court in *Voog* did not address whether CUTPA was a valid special defense, instead it addressed whether, inter alia, the trial court properly denied the defendant's request for leave to amend his pleadings. Id., 365–70.

Because *Voog* significantly differs both factually and procedurally from the present case, it is not controlling. Accordingly, the court properly concluded, under *Aubut*, that the alleged CUTPA violation was not a valid special defense and did not preclude the rendering of summary judgment in the plaintiff's favor. See *Bank of America, N.A.* v. *Aubut*, supra, 167 Conn. App. 374.

III

Wall Street Associates also claims that, in rendering summary judgment on its CUTPA defense; see part II of this opinion; the court erred by not construing the defense as one alleging unclean hands. Specifically, Wall Street Associates concedes that its "allegations were styled as a CUTPA violation," but nonetheless argues that the "trial court should have recognized [the defense of unclean hands] on the face of the pleadings . . . ." Because we conclude that Wall Street Associates' claim is unpreserved, we decline to review it.

"It is well known that this court is not bound to consider a claim unless it was distinctly raised at the

trial or arose subsequent to the trial. Practice Book § 60-5. The requirement that [a] claim be raised distinctly means that it must be so stated as to bring to the attention of the court the precise matter on which its decision is being asked. . . . The reason for the rule is obvious: to permit a party to raise a claim on appeal that has not been raised at trial—after it is too late for the trial court . . . to address the claim—would encourage trial by ambuscade, which is unfair to both the trial court and the opposing party." (Emphasis omitted.) *United Cleaning & Restoration, LLC* v. *Bank of America, N.A.*, 225 Conn. App. 702, 714–15, 317 A.3d 2 (2024).

Our examination of the record reveals that this appeal is the first time Wall Street Associates has raised the claim that the plaintiff's conduct was not "fair, equitable and honest as to the particular controversy in issue"; *M&T Bank* v. *Lewis*, 349 Conn. 9, 32, 312 A.3d 1040 (2024); Wall Street Associates failed to plead or raise unclean hands at any time before the trial court. Wall Street Associates' claim, therefore, is not properly before this court, and we decline to review it.

The appeal is dismissed with respect to Ganga Duleep; the judgment is affirmed and the case is remanded for the purpose of setting new law days.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* KENNETH K.*
(AC 46579)

Bright, C. J., and Suarez and Westbrook, Js.**

Syllabus

Convicted, following a jury trial, of criminal violation of a protective order, the defendant appealed to this court. The defendant claimed, inter alia, that the trial court improperly granted the state's motion to join for trial the information charging him with violation of a protective order with a separate information charging him with breach of the peace. *Held*:

This court declined to address whether the trial court abused its discretion in granting the state's motion for joinder because the defendant failed to show that he was substantially prejudiced or harmed by the joinder.

The trial court abused its discretion in requiring the defendant to comply with family court orders as a condition of his probation because the condition was overly broad such that it lacked a reasonable connection to the defendant's reformation and rehabilitation.

This court could not conclude, on the basis of the information the trial court appropriately considered before sentencing the defendant, that the trial court abused its discretion in imposing a forty year standing criminal protective order that prohibited the defendant from coming within 100 yards of his former wife and prohibited contact with her.

Argued November 21, 2024—officially released May 20, 2025

Procedural History

Information charging the defendant with the crime of criminal violation of a protective order, brought to

* In accordance with the spirit and intent of General Statutes § 46b-142 (b) and Practice Book § 79a-12, the names of the parties involved in this appeal are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the court.

Moreover, in accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018), as amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 106, 136 Stat. 49, 851; we decline to identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that person's identity may be ascertained.

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

the Superior Court in the judicial district of Stamford-Norwalk, geographical area number one, and tried to the jury before *Blawie*, *J.*; verdict and judgment of guilty, from which the defendant appealed to this court. *Reversed in part*; *further proceedings*.

Allison M. Near, for the appellant (defendant).

Meryl R. Gersz, assistant state's attorney, with whom, on the brief, were *Paul J. Ferencek*, state's attorney, and *Michael C. Bivona*, assistant state's attorney, for the appellee (state).

Opinion

BRIGHT, C. J. The defendant, Kenneth K., appeals from the judgment of conviction, rendered after a jury trial, of violation of a protective order in violation of General Statutes § 53a-223. On appeal, the defendant claims that the trial court improperly (1) granted the state's motion for joinder for trial of the information charging the defendant with a violation of a protective order with a separate information charging the defendant with two counts of breach of the peace, (2) ordered the defendant to comply with any family court orders as a condition of probation, and (3) imposed a forty year standing criminal protective order that prohibited the defendant from coming within 100 yards of his former wife, L, and from contacting her. We conclude that only the trial court's condition of probation was improper and, therefore, reverse in part the judgment of the trial court.

The jury heard evidence of the following facts. The defendant and L married in 1997 and have three children together. In 2014, L initiated divorce proceedings, and the defendant and L agreed to a visitation schedule for their children, which provided that the defendant would pick up the children at L's residence. In April, 2015, when the defendant arrived at L's home to pick up

two of their children, an argument ensued between the defendant and L. L warned the defendant that their custody arrangement would not work if his outbursts continued. The defendant then began yelling and swearing at L, calling her a "bitch" and, at one point, approached her and told her that he was going to "bash [her] fucking brains in and [that L was] not going to be able to stop [him]." L called the police and reported a nonphysical domestic altercation. The state ultimately charged the defendant with two counts of breach of the peace in the second degree[1] in violation of General Statutes § 53a-181 (a) (3), and the trial court issued a protective order in November, 2015, which precluded the defendant from contacting L in any manner, including by written, electronic, or telephonic contact, except for parenting exchanges, emergencies, or scheduling regarding their minor children (protective order).[2]

In January, 2016, a few months after the protective order was issued, a hearing took place in the defendant and L's divorce case. Later that day, the defendant texted L about the hearing, mocking her and her attorney.[3] Three days later, L reported the defendant's text message to an advocate at the Domestic Violence Crisis Center and to the police. The state subsequently charged the defendant with violation of a protective order for texting L.

[1] The state charged the defendant with intentional breach of the peace in the second degree and, alternatively, with reckless breach of the peace in the second degree.

[2] The protective order contained an exception to effectuate parenting exchanges via curbside pickup only and to allow the defendant to contact L regarding "emergency or scheduling matters as they pertain to their minor children."

[3] The text message read: "You just got slaughtered in court. Your attorney is a retard and has not paid any attention to your case. I know he is sick of you and only cares about being paid [That's] what he tells [the defendant's divorce attorney] anyway. [L]oved the part when [L's divorce attorney] is questioning me about clothing donations ha how comical! I can't wait for the [judge's] decision!"

On March 3, 2023, the trial court in the defendant's criminal case granted the state's motion to join for trial the breach of the peace charges and the violation of a protective order charge. Following a jury trial, *Blawie*, *J.*, presiding, the jury found the defendant not guilty of the breach of the peace charges but found him guilty of violating the protective order. The defendant was sentenced to a term of imprisonment of five years, execution fully suspended, and five years of probation. As a condition of his probation, the court ordered the defendant to comply with any orders issued in family court. The court additionally imposed a standing criminal protective order for forty years that prohibited the defendant from coming within 100 yards of L and from contacting her.

This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

The defendant first claims that the court improperly granted the state's motion for joinder. We need not address whether the court erred in granting the motion for joinder because the defendant was not harmed or prejudiced by the joinder.

The following additional facts and procedural history are relevant to this claim. In February, 2023, the state filed a motion to join the two informations pending against the defendant. The state argued in its motion that the evidence in both cases was cross admissible because evidence in the breach of the peace case was "relevant to show motive, intent, and ongoing animus of the parties" in the protective order case and because the admission of the evidence was more probative than prejudicial. It additionally argued that, even if the evidence in each case was not cross admissible, the state nevertheless satisfied the factors set forth in *State* v.

Boscarino, 204 Conn. 714, 529 A.2d 1260 (1987).[4] The defendant filed an opposition to the state's motion for joinder, arguing that the two incidents were factually dissimilar and should not be joined.

On March 3, 2023, the trial court heard arguments from the parties regarding the state's joinder motion. The prosecutor argued that evidence was cross admissible because "the breach of [the] peace and the violation of protective order all stem from conflict from the divorce for childcare and visitation issues and then for things that happened in court, which the mocking text was sent for." The prosecutor further argued that the charges also "clearly fit the *Boscarino* factors [because] they are discrete, easily distinguishable factual scenarios. One is an in person conflict in 2015, one is a text message in 2016. Neither of the crimes are violent in nature and shocking to the conscience that would prejudice the jury against the defendant because they are both joined together. And by joining them . . . we have essentially added one extra witness who would be a police officer because the complaining witness will be testifying in either matter either way . . . ." In response, defense counsel argued that, although the charges were interrelated, there was not a logical connection between the two charges because the fact that there was a confrontation nine months before the defendant sent the text message would not "help a jury make

[4] In *State* v. *Boscarino*, supra, 204 Conn. 714, our Supreme Court "identified several factors that a trial court should consider in deciding whether a severance or [denial of joinder] may be necessary to avoid undue prejudice resulting from consolidation of multiple charges for trial. These factors include: (1) whether the charges involve discrete, easily distinguishable factual scenarios; (2) whether the crimes were of a violent nature or concerned brutal or shocking conduct on the defendant's part; and (3) the duration and complexity of the trial. . . . If any or all of these factors are present, a reviewing court must decide whether the trial court's jury instructions cured any prejudice that might have occurred." (Internal quotation marks omitted.) *State* v. *Norris*, 213 Conn. App. 253, 280, 277 A.3d 839, cert. denied, 345 Conn. 910, 283 A.3d 980 (2022).

a determination [as to] whether or not that text violated a protective order." Defense counsel also claimed that, regarding the *Boscarino* factors, "given the [l]ack of time between the cases, the dissimilar nature of the two offenses and the fact that [their effect on] the issue of judicial economy is not really significant . . . they are both very short trials that the state has not met its [burden] beyond the preponderance of the evidence that there should be a joint trial . . . ."

After hearing from the parties, the trial court granted the state's motion for joinder on the record, concluding that the evidence would be cross admissible because "the protective order has its roots in the breach of [the] peace allegation, and so I do think that joinder is in the interest of justice . . . ." The court also stated that it would "specifically instruct the jury to separately consider the charges against the defendant to alleviate any potential prejudice from the joinder and [it] will be instructed as to how to apply the evidence to each of the separate charges." On March 14, 2023, the defendant filed a motion for articulation of the court's decision granting the state's motion for joinder. Before the trial began on March 15, 2023, the court granted the motion for articulation on the record and stated that it would issue a written decision in the event of a conviction because "if there's an acquittal there [would] be no need for articulation."

On March 20, 2023, in its final charge, the trial court instructed the jury regarding the consolidation of multiple charges for trial in accordance with the defendant's written request to charge. Specifically, the court instructed the jury that "the defendant is entitled to and must be given by you a separate and independent determination of whether he is guilty or not guilty as to each count. Each count charged in the information is a separate offense and recall that the state is required

to prove every element in each count beyond a reasonable doubt. The total number of counts charged does not add to the strength of the state's case.

"You may find that some evidence applies to more than one count. The evidence, however, must be considered separately as to each element in each count because each count is a separate entity. This means that you may reach opposite verdicts on different counts. A decision on one count does not bind your decision on another count."

After sentencing the defendant on May 1, 2023, on the violation of protective order conviction, the trial court held a hearing on the defendant's motion for articulation on May 25, 2023. At that hearing, the court issued its articulation on the record, stating that "a preponderance of the evidence showed that the evidence in this case was cross admissible because the defendant was convicted [by] a jury [of] violating a protective order which arose out of his initial arrest . . . . I don't have to get into the *Boscarino* factors, because I did find it to be cross admissible pursuant to [§ 4-5 of] the [Connecticut] Code of Evidence . . . . [T]he charges were linked and dependent on the same evidence, and joining them did bolster important policy considerations without identifiable cost or prejudice to the defendant." This appeal followed.

Before considering the defendant's claim, we set forth the standard of review and legal principles regarding joinder. "The principles that govern our review of a trial court's ruling on a motion for joinder . . . are well established. Practice Book § 41-19 provides that [t]he judicial authority may, upon its own motion or the motion of any party, order that two or more informations, whether against the same defendant or different defendants, be tried together. . . . In deciding whether to [join informations] for trial, the trial court enjoys

broad discretion, which, in the absence of manifest abuse, an appellate court may not disturb. . . . The defendant bears a heavy burden of showing that [joinder] resulted in substantial injustice, and that any resulting prejudice was beyond the curative power of the court's instructions. . . .

"A long line of cases establishes that the paramount concern [when joining informations] is whether the defendant's right to a fair trial will be impaired. Therefore, in considering whether joinder is proper, this court has recognized that, [when] evidence of one incident would be admissible at the trial of the other incident, separate trials would provide the defendant no significant benefit. . . . Under such circumstances, the defendant would not ordinarily be substantially prejudiced by joinder of the offenses for a single trial. . . . Accordingly, we have found joinder to be proper [when] the evidence of other crimes or uncharged misconduct [was] cross admissible at separate trials. . . . [When] evidence is cross admissible, therefore, our inquiry ends.

"Substantial prejudice does not necessarily result from [joinder] even [if the] evidence of one offense would not have been admissible at a separate trial involving the second offense. . . . Consolidation under such circumstances, however, may expose the defendant to potential prejudice for three reasons: First, when several charges have been made against the defendant, the jury may consider that a person charged with doing so many things is a bad [person] who must have done something, and may cumulate evidence against him . . . . Second, the jury may have used the evidence of one case to convict the defendant in another case even though that evidence would have been inadmissible at a separate trial. . . . [Third] joinder of cases that are factually similar but legally unconnected . . . present[s] the . . . danger that a defendant will

be subjected to the omnipresent risk . . . that although so much [of the evidence] as would be admissible upon any one of the charges might not [persuade the jurors] of the accused's guilt, the sum of it will convince them as to all." (Internal quotation marks omitted.) *State* v. *Norris*, 213 Conn. App. 253, 278–80, 277 A.3d 839, cert. denied, 345 Conn. 910, 283 A.3d 980 (2022).

"On appeal, the burden rests with the defendant to show that joinder was improper by proving substantial prejudice that could not be cured by the trial court's instructions to the jury. . . . [A]lthough a curative instruction is not inevitably sufficient to overcome the prejudicial impact of [inadmissible other crimes] evidence . . . [when] the likelihood of prejudice is not overwhelming, such curative instructions may tip the balance in favor of a finding that the defendant's right to a fair trial has been preserved." (Internal quotation marks omitted.) Id., 283.

In the present case, the defendant argues that the evidence pertaining to the breach of the peace charges would not have been admissible at a trial for his alleged violation of a protective order because such evidence was irrelevant to the state's burden to prove the defendant violated the protective order. He contends that the state only needed to demonstrate that he had the "general intent" to engage in conduct that violated the protective order, such that the state's explanation for the joinder—that is, to demonstrate that the defendant had the "specific intent" to violate the criminal protective order—was without merit and carried no probative value relative to the state's burden of proof. In response, the state argues that the evidence was cross admissible because the two incidents were "necessarily interrelated, told parts of the same story, and were committed against the same victim." The state also contends that the defendant did not establish that the jury instructions

failed to cure any prejudice and that any error was harmless.

We need not address whether the court abused its discretion in joining the two cases because the defendant has failed to show that he was substantially prejudiced or harmed by the joinder.[5] First, the court's instructions were sufficient to cure any prejudice that the defendant might have suffered as a result of the joinder. The court instructed the jury to consider each charge separately. It further instructed the jury that the violation of a protective order charge required the state to prove two elements beyond a reasonable doubt: the existence of a protective order and the intentional violation of a condition of that protective order. It then detailed the differences between general intent and specific intent, explaining that the state had to prove only the defendant's general intent to send the text message for the violation of a protective order charge: "The law recognizes two types of intent: general intent and specific intent. General intent is the intent to—engage in conduct. Thus, in this case, it is not necessary for the state to prove that the defendant intended the precise harm or the precise result, which eventuated. Rather, the state is required to prove that the defendant intentionally and not inadvertently or accidentally engaged in his actions. . . . Note [that] general intent is a different legal concept than specific intent. The concept of specific intent applies to . . . breach of [the] peace in the second degree, while this concept of general intent applies only to . . . criminal violation of a protective order." Given the charges in this case, by delineating the differences in the intent required, the court eliminated the chance of any prejudice. See, e.g., *State* v. *McKethan*, 184 Conn. App. 187, 200, 194

[5] Accordingly, we need not consider whether the trial court erred in granting the state's motion for joinder or whether it erred in not applying the *Boscarino* factors.

A.3d 293 ("the court's jury instructions cured the risk of substantial prejudice to the defendant and, therefore, preserved the jury's ability to fairly and impartially consider the offenses charged in the jointly tried cases"), cert. denied, 330 Conn. 931, 194 A.3d 779 (2018); see also *State* v. *Parrott*, 262 Conn. 276, 294, 811 A.2d 705 (2003) ("[b]arring contrary evidence, we must presume that juries follow the instructions given them by the trial judge" (internal quotation marks omitted)).

Additionally, there was no dispute at trial that the defendant had the requisite general intent to send the text message that was the basis of the violation of a protective order charge. The only question the jury had to resolve as to that charge was whether the language of the text message violated the terms of the protective order. There is nothing in the record to suggest that the jury's resolution of this question was in any way affected by the joinder of the breach of the peace charges. To the contrary, all the jury had to do was compare the language of the text message to the language of the protective order to determine if there was a violation.

Finally, it is evident that the jury followed the court's instructions and treated each offense separately because it found the defendant not guilty on the breach of the peace charges but convicted the defendant on the violation of a protective order charge. See, e.g., *State* v. *Atkinson*, 235 Conn. 748, 766, 670 A.2d 276 (1996) ("by returning a verdict of not guilty on the charge of possession of a weapon in a correctional institution, which also stemmed from [an] escape incident, the jury evidently was able to separate the two cases and did not blindly condemn the defendant on his participation in the murder"); *State* v. *Gerald A.*, 183 Conn. App. 82, 123 n.21, 191 A.3d 1003 ("[w]e conclude that acquittal of the charges related to [separate]

allegations demonstrates that the jury properly considered each information separately"), cert. denied, 330 Conn. 914, 193 A.3d 1210 (2018). Accordingly, because the defendant was not prejudiced or harmed by the joinder of the two informations, his claim fails.

II

The defendant next claims that the trial court lacked a reasonable basis to impose a condition of probation requiring the defendant to comply with orders in the family court. We conclude that the court abused its discretion because the condition was overly broad such that it lacked a reasonable connection to the defendant's rehabilitation.

The following additional facts and procedural history are relevant to this claim. During the defendant's sentencing on May 1, 2023, the court sentenced the defendant to five years of imprisonment, execution fully suspended, with five years of probation. One of the conditions of probation was that the defendant must "comply with any court orders issued in family court, or noncompliance will constitute grounds for violating your probation." After imposing that condition, the court stated: "I believe I have the authority to do that, I'm trying to choose my words carefully. Your lawyer can appeal this, but I see this as part and parcel of a very nasty divorce where you are now convicted of violating an order of this court with taunting words and threats directly tied to that. . . . A violation of probation would not lie from a motion filed by your ex-wife for contempt. It would be a finding by a court, of this Superior Court, that you have violated one of their orders. The state would then be free to bring a violation of probation [charge] against you. . . . I'm talking about for the next five years of probation, which is until 2028, any violations found by a family court, whether at the trial court or [the] appellate court level, would

be grounds for the state to seek a violation of probation [charge]. If I have no authority to do that the higher courts will tell me . . . . You have no discretion in obeying an order of the court, and you have an extra inducement now to obey any court orders because you have five years hanging over your head . . . . I'm basically putting [the defendant] on notice . . . that a violation of a family court order is grounds to violate his probation here. Whether I have the authority to do that, you're free to appeal that specific issue but I think it's fully warranted by the facts and circumstances I heard about both during this trial and today at this sentencing proceeding."

Defense counsel objected to the condition, stating: "I respectfully object to the court setting that condition, you know, complying with court orders in the family court . . . . I don't think the court, respectfully, has jurisdiction to do that. . . . If there's an order and one doesn't [follow] it, one has the right to appeal that particular decision; it's not a final decision. . . . [I]t's final in the sense of the trial court but it could be . . . the wrong decision." Defense counsel also objected on the basis that the condition was "imposing a potential criminal sanction . . . for violation of a civil order." In response, the court offered to stay that portion of its sentence if the defendant wanted to appeal. The defendant then filed a motion for a partial stay of execution, specifically to "stay the execution of that condition of [his] probation that he must abide by any orders of the family court and that a failure to do so could result in a violation of probation," which the trial court granted.

The following legal principles guide our analysis. "On appeal, the standard of review of an order of probation is whether the trial court abused its discretion. If it appears that the trial court reasonably was satisfied that the terms of probation had a beneficial purpose

consistent with the defendant's reformation and rehabilitation, then the order must stand. . . . In reviewing the issue of discretion, we do so according it every reasonable presumption in favor of the trial court's ruling." (Internal quotation marks omitted.) *State* v. *Thorp*, 57 Conn. App. 112, 116, 747 A.2d 537, cert. denied, 253 Conn. 913, 754 A.2d 162 (2000).

Pursuant to General Statutes § 53a-30 (a) (17), "[w]hen imposing sentence of probation or conditional discharge, the court may, as a condition of the sentence, order that the defendant . . . satisfy any other conditions reasonably related to the defendant's rehabilitation." Indeed, a "sentencing court must have the discretion to fashion those conditions of probation it deems necessary to ensure that the individual successfully completes the terms of probation." (Internal quotation marks omitted.) *State* v. *Pieger*, 240 Conn. 639, 647, 692 A.2d 1273 (1997).

"Probation conditions serve two primary purposes. [They] are meant to assure that the probation serves as a period of genuine rehabilitation and that the community is not harmed by the probationer's being at large. . . . Because probation is part of a criminal sentence, probation conditions often restrict the liberty rights of a probationer by imposing serious restraints on a probationer's [lifestyle], associations, movements and activities. . . . Nevertheless, a condition of probation may diminish a probationer's liberty rights only to the extent necessary for his reformation and rehabilitation." (Citations omitted; internal quotation marks omitted.) *State* v. *Graham*, 33 Conn. App. 432, 448, 636 A.2d 852, cert. denied, 229 Conn. 906, 640 A.2d 117 (1994); see, e.g., *State* v. *Thornton*, 55 Conn. App. 28, 33–34, 739 A.2d 271 (1999) (trial court erred in including probation condition that required defendant to pay money into

fund to reimburse victim for any treatment or counseling because it was "too remote to be considered reasonably related to the offense" (internal quotation marks omitted)); *State* v. *Graham*, supra, 448 ("[w]e conclude that the conditions regarding cleanliness of the home and care and cleanliness of the children do not serve to rehabilitate or to reform the defendant because they do not relate to the defendant's behavior involved in her convictions for larceny and drug crimes"); cf. *State* v. *Pieger*, 42 Conn. App. 460, 468, 680 A.2d 1001 (1996) ("[p]ayment of a charitable contribution to the hospital in which the defendant's victim received her treatment is a condition that is reasonably related to the defendant's rehabilitation"), aff'd, 240 Conn. 639, 692 A.2d 1273 (1997).

On appeal, the defendant argues that the probation condition that he not violate orders of the family court is not reasonably related to his rehabilitation because the condition was too remote from the conduct of his conviction.[6] In response, the state argues that the challenged condition was appropriate and reasonably

[6] The defendant additionally argues that the trial court lacked both the authority and the jurisdiction to impose the condition. First, the defendant argues that the trial court lacked the authority to impose the condition because there is no apparent authority for the criminal court to impose a condition that requires compliance with the orders of a civil court. We are not persuaded. Section 53a-30 (a), which governs the conditions of probation that a trial court can order, affords trial courts wide discretion to determine what conditions of probation to order as long as they are reasonably related to the defendant's rehabilitation, including conditions that do not rise to the level of criminal activity on their own but would do so if the defendant were to violate them. Second, the defendant relies on General Statutes §§ 46b-1 and 46b-2 to argue that the court lacks the jurisdiction to impose such a condition because, "if a matter concerns the family court and orders of that court, it should first be placed on that docket and only referred to another court if the family court judge deems it 'more suitable for the disposition of the case.' " Those statutes address the disposition of "family relations matters," not the consequences that a party may face for disobeying a court's order in such matters. Consequently, we reject the defendant's arguments.

related to the defendant's rehabilitation because the trial court considered reliable information of the defendant's past failures to comply with family court orders.

We conclude that the trial court abused its discretion when it imposed the probation condition because the condition, as it stands, is overly broad such that it is not reasonably related to the defendant's reformation and rehabilitation. First, the condition is violated if the defendant is found to have violated a court order rather than if he is found in contempt. This distinction is significant because, "[t]o constitute contempt, it is not enough that a party has merely violated a court order; the violation must be *wilful*." (Emphasis added.) *Puff* v. *Puff*, 334 Conn. 341, 365, 222 A.3d 493 (2020). Thus, the defendant may face up to five years of incarceration if he in good faith disputes a motion filed by L claiming that he has violated an order of the family court. It is not unusual for litigants in civil proceedings, especially contentious divorce cases, to have reasonable disagreements regarding the meaning of orders previously issued by the court. For this reason, the Supreme Court has held that a court may issue a remedial order even when it finds that the defendant is not in contempt. See *O'Brien* v. *O'Brien*, 326 Conn. 81, 99, 161 A.3d 1236 (2017) ("Unlike contempt penalties, a remedial award does not require a finding of contempt. Rather, [i]n a contempt proceeding, even in the absence of a finding of contempt, a trial court has broad discretion to make whole any party who has suffered as a result of another party's failure to comply with a court order." (Internal quotation marks omitted.)). Exposing the defendant to a violation of probation charge simply because he unsuccessfully opposes a motion filed by L accusing him of violating a court order is not reasonably related to the rehabilitation goal of assuring the defendant does not, in the future, wilfully ignore court orders. Instead, it could have a chilling effect on his right to, in good

faith, present arguments and claims before the family court.

Second, the condition of probation imposed by the trial court is overbroad because it is violated upon a court's finding that the defendant failed to comply with a court order, without regard to the defendant's right to challenge such a finding on appeal. See *Bryant* v. *Bryant*, 228 Conn. 630, 636, 637 A.2d 1111 (1994) (holding that civil contempt findings are appealable final orders). As the condition currently stands, the defendant could be found in violation of his probation and sentenced to a period of incarceration for violating a court order, only to have the violation of the court order reversed on appeal. In that circumstance, the defendant will have been incarcerated when he should not have been and before he could fully exercise his rights to challenge the ruling in the family court. Thus, although we recognize that the defendant's compliance with court orders is reasonably related to the offense that he was convicted of, the condition imposed in the present case exceeds that which is necessary for the defendant's rehabilitation. Accordingly, this condition of probation, as imposed by the court, cannot stand. Given our conclusion, a remand is necessary for the court to consider whether a different, more limited condition is necessary for the defendant's rehabilitation.

III

We last turn to the question of whether the trial court erred in imposing a forty year criminal protective order that prohibited the defendant from coming within 100 yards of L and prohibited contact with L. We conclude that the court did not abuse its discretion by imposing the standing criminal protective order.

The following additional facts and procedural history are necessary to our resolution of this claim. During the defendant's sentencing, the trial court heard from

defense counsel, the prosecutor, and L. Defense counsel asked for a probationary sentence, arguing that the defendant had no previous convictions and that his text to L was not "a threat to harm or injure anyone at all. It was a[n] unfortunate comment about the proceedings in the court." The prosecutor detailed the defendant's other pending cases,[7] and L gave a statement regarding the defendant's conduct, his failure to comply with court-ordered alimony and child support payments, and his failure to undergo a court-ordered neuropsychological exam.[8] L additionally read statements from herself and the defendant's daughter, each of which described the defendant's verbal abuse toward them.

At the conclusion of the sentencing, the trial court issued a standing criminal protective order stating that the defendant had to stay 100 yards away from L and could not contact her for the next forty years.[9] In June, 2023, the defendant filed a motion to modify the standing criminal protective order, requesting that the order be modified to "permit the defendant to have electronic

[7] The defendant at the time of sentencing had three pending cases. The defendant had two additional charges of violation of a protective order and a case charging him with assault in the second degree and intimidation connected to a road rage incident. He ultimately pleaded guilty to assault in the third degree in violation of General Statutes § 53a-61 and breach of the peace in the second degree in violation of General Statutes § 53a-181. He was sentenced to one year of incarceration, execution suspended, and two years of probation.

[8] L stated: "From 2014 to just this past week, [the defendant] has threatened me and the children with physical violence, intimidated us physically and verbally; he has done these things to my family and friends, to officers of the court who have even filed sanctions, police officers, and even his own family. . . . I carry mace everywhere; I have cameras; I've had to leave my house on more than one occasion because someone told us he was enraged and on his way over. The children and I have left the house because we knew something that was said or done would enrage him. For days after he was found guilty here, I was on the edge, looking over my shoulder."

[9] The defendant was also ordered to surrender or transfer all firearms and ammunition.

communication through Our Family Wizard[10] with [L] necessary to arrange and effect visitation with their child . . . and to allow the defendant to do pickup and drop-off at the end of the driveway to [L's] residence . . . ." (Footnote added.) The trial court granted the motion in part and issued a new protective order, which, in addition to permitting electronic communications through Our Family Wizard, allowed the defendant to pick up and drop off their child at the end of L's driveway, "if so ordered [by the] family court," and permitted him to attend court if a matter was pending in family court.

On appeal, the defendant argues that imposing a standing criminal protective order of such significant length was not necessary because this was the defendant's first conviction, there was no history of abuse or threats between the defendant and L, and the conduct underlying the conviction occurred five years before the sentence was imposed. In response, the state claims that the defendant cannot demonstrate that the court abused its discretion as to the terms of the order because the trial court's modifications demonstrate that the court "responded to and alleviated the concerns raised by the defendant" and because the nature and circumstances of the defendant's criminal conduct justified the trial court's imposition of the order.[11] We agree with the state.

[10] "Our Family Wizard is a website offering web and mobile solutions for divorced or separated parents to communicate, reduce conflict, and reach resolutions on everyday coparenting matters . . . ." *Buehler* v. *Buehler*, 211 Conn. App. 357, 361 n.3, 272 A.3d 736, cert. denied, 343 Conn. 917, 274 A.3d 869 (2022).

[11] The state additionally argues that any challenge to the protective order's duration is unpreserved for appellate review because the defendant only contested the terms of the standing criminal protective order during trial, not its duration. Even if unpreserved, however, we exercise our discretion to consider the merits of the claim because the state would not be prejudiced by our decision to do so.

General Statutes § 53a-40e (a) provides that a trial court may issue a standing criminal protective order "if the court is of the opinion that the history and character and the nature and circumstances of the criminal conduct of such offender indicate that a standing criminal protective order will best serve the interest of the victim and the public . . . ."[12] We review a trial court's imposition of a standing criminal protective order for an abuse of discretion. See *State* v. *Mieles*, 221 Conn. App. 164, 173, 301 A.3d 1063 (2023), rev'd on other grounds, 351 Conn. 765, A.3d (2025).

In the present case, we cannot conclude that the trial court abused its discretion in imposing the standing criminal protective order. The defendant argues that the court did not consider the fact that this was his first conviction, that there was no history of abuse or threats, or that the conduct that was the basis for his conviction occurred five years before the sentence was imposed because, had it done so, it would have determined that an order of such length was not necessary. We are not persuaded, as the record does not reflect that the court did not consider such factors when it determined whether to impose the standing criminal protective order. Indeed, although the court heard from the defendant and his counsel before imposing its sentence, it also heard from the prosecutor, L, and the defendant's child regarding the defendant's outstanding criminal charges and his conduct toward L and his children, including his actions in the week before the sentencing hearing. On the basis of the severity and continuing nature of the defendant's conduct toward L and their children, the trial court ultimately determined

[12] The trial court may only impose a standing criminal protective order if a defendant is "convicted of . . . (1) a violation of . . . section 53a-223 . . . or (2) any crime that the court determines constitutes a family violence crime, as defined in section 46b-38a, or attempt or conspiracy to commit any such crime . . . ." General Statutes § 53a-40e (a). It is undisputed that the defendant was convicted of one of the qualifying offenses.

that a standing criminal protective order of this duration best served the interests of L, their children, and the public.[13] On the basis of the information the court appropriately considered before sentencing the defendant, we cannot conclude that the court abused its broad discretion when it imposed the standing criminal protective order.

The judgment is reversed with respect to the condition of the defendant's probation requiring that he not violate any family court order and the case is remanded for resentencing with direction to delete or modify that condition; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

M. W. *v.* G. C.*
(AC 47189)

Alvord, Seeley and Flynn, Js.

Syllabus

The defendant appealed from the judgment of the trial court dissolving his marriage to the plaintiff. He claimed that the court abused its discretion in making its property distribution orders because the court's factual findings were clearly erroneous. *Held*:

The trial court's factual finding as to the defendant's income was not clearly erroneous, as the defendant's evidence as to his income was internally inconsistent and incomplete, and the court's findings regarding the plaintiff's

[13] The trial court stated: "I'm very familiar with the trauma, the emotional harm, that contentious family matters can bring upon not just the adults but the children. And sir, when the elephants fight it's the grasses that get trampled and I can see that your relationship with your children, if it still exists, has been virtually destroyed by this case."

* In accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018), as amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 106, 136 Stat. 49, 851; we decline to identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that person's identity may be ascertained.

testimony and the defendant's representations made in his applications to mortgage lenders were supported by the record.

The trial court's factual finding as to the value of the parties' marital home was not clearly erroneous, as the court's determination was based in part on exhibits the defendant entered into evidence at trial, including an appraisal of the property, a hypothetical real estate closing statement created by the defendant's counsel for the purpose of aiding the court, and a tax assessor's card, and the court was not required to credit the defendant's testimony regarding the fair market value of the property.

Argued December 10, 2024—officially released May 20, 2025

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the defendant filed a cross complaint; thereafter, the case was tried to the court, *Vizcarrondo*, *J.*; judgment dissolving the marriage and granting certain other relief, from which the defendant appealed to this court. *Affirmed*.

Igor G. Kuperman, for the appellant (defendant).

Opinion

ALVORD, J. The defendant, G. C., appeals from the judgment of the trial court dissolving his marriage to the plaintiff, M. W.[1] On appeal, the defendant challenges the court's property distribution orders on the basis that the court made clearly erroneous factual findings as to (1) the defendant's net income and (2) the value of the marital home. We affirm the judgment of the trial court.

The record reveals the following relevant facts and procedural history. The parties were married on March 17, 2018, and no children were born of the marriage. The plaintiff initiated the dissolution proceeding in

[1] The plaintiff did not file an appellee's brief. As a result, this court ordered the appeal to be considered on the basis of the defendant's brief and the record, as defined by Practice Book § 60-4, and oral argument by the defendant.

November, 2021, and the defendant filed a cross complaint in December, 2021. The matter was tried to the court, *Vizcarrondo*, *J.*, over several days.[2] Both parties testified, in addition to other witnesses, and submitted a number of exhibits into evidence. Both parties were represented by counsel and filed posttrial briefs. In its November 30, 2023 memorandum of decision, the court found that each of the parties had children from a prior relationship. The court found that the defendant engaged in domestic violence during the marriage, including physical abuse and coercive control. The court recounted an incident on June 23, 2020, in which the defendant punched the plaintiff's daughter, then a teenager, in the face after she attempted to intercede in an argument between the parties. The defendant pleaded guilty to assault in the third degree, and a restraining order was entered against him. The court found the defendant's misconduct to be the principal cause for the breakdown of the marriage and that he "controlled the household finances and acted to restrict the plaintiff and her daughters' interactions with others to a degree consistent with coercive control."

The court found the plaintiff's net weekly income to be $650 as a financial advisor selling life insurance and the defendant's net annual income to be $90,000 as a construction contractor. The court made findings with respect to the marital home, which the parties had purchased for $515,000 in 2019. The court found that the defendant sold the marital home during the pendency of the litigation in violation of the court's automatic orders. The court issued a remedial property distribution order requiring the defendant to pay the plaintiff $91,600.

With respect to its remaining financial orders, the court denied the plaintiff's claim for alimony, noting

[2] A related civil action was consolidated with the dissolution trial.

"the relatively short duration of the marriage, the plaintiff's active employment, her good health, and the financial orders made pursuant to General Statutes § 46b-81." The court ordered, inter alia, that the defendant would retain his 100 percent interest in his business. The court declined to award attorney's fees. This appeal followed. Additional facts and procedural history will be set forth as necessary.

Both of the defendant's claims in this appeal challenge the factual findings underlying the court's distribution of marital property. Section 46b-81 provides in relevant part: "(a) At the time of entering a decree . . . dissolving a marriage . . . the Superior Court may assign to either spouse all or any part of the estate of the other spouse. . . . (c) In fixing the nature and value of the property, if any, to be assigned, the court, after considering all the evidence presented by each party, shall consider the length of the marriage, the causes for the . . . dissolution of the marriage . . . the age, health, station, occupation, amount and sources of income, earning capacity, vocational skills, education, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates."

"The standard of review in family matters is well settled. An appellate court will not disturb a trial court's orders in domestic relations cases unless the court has abused its discretion or it is found that it could not reasonably conclude as it did, based on the facts presented. . . . 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. . . . Appellate review of a trial court's findings of fact is governed by the

clearly erroneous standard of review. The trial court's findings are binding upon this court unless they are clearly erroneous in light of the evidence and the pleadings in the record as a whole. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . . Therefore, to conclude that the trial court abused its discretion, we must find that the court either incorrectly applied the law or could not reasonably conclude as it did." (Internal quotation marks omitted.) *Ferraro* v. *Ferraro*, 168 Conn. App. 723, 727, 147 A.3d 188 (2016).

I

The defendant's first claim on appeal is that the court's factual finding as to his income was clearly erroneous. Specifically, he contends that the "plaintiff's unfounded claims could not form the basis for the trial court's finding." The defendant further argues that, because the court did not credit his representations of his income to third parties, the court could not have concluded that "the same representations were an accurate picture of the defendant's actual income." We are not persuaded.

The court had before it the following evidence as to the defendant's income. The plaintiff introduced into evidence a 2022 application for the emergency mortgage assistance program signed by the defendant, in which he represented his income to be $12,479 gross per month. Attached to that application was a profit and loss statement for the time period of January 1 through August 31, 2022, which, according to the defendant's testimony and the date on the document, the defendant signed in September, 2022. The profit and loss statement reflected monthly income of $12,479.50 over the eight

month period of January 1 through August 31, 2022.[3] When questioned regarding the profit and loss statement, the defendant testified that, despite having signed the statement at the conclusion of the eight month period, his recollection was that the document was prepared using an estimate of what he would be making if he had his company working. Upon further questioning, the defendant testified that "everything that I was doing with this paperwork was in order to avoid losing the property."

The plaintiff testified that, although she did not know exactly how much money the defendant was making at the time of trial, she knew that he had a "big contract," funded by insurance proceeds, to "redo" his uncle's house after a fire. She also testified that he had made $120,000 one year and that "he always works probably 70 percent cash and 30 percent in checks just because he has to declare something and pay his workers. He only had one worker with Social Security. Everybody else he pays cash and that's why when he makes his contracts, he always be sure that he gets [a] big chunk of cash on the side."

The defendant's evidence as to his income was internally inconsistent and incomplete. On one occasion, he testified that the most he had earned in any year was $70,000. On another occasion, he testified that the most he had earned in any year was $50,000. On each of the defendant's financial affidavits filed in this action, he identified a gross weekly income and used the same figure as his net weekly income; he did not identify any mandatory deductions. For example, his February 3, 2022 financial affidavit reflected $120 in gross weekly income, $0 in mandatory deductions, and $120 in net

[3] The statement reflected a total income of $116,465 for that time period. It identified deductions for car and truck expenses, contract and labor, insurance, a professional service fee, office expenses, supplies, licenses and fees, and other expenses, for a net profit of $99,836 over the eight months.

weekly income. His July 19, 2023 financial affidavit reflected $600 in gross weekly income, $0 in mandatory deductions, and $600 in net weekly income.

The court made the following factual findings with respect to the defendant: "Throughout the marriage he was a construction contractor. At trial, the defendant testified that his gross earnings never exceeded $60,000 in any given year; though he concedes that he deliberately misrepresented his income as $144,000 in connection with his efforts to refinance the marital home.

"The court finds that the defendant's trial testimony has been self-serving and not credible. The defendant's testimony concerning his income is no exception. Based on the plaintiff's personal observations, the court finds that the defendant received a significant portion of his income as undisclosed cash. Based in part o[n] the defendant's representations to mortgage lenders, the court finds that his yearly gross income is at least $120,000, and that his net annual income after taxes and mandatory deductions is properly valued at $90,000."

We cannot conclude that the court's findings as to the defendant's income are clearly erroneous. First, we note that the defendant's submissions to the court were both lacking in candor and incomplete. "We have often said that a party who fails to provide information to the court will not later be heard to complain that the court made orders without sufficient information." *Fronsaglia* v. *Fronsaglia*, 202 Conn. App. 769, 785, 246 A.3d 1083 (2021); see also *Rosenfeld* v. *Rosenfeld*, 115 Conn. App. 570, 581, 974 A.2d 40 (2009) ("[w]here a party's own wrongful conduct limits the financial evidence available to the court, that party cannot complain about the resulting calculation of a monetary award" (internal quotation marks omitted)). Second, the court's findings regarding the plaintiff's testimony and the defendant's representations made in his applications to mortgage lenders were supported by the record. "The

trial court, as trier of fact, determined who and what to believe and the weight to be accorded the evidence. The sifting and weighing of evidence is peculiarly the function of the trier." (Internal quotation marks omitted.) *Nunez* v. *Nunez*, 85 Conn. App. 735, 738, 858 A.2d 873 (2004). Accordingly, the defendant's claim fails.

II

The defendant's second claim on appeal is that the court's factual finding as to the value of the marital home was clearly erroneous. We are not persuaded.

The court made the following findings with respect to the marital home. Although title to the home was exclusively in the defendant's name, the plaintiff contributed more than one half of the $77,237.97 down payment and substantial sums toward the mortgage. These contributions would have entitled her to a substantial share of any proceeds from the sale. The marital home was in foreclosure at the time of trial, and a foreclosure auction date had been set. In the context of the foreclosure action, the marital home was valued at no less than $715,000. The defendant had attempted to refinance the property to avoid the foreclosure and had requested that the court grant him exclusive possession of the premises, in part because residency in the home was one of several requirements to be stated to obtain modification of the mortgage obligation. The defendant acted with knowledge of the home's value and with the intention of preserving that value. On February 22, 2023, the defendant unilaterally sold the home, at a claimed sale price of $540,000. This amount equaled the debt related to the property, including unpaid mortgage principal, interest, real estate taxes, and unpaid homeowners insurance. The defendant denied receiving any additional compensation beyond the claimed sale price.[4]

[4] The defendant did not introduce any documentary evidence in support of his testimony that he sold the property for $540,000.

The plaintiff filed a motion for contempt of the automatic orders. After a hearing, the court found that the automatic orders were clear and unambiguous and that the defendant sold the marital home without notice to his counsel, the plaintiff, or the court. The court found not credible "the defendant's claim that the value of the transaction resulted merely in satisfaction of the mortgage debt, taxes, interest, liens, and other costs, such that the sale did not yield any net proceeds. The defendant is not unsophisticated. To the contrary, throughout the proceedings, he demonstrated a keen awareness of the value of all property he deemed his. But, even if the sale did not in fact result in proceeds, the court finds that the defendant's actions were, at a minimum, spiteful and intended to deprive the plaintiff of any financial benefit, and to undermine this court's authority to order and effectuate an equitable property settlement. In so finding, the court concurs with the plaintiff's assessment that the unilateral sale can 'only be viewed as a final act of retaliation towards the plaintiff . . . .' "

Accordingly, the court found the defendant in contempt on the basis that he had wilfully violated the court's automatic orders. The court considered "[t]he defendant's contumacious conduct, and the economic harm suffered by the plaintiff," in its property award issued pursuant to § 46b-81. Specifically, the court found that an open market sale would have yielded proceeds in the amount of $175,000, with closing costs of approximately $37,000, resulting in total net proceeds after costs of $138,000. The court expressly considered the defendant's history of domestic violence throughout the marriage and his deliberate litigation misconduct in awarding the plaintiff 70 percent of the imputed net value of the marital home's proceeds. The court ordered that amount to be reduced by $5000, the value of the furnishings remaining within the home at the time of

trial. Accordingly, the court ordered the defendant to pay to the plaintiff a property settlement of $91,600, to be paid in sixty monthly installments of $1527.

We are not persuaded by the defendant's claim that the court could not reasonably have concluded as it did in valuing the property at $715,000. At trial, the defendant entered into evidence as a full exhibit the August 31, 2021 appraisal valuing the property at $715,000. The defendant also entered into evidence a real estate closing statement, created by the defendant's counsel for the purpose of aiding the court, showing that a hypothetical sale of the property at a price of $715,000 would yield approximately $150,000 in net proceeds as of December 31, 2022. Finally, the defendant entered into evidence the 2018 tax assessor's card, which identified an appraised value of $708,230. Although the defendant testified that he believed the fair market value of the property based on the property's condition to be between $650,000 and $680,000,[5] the court was not required to credit his testimony. See *Cimino* v. *Cimino*, 155 Conn. App. 298, 301–302, 109 A.3d 546 ("[a]lthough there was other evidence, including testimony from the parties, that the home's fair market value was higher, the court was not required to accept those figures" (footnote omitted)), cert. denied, 316 Conn. 912, 111 A.3d 886 (2015).

We conclude that the court's determination regarding the value of the marital home, based on an appraisal admitted into evidence, was proper. See *Bevilacqua* v. *Bevilacqua*, 201 Conn. App. 261, 274–76, 242 A.3d 542 (2020) (where defendant failed to provide financial affidavit and denied owning property in Bahamas during

[5] In his November, 2022 financial affidavit, the defendant also estimated the fair market value of the marital home to be $680,000. After subtracting the mortgage current principal balance and equity line of credit and other liens, the defendant identified equity in the amount of $108,000.

deposition, court did not abuse its discretion in awarding such property to defendant and valuing it based on estimate defendant had provided in prenuptial disclosure); *Porter* v. *Porter*, 61 Conn. App. 791, 800, 769 A.2d 725 (2001) (court's valuation, which was less than both parties requested, was not clearly erroneous where neither party provided court with expert testimony as to value of home and, as a result, court was left with claims of parties and general knowledge to establish value). Accordingly, we conclude that the court did not abuse its discretion in rendering its property division order.

The judgment is affirmed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* MICHAEL LEVEILLE (AC 47241)

Alvord, Elgo and Cradle, Js.*

Syllabus

Convicted, following a jury trial, of assault in the first degree, the defendant appealed. The defendant, who had a confrontation with M in a brewery and repeatedly stabbed M in the head and face with a broken beer glass, claimed, inter alia, that the evidence was insufficient to support his conviction. *Held*:

The evidence provided a sufficient basis from which the jury reasonably could have inferred that the defendant acted with the specific intent to cause M serious physical injury, as surveillance video depicted the defendant's attack on M, and the defendant testified that he knew the glass could pose a danger to M and that what he was doing could seriously injure M.

Testimony from a paramedic and a physician who treated M provided ample evidence from which the jury reasonably could have concluded that the defendant caused M serious physical injury, either in the form of serious disfigurement or a serious loss or impairment of the function of M's skin and left ear, which hung from his face as a result of the defendant's attack.

The defendant's contention that the state failed to disprove his claim of self-defense was unavailing, as none of the evidence, including surveillance

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

video of the incident, supported his assertion that M had threatened to use physical force against the defendant, a text message the defendant sent to his date that evening after the stabbing supported the reasonable inference that the defendant did not believe he had acted in self-defense, and the jury reasonably could have concluded that the defendant's belief that he used the degree of physical force necessary to defend himself was not objectively reasonable in light of his testimony that he had no reason to believe that M possessed a weapon and that he continued attacking M with the glass even as he saw that M was not trying to defend himself.

Contrary to the defendant's contention, the trial court's jury instruction on serious physical injury was not constitutionally deficient because it included the statutory (§ 53a-3 (4)) definition of only one type of serious physical injury or because it failed to include his proposed definitions of certain terms, as the instruction was correct in law, adapted to the issues in the case and sufficient for the guidance of the jury.

The prosecutor's closing arguments to the jury were not improper and, thus, did not violate the defendant's due process right to a fair trial, as the prosecutor's contentions that the defendant intended to kill M and had testified falsely and fabricated evidence were properly rooted in the evidence and the reasonable inferences drawn therefrom.

Argued February 3—officially released May 20, 2025

Procedural History

Substitute information charging the defendant with the crime of assault in the first degree, brought to the Superior Court in the judicial district of New Britain and tried to the jury before *Pelosi*, *J.*; verdict of guilty; thereafter, the court denied the defendant's motion for a new trial and rendered judgment in accordance with the verdict, from which the defendant appealed to this court. *Affirmed.*

Michael A. Fitzpatrick, for the appellant (defendant).

Danielle Koch, assistant state's attorney, with whom, on the brief, were *Christian M. Watson*, state's attorney, *David Clifton*, senior assistant state's attorney, and *Justin Blain*, supervisory assistant state's attorney, for the appellee (state).

Opinion

CRADLE, J. The defendant, Michael Leveille, appeals from the judgment of conviction, rendered following a jury trial, of one count of assault in the first degree in violation of General Statutes § 53a-59 (a) (1). On appeal, the defendant claims that (1) the evidence was insufficient to support his conviction, (2) the trial court's final instruction to the jury was constitutionally deficient, and (3) prosecutorial impropriety during closing argument deprived him of his due process right to a fair trial. We affirm the judgment of the trial court.

The jury reasonably could have found the following facts. On August 16, 2019, the defendant and Katherine Woodward, a woman he had been communicating with over the dating app Tinder, met to go running together and then went for a beer at a brewery in New Britain. Approximately one hour later, Woodward's former boyfriend, Darl Eugene Miller (victim), arrived at the brewery to confront Woodward.[1] The victim approached the table where Woodward and the defendant were sitting and engaged in an "[un]pleasant" conversation using "some expletives." At some point during the encounter, the victim said to Woodward and the defendant, "you're fucked." Although the victim was "upset" and "animated," he was not yelling and did not threaten Woodward or the defendant.

The victim eventually walked away from the table and toward the bar, at which point Woodward said to the defendant, "we should go." The defendant finished his glass of beer and followed Woodward toward the exit with the empty glass in hand. As the defendant walked by the victim, who was still standing at the bar,

[1] Woodward had told the victim that she was going for a run at an area reservoir. The victim, who believed that he and Woodward were still in a romantic relationship and suspected that Woodward was lying, drove to various bars until he found her.

the victim turned and began to follow the defendant while saying "more un-nice things" to him. Before reaching the exit, the defendant turned around and struck the victim in the face with the empty beer glass, causing the glass to shatter. As the defendant continued to strike the victim's head and face with the broken beer glass, the victim tripped over nearby chairs, causing him and the defendant to fall to the ground. Once on the ground, the defendant continued to stab the victim's head and face with the remnant of the broken glass even though the victim "[was not] even try[ing] to defend himself . . . ." Several bystanders, who were concerned for the victim's safety, attempted to restrain the defendant. After a brief struggle, they managed to separate the defendant from the victim approximately twenty seconds after the attack began.

Within minutes, officers from the New Britain Police Department and Hannah Stewart, a paramedic, responded to the brewery. Upon her arrival, Stewart noticed that the victim "was bleeding everywhere" and observed lacerations to his chin, forehead, and cheeks as well as "an avulsed ear," meaning that "[t]he top half [of his ear] . . . was no longer connected to his face." Stewart classified the victim as a "level 1 trauma" and transported him to Saint Francis Hospital and Medical Center in Hartford, where emergency department physicians treated him for his injuries. There was a four centimeter laceration to the victim's left ear that required fifteen sutures to close, and an eight centimeter laceration to his chin that required thirteen sutures to close.[2] The victim also required a total of six staples to close two lacerations to his scalp, each measuring three centimeters in length, which were contaminated with small

[2] While recovering from his injuries, the victim had to return to the hospital twice to have the laceration to his chin "reclosed" because the sutures had "bust[ed] open."

particles of glass. Although emergency department physicians were able to remove most of the glass by irrigating the wounds, they were unable to remove all the glass particles from the victim's scalp before closing the lacerations.[3]

After a brief investigation, police officers arrested the defendant the following morning. The defendant subsequently was charged with one count of assault in the first degree in violation of § 53a-59 (a) (1).[4] Following a jury trial over four days in September, 2023, the defendant was found guilty. On December 11, 2023, the court, *Pelosi*, *J.*, sentenced the defendant to twenty years of incarceration, execution suspended after seven and one-half years, five years of which was a mandatory minimum, followed by five years of probation. This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

The defendant first claims that the evidence was insufficient (1) to prove that he intended to cause the victim serious physical injury, (2) to prove that he caused the victim serious physical injury, and (3) to disprove his claimed justification of self-defense.

Section 53a-59 (a) provides in relevant part: "A person is guilty of assault in the first degree when . . . (1) [w]ith intent to cause serious physical injury to another

[3] The remaining particles of glass were expelled from the victim's body naturally during the healing process. Specifically, the victim was "pick[ing] out" particles of glass from his scalp "for the better part of two years" after the assault.

[4] On September 1, 2023, the state filed a long form information charging the defendant with one count of assault in the first degree in violation of § 53a-59 (a) (1), alleging that the defendant, "intending to cause serious physical injury to another person did cause such injury to such person by means of a dangerous instrument, to wit: [the defendant] intended to cause serious physical injury to [the victim] and did cause serious physical injury to [the victim] by striking and stabbing [the victim] with a beer glass."

person, he causes such injury to such person . . . by means of . . . a dangerous instrument . . . .”[5] “In reviewing the sufficiency of the evidence to support a criminal conviction we apply a [two part] test. First, we construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the [jury] reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt. . . . In particular, before this court may overturn a jury verdict for insufficient evidence, it must conclude that no reasonable jury could arrive at the conclusion the jury did. . . . Although the jury must find every element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense . . . each of the basic and inferred facts underlying those conclusions need not be proved beyond a reasonable doubt.” (Citation omitted; internal quotation marks omitted.) *State* v. *Charles L.*, 217 Conn. App. 380, 386, 288 A.3d 664, cert. denied, 346 Conn. 920, 291 A.3d 607 (2023). “The standard of review governing a challenge to the sufficiency of the evidence to defeat a claim of self-defense . . . is the same [as the] standard used when examining claims of insufficiency of the evidence.” (Internal quotation marks omitted.) *State* v. *Johnson*, 351 Conn. 53, 62–63, 328 A.3d 143 (2025). With these principles in mind, we address each of the defendant’s claims in turn.

A

The defendant first argues that there was insufficient evidence to establish that he intended to cause the victim serious physical injury. Specifically, he argues that “[t]he state presented no direct evidence” on the

[5] The defendant does not challenge the sufficiency of the evidence as to the “dangerous instrument” element of § 53a-59 (a) (1).

issue of intent and "the circumstantial evidence [presented] by the state was unconvincing." We are not persuaded.

"Assault in the first degree is a specific intent crime. . . . It requires that the criminal actor possess the specific intent to cause [serious] physical injury to another person."[6] (Internal quotation marks omitted.) *State* v. *Pagan*, 158 Conn. App. 620, 627 n.6, 119 A.3d 1259, cert. denied, 319 Conn. 909, 123 A.3d 438 (2015). "We have long recognized that direct evidence of the accused's state of mind is rarely available. . . . Therefore, intent is often inferred from conduct . . . and from the cumulative effect of the circumstantial evidence and the rational inferences drawn therefrom." (Internal quotation marks omitted.) Id., 627. "Intent may be gleaned from circumstantial evidence such as the type of weapon used, [and] the manner in which it was used . . . . Furthermore, it is a permissible, albeit not a necessary or mandatory, inference that a defendant intended the natural consequences of his voluntary conduct." (Internal quotation marks omitted.) *State* v. *Santiago*, 206 Conn. App. 390, 402–403, 260 A.3d 585, cert. denied, 339 Conn. 918, 262 A.3d 138 (2021). "Intent is a question of fact, the determination of which should stand unless the conclusion drawn by the trier is an unreasonable one." (Internal quotation marks omitted.) Id., 402.

On the basis of the evidence presented and the reasonable inferences that could be drawn therefrom, the jury reasonably could have found that the defendant intended to cause the victim serious physical injury when he struck him with a beer glass and used the broken glass to repeatedly stab the victim in the head

[6] As defined in General Statutes § 53a-3 (11), "[a] person acts 'intentionally' with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause such result or to engage in such conduct . . . ."

and face. The jury was shown surveillance video of the assault captured by the security cameras at the brewery. The video shows the defendant bringing his empty beer glass with him as he gets up from his table and walks toward the exit. As the victim begins to follow him, the defendant stops, turns around to face victim, and strikes him in the face with the beer glass. The video then shows the defendant repeatedly stabbing the victim's head and face with the broken glass. The video further corroborates witness testimony that the victim, after falling to the ground, was covering his face while being repeatedly struck by the defendant. At trial, the defendant acknowledged that he knew at the time of the assault that the beer glass "could [pose] a danger" and that he was "aware that what [he was] doing [could] seriously injur[e] [the victim]." The defendant further testified that he was "aiming specifically for the top of [the victim's] head" because "[i]t's the hardest part" and "bleeds a lot." Viewed cumulatively, this evidence provided a sufficient basis from which the jury reasonably could have inferred that the defendant acted with the specific intent to cause the victim serious physical injury.[7]

B

The defendant next claims that there was insufficient evidence to establish that he caused the victim serious physical injury. We disagree.

[7] In support of his claim, the defendant argues that his own testimony at trial provided "direct evidence" that he lacked the intent to seriously injure the victim. To the contrary, as noted herein, the defendant testified that he was aware that his conduct could seriously injure the victim and that he intentionally targeted the top of the victim's head because it "bleeds a lot." Moreover, it is well established that "[t]he [jury is] not bound to accept as true the defendant's claim of lack of intent or his explanation of why he lacked intent." (Internal quotation marks omitted.) *State* v. *Santiago*, supra, 206 Conn. App. 402. "[I]t is axiomatic that this court does not assess the credibility of witnesses, and we decline the defendant's invitation to do so here." (Internal quotation marks omitted.) *State* v. *Miller*, 229 Conn. App. 435, 443 n.5, 327 A.3d 448 (2024), cert. denied, 351 Conn. 909, 330 A.3d 880 (2025).

As defined in General Statutes § 53a-3 (4), a serious physical injury is a "physical injury[8] which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ . . . ."[9] (Footnote added.) "[T]he term serious physical injury does not require that the injury be permanent [and] a victim's complete recovery is of no consequence . . . ." (Internal quotation marks omitted.) *State* v. *Morlo M.*, 206 Conn. App. 660, 671, 261 A.3d 68, cert. denied, 339 Conn. 910, 261 A.3d 745 (2021). "Whether an injury constitutes a serious physical injury . . . is a fact intensive inquiry and, therefore, is a question for the jury to determine. . . . [Despite] the difficulty of drawing a precise line as to where physical injury leaves off and serious physical injury begins . . . we remain mindful that [w]e do not sit as a [seventh] juror who may cast a vote against the verdict based upon our feeling that some doubt of guilt is shown by the cold printed record . . . and that we must construe the evidence in the light most favorable to sustaining the verdict." (Citation omitted; internal quotation marks omitted.) Id., 670.

Here, the victim sustained four lacerations to his head and face that required twenty-eight sutures and six staples to close. The jury heard testimony from Justus Guerrieri, the emergency department physician who treated the victim, regarding the important functions of the skin: "[Y]our skin is a barrier against infection . . . . The skin is, well, it's the largest organ in your body, and it has a few important roles, I mean . . .

[8] As defined in General Statutes § 53a-3 (3), " '[p]hysical injury' means impairment of physical condition or pain . . . ."

[9] We note, however, that, to find the defendant guilty of assault in the first degree, "[t]he jurors had only to determine . . . whether the victim suffered a serious physical injury; they did not have to agree on which type of [serious physical] injury." *State* v. *Wynter*, 19 Conn. App. 654, 666, 564 A.2d 296, cert. denied, 213 Conn. 802, 567 A.2d 834 (1989).

none of us can survive without skin. It protects us from trauma, from infection, from bacteria entering your body." The jury also heard ample witness testimony regarding how the victim's injuries seriously impaired those functions. Guerrieri explained that the victim's scalp lacerations presented a risk of infection because they were "large" wounds "contaminated" with "presumed foreign bodies." The victim testified that the particles of glass embedded in his skull from those injuries continued to emerge from his skin "for the better part of two years" after the assault. Guerrieri further testified that there was an increased risk of infection associated with the victim's chin laceration because "[i]t was a gaping, relatively large wound." Due to the location of that laceration, the wound reopened twice during the recovery process because "every time [the victim] turned or tried to eat or did anything, it would pull the scab." In addition, Guerrieri testified that the victim's ear laceration was susceptible to infection because "[the] ear is made of cartilage, which is a slow healing tissue" and "has less blood flow and less reparative capabilities . . . than normal tissue." Moreover, Guerrieri explained to the jury that the ear itself is an organ. Stewart testified that, when she arrived at the brewery, the victim's ear was "mostly coming off . . . . Basically, his ear was hanging on by the bottom half. The top half was not connected to the rest of [his] face." She had to wrap bandages around the victim's head "[s]o his ear didn't fall off any more." Stewart's testimony was corroborated by Guerrieri, who stated that "the [victim's ear] laceration . . . did nearly lacerate through the entire structure," and, as a result, "[t]he structure . . . [of] his ear was compromised . . . ." On the basis of the foregoing testimony, we conclude that there was sufficient evidence from which the jury reasonably could have found that the defendant caused the victim physical injuries that caused the serious loss

or impairment of the function of a bodily organ, specifically, his skin and ear.

In addition, much of the previously discussed testimony provided a foundation for a conclusion that the same injuries also caused serious disfigurement. " 'Serious disfigurement' is an impairment of or injury to the beauty, symmetry or appearance of a person of a magnitude that substantially detracts from the person's appearance from the perspective of an objective observer. In assessing whether an impairment or injury constitutes serious disfigurement, factors that may be considered include the duration of the disfigurement, as well as its location, size, and overall appearance. Serious disfigurement does not necessarily have to be permanent or in a location that is readily visible to others. The jury is not bound by any strict formula in weighing these factors, as a highly prominent scar in a less visible location may constitute serious disfigurement, just as a less prominent scar in a more visible location, especially one's face, may constitute serious disfigurement." (Footnote omitted.) *State* v. *Petion*, 332 Conn. 472, 491–92, 211 A.3d 991 (2019); see also id., 480, 494–95 (one and one-half inch scar on victim's forearm that was "not . . . in a prominent location" and "otherwise unremarkable in its general appearance" did not constitute serious disfigurement); *State* v. *Morlo M.*, supra, 206 Conn. App. 672 (visible bruising on victim's body and "noticeable injuries" to head and face constituted serious disfigurement); *State* v. *Lewis*, 146 Conn. App. 589, 607–608, 79 A.3d 102 (2013) (forehead laceration, facial fractures, and chipped teeth constituted serious disfigurement), cert. denied, 311 Conn. 904, 83 A.3d 605 (2014); *State* v. *Nelson*, 118 Conn. App. 831, 850, 986 A.2d 311 (scarring on victim's face and abdomen constituted serious disfigurement), cert. denied, 295 Conn. 911, 989 A.2d 1074 (2010); *State* v. *Hayward*, 116 Conn. App. 511, 516, 976 A.2d 791 (scarring on victim's nose constituted

serious disfigurement), cert. denied, 293 Conn. 934, 981 A.2d 1077 (2009).

Here, Guerrieri testified that there was a "reasonable degree of medical certainty" that scarring would result from the victim's chin, ear, and scalp lacerations, noting that the ear laceration in particular posed "an increased risk of scarring" because "any cartilage structure heals so slowly . . . ." The victim's testimony confirmed that his injuries resulted in scarring on his jaw, his ear, and the top of his head. In addition, Guerrieri testified that, when the victim arrived at the emergency department, his ear "was deformed from the laceration," and the victim confirmed at trial that the injury resulted in a "permanent deformity" to his ear. Specifically, the victim testified: "There's a notch missing and the ear loop is funny, and . . . [t]he center part of my ear has a knot on it and a gash." At trial, the victim stepped down from the witness stand and showed the jury the "piece missing" from his ear. Under the factors set forth in *Petion*, we cannot conclude that there was insufficient evidence from which the jury could find that the victim's cumulative injuries caused serious disfigurement.[10]

[10] The defendant's arguments to the contrary are not convincing. Specifically, he argues that, because the victim "never described the scars or exposed them from under his hair and beard, the jury had no evidence of their characteristics . . . which the jury would need before it could find that the disfigurements, assuming their existence, were 'serious.' " He further argues that the victim's ear deformity did not constitute serious disfigurement because it is "so inconsequential that no objective observer could reasonably conclude that it altered, let alone substantially detracted from, [the victim's] appearance."

We reiterate, however, that our Supreme Court in *Petion* held that "[s]erious disfigurement does not necessarily have to be . . . in a location that is readily visible to others." *State* v. *Petion*, supra, 332 Conn. 491. Here, the victim testified that he had scarring on his scalp, jaw, and ear. He further testified that his scalp scars would be visible if he were to shave his head, and the record indicates that the victim *did* show the jury the scarring on his ear. Moreover, the defendant's arguments address only whether the victim's injuries at the time of trial were sufficient to support the jury's finding of serious physical injury. "[I]n assessing the seriousness of the disfigurement, the jury was not limited to considering the injury in its final,

Accordingly, we conclude, on the basis of the cumulative effect of the evidence, that the state produced ample evidence from which the jury reasonably could have concluded that the defendant caused the victim serious physical injury, either in the form of serious disfigurement or serious loss or impairment of the function of any bodily organ.

C

The defendant further argues that the state presented insufficient evidence to disprove his claim of self-defense as a justification for his use of physical force, as set forth in General Statutes § 53a-19 (a).[11] We disagree.

Section 53a-19 (a) provides in relevant part that "a person is justified in using reasonable physical force upon another person to defend himself . . . 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."[12] "[T]he test a jury must apply . . . is a subjective-objective one. The jury must view the situation

fully healed state." Id., 497. During the defendant's trial, which took place four years after the date of the assault, the jury was shown three photographs of the victim's injuries as they appeared immediately after the assault. Those photographs, along with the ample witness testimony describing the victim's injuries prior to their fully healed state, provided a sufficient basis from which the jury reasonably could have found that the victim's injuries caused serious disfigurement.

[11] In its final instructions to the jury, the court, pursuant to defense counsel's request and over the state's objection, set forth the elements of self-defense and instructed the jury that, if it were to find the defendant guilty of the charged offense, it must consider whether he acted in self-defense.

[12] There are additional statutory exceptions to self-defense, only one of which—the duty to retreat—was relevant to the defendant's claimed defense. Pursuant to § 53a-19 (b), "a person is not justified in using deadly physical force upon another person if he or she knows that he or she can avoid the necessity of using such force with complete safety . . . (1) by retreating

from the perspective of the defendant . . . [but] . . . the defendant's belief ultimately must be found to be reasonable." (Internal quotation marks omitted.) *State* v. *Hughes*, 341 Conn. 387, 398–99, 267 A.3d 81 (2021).

"Self-defense is a defense, but not an affirmative defense, which means that the defendant only has a burden of production and does not have a burden of persuasion; once the defendant introduces sufficient evidence to warrant presenting his claim of self-defense to the jury, it is the state's burden to disprove the defense beyond a reasonable doubt." *State* v. *Magaraci*, 198 Conn. App. 305, 312, 232 A.3d 1220 (2020), cert. denied, 345 Conn. 916, 284 A.3d 299 (2022). "Whether the defense of the justified use of force, properly raised at trial, has been disproved by the state is a question of fact for the jury, to be determined from all the evidence in the case and the reasonable inferences drawn from that evidence. . . . As long as the evidence presented at trial was sufficient to allow the jury reasonably to conclude that the state had met its burden of persuasion, the verdict will be sustained." (Internal quotation marks omitted.) *State* v. *Brown*, 198 Conn. App. 630, 636, 233 A.3d 1258, cert. denied, 335 Conn. 942, 237 A.3d 730 (2020).

On appeal, the defendant claims, inter alia, that the state failed to disprove that (1) he was defending himself from what he reasonably believed to be the victim's imminent use of physical force, and (2) he used the degree of physical force he reasonably believed to be necessary to defend himself from the victim.] In support of the former claim, the defendant relies on his own testimony in arguing that, at the time he struck the victim, "[h]e believed [the victim] was about to punch

. . . ." In the present case, the court instructed the jury that it must consider the duty to retreat exception if it were to find that the defendant had used deadly physical force against the victim.

him" because the victim "drew his hand back, as if he was about to curl a fist." The defendant suggests that, because his testimony provided direct evidence of his belief at the time that he attacked the victim, and the state "offered no evidence that the defendant's belief was something different," the state failed to disprove his claim of self-defense. We are not persuaded.[13]

None of the evidence at trial supports the defendant's argument that the victim threatened the use of physical force against the defendant. Indeed, the surveillance video, which does not show the victim drawing his hand back or curling it into a fist before the defendant struck him, plainly contradicted the defendant's version of the events. The jury also could have given weight to the fact that the defendant's written statement to the police on the night of the assault did not specifically mention that he saw the victim draw his hand back or curl it into a fist. In addition, the state challenged the credibility of the defendant's testimony through the admission of a text message he had sent to Woodward shortly after the assault that stated, "it'll help my case if [the victim] was stalking you." The defendant's message, viewed in the light most favorable to sustaining the verdict, supports a reasonable inference that he did not believe his attack on the victim was merely an act of self-defense. Accordingly, we conclude that there was a rational view of the evidence from which the jury could conclude, beyond a reasonable doubt that, at the time

[13] We emphasize that "[i]t is the exclusive province of the trier of fact to weigh conflicting testimony and make determinations of credibility, crediting some, all or none of any given witness' testimony." (Internal quotation marks omitted.) *State* v. *DeMarco*, 311 Conn. 510, 519–20, 88 A.3d 491 (2014). Thus, although the defendant testified as to his beliefs at the time of the assault, the jury was not required to believe his testimony. Moreover, the state presented ample evidence, as set forth herein, contradicting the defendant's version of the events. "[T]he [jury] [was] free to juxtapose conflicting versions of events and determine which is more credible." (Internal quotation marks omitted.) *State* v. *Brown*, supra, 198 Conn. App. 637.

of the assault, the defendant did not reasonably believe that the victim was about to use physical force against him.

Even if the jury had credited the defendant's testimony that he reasonably believed that the victim was about to assault him, the jury reasonably could have concluded that the defendant's belief that he used the degree of physical force necessary to defend himself was not an objectively reasonable one. Although the defendant testified at trial that he had no reason to believe that the victim possessed any type of weapon, he nonetheless chose to attack the victim with a beer glass despite his awareness of the "weapon's danger" and its capability of "seriously injur[ing]" the victim. The defendant further acknowledged that, after the glass shattered, he continued attacking the victim with the broken glass even as he saw that the victim, who was bleeding profusely, was not trying to defend himself. The video of the assault, which does not show the victim attempting to hit or strike the defendant at any point, shows the defendant stabbing, or attempting to stab, the victim approximately seventeen times. Finally, the bystanders who intervened testified that, when they tried to restrain the defendant, he shouted, "let me go," while attempting to overpower them and continue his assault of the victim, which ceased only when one of the bystanders managed to get the defendant into a "choke hold . . . ."

On the basis of the foregoing, we conclude that the defendant's challenge to the sufficiency of the evidence to defeat his self-defense claim is unavailing.[14]

[14] In light of our conclusion that the state presented sufficient evidence to disprove the defendant's claim of self-defense pursuant to § 53a-19 (a), we need not consider the defendant's alternative claim that, had the jury found his beliefs to be reasonable, the state failed to prove that the defendant had used deadly physical force and that such force was unjustified pursuant to the duty to retreat exception to self-defense discussed in footnote 12 of this opinion. See *State* v. *Hughes*, supra, 341 Conn. 394–95.

II

The defendant next claims that the trial court's instruction to the jury on serious physical injury was constitutionally deficient in that it failed to adequately guide the jury in determining whether the state proved that the defendant had caused the victim serious physical injury. Specifically, the defendant claims that the inadequate instruction "deprived [him] of his federal and state constitutional rights to due process of law and to present a defense."

The following facts and procedural history are relevant to the defendant's claim. On September 6, 2023, defense counsel filed a written request to charge that included, inter alia, an instruction on serious physical injury.[15] The court denied counsel's request and indicated that it instead would provide an instruction on serious physical injury based on the Judicial Branch's model criminal jury instructions.[16] Thereafter, on September 18, 2023, the court instructed the jury on serious

[15] In his request to charge, defense counsel requested the following instruction on serious physical injury: "The word 'serious' means 'grave and not trivial in quality or manner.' Thus, to be 'serious,' the loss or injury at issue must be substantially greater than the minimum required to establish a loss or injury. For 'serious disfigurement,' that means disfigurement 'that would make the injured party's appearance distressing or objectionable to a reasonable person observing him.' For 'serious impairment of health or loss or impairment of the function of a bodily organ,' you must find that the injured party suffered injury or impairment of a significant degree which greatly hindered the injured party. Factors that can be considered in deciding whether [the] injury is 'serious' include: the size, severity and extent of the impairment or disfigurement, the location of the injury or disfigurement, the parts of the body affected by the impairment or disfigurement, the length of time the impairment or disfigurement lasted, the treatment required to correct the impairment or disfigurement, and any other relevant factors. An impairment or disfigurement need not be permanent to be serious; likewise, a permanent impairment or disfigurement does not necessitate a finding of serious injury."

[16] The record indicates that, on September 15, 2023, the court conducted a charge conference with counsel off the record and, thereafter, provided counsel with a final draft of its proposed charge. On September 18, 2023, prior to the court's final instructions, defense counsel "note[d] . . . for the

physical injury as follows: "Serious physical injury is something more serious than mere physical injury, which is defined as impairment of physical condition or pain; it is more than a minor or superficial injury. It is defined by statute as physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health, or serious loss or impairment of the function of any bodily organ." The court's instruction on serious physical injury followed verbatim the relevant portion of the model jury instruction on assault in the first degree. See Connecticut Criminal Jury Instructions 6.1-1, available at https://jud.ct.gov/JI/Criminal/ Criminal.pdf (last visited May 14, 2025).[17] In addition, the court gave a further instruction on serious disfigurement that was a verbatim iteration of the definition our Supreme Court set forth in *State* v. *Petion*, supra, 332 Conn. 491–92.[18]

record" his exception to the court's final draft, "to the extent [that] any of [his] request[ed] [instructions] were not adopted." The court noted his objection and responded in relevant part: "I looked at the glossary of terms in our Connecticut jury instructions and included that language. And I included the language that is included in serious physical injury . . . according to the language in our criminal jury instructions, and I just left it as is."

[17] Instruction 6.1-1 of the Connecticut model criminal jury instructions provides in relevant part: " 'Serious physical injury' is something more serious than mere physical injury, which is defined as 'impairment of physical condition or pain.' It is more than a minor or superficial injury. It is defined by statute as 'physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ' . . ."

[18] The court instructed the jury: "[D]isfigurement means impairment of or injury to the beauty, symmetry, or appearance of a person that renders the person unsightly, misshapen or imperfect, or deformed . . . in some manner, or otherwise causes a detrimental change in the external form of the person. Serious disfigurement is an impairment of or injury to the beauty, symmetry, or appearance of a person of magnitude that substantially distracts from the person's appearance from the perspective of an objective observer. In assessing whether an impairment or injury constitutes serious disfigurement, factors that may be considered include the duration of the disfigurement, as well as its location, size, and overall appearance. Serious disfigurement does not necessarily have to be permanent or in a location that is readily visible to others. The jury is not bound by any strict formula

Although the defendant concedes that the trial court's instruction on serious physical injury was consistent with the model jury instructions, the relevant statutory definitions, and the instruction on serious disfigurement set forth in *Petion*, he claims that it was constitutionally deficient because the court's instruction failed to include his "proposed definitions for impairment of health and impairment of organ function, as well as [his proposed] definition for the term 'serious,' " which he argues were necessary to "adequately guide the jury in determining whether a serious physical injury was proven . . . ." We are not persuaded.

"[I]n reviewing a constitutional challenge to the trial court's instruction, we must consider the jury charge as a whole to determine whether it is reasonably possible that the instruction misled the jury. . . . We will reverse a conviction only if, in the context of the whole, there is a reasonable possibility that the jury was misled in reaching its verdict."[19] (Citation omitted; internal quotation marks omitted.) *State* v. *Griggs*, 288 Conn. 116, 125, 951 A.2d 531 (2008). "A jury instruction is constitutionally adequate if it provides the jurors with a clear understanding of the elements of the crime charged, and affords them proper guidance for their determination of whether those elements were present. . . . The test of a charge is whether it is correct in law, adapted to the issues and sufficient for the guidance of the jury." (Internal quotation marks omitted.) Id.

in weighing these factors, [as a] highly prominent scar in a less visible location may constitute . . . serious disfigurement, just as a less prominent scar in a more visible location, especially one's face, may constitute serious disfigurement."

[19] Conversely, "[i]n appeals not involving a constitutional question [we] must determine whether it is reasonably *probable* that the jury [was] misled . . . ." (Emphasis added; internal quotation marks omitted.) *State* v. *Ortiz*, 343 Conn. 566, 594, 275 A.3d 578 (2022). We assume, without deciding, that the defendant's alleged instructional error is of constitutional proportion, and we conclude for the reasons set forth herein that the court's instruction was not inadequate.

"Although [a] request to charge which is relevant to the issues of [a] case and which is an accurate statement of the law must be given . . . [a] refusal to charge in the exact words of a request . . . will not constitute error if the requested charge is given in substance." (Internal quotation marks omitted.) *State* v. *Ledbetter*, 263 Conn. 1, 22, 818 A.2d 1 (2003). "The trial court is not under a duty in a criminal proceeding to charge in the identical language requested if the charge [given to the jury] is accurate, adequate and, in substance, properly includes material portions of the defendant's request; its responsibility is performed when it gives instructions to the jury in a manner calculated to give them a clear understanding of the issues presented for their consideration, under the offenses charged and upon the evidence, and when its instructions are suited to their guidance in the determination of those issues." (Internal quotation marks omitted.) *State* v. *Moye*, 119 Conn. App. 143, 154–55, 986 A.2d 1134, cert. denied, 297 Conn. 907, 995 A.2d 638 (2010).

Here, the defendant does not contend that the instruction the trial court gave was an incorrect statement of law, and he concedes that the court's instruction on serious physical injury followed verbatim the model instruction, which incorporates the definition of serious physical injury set forth in § 53a-3 (4), which, in turn, lists several types of physical injury that constitute serious physical injury.[20] See *State* v. *Daniel B.*, 164 Conn. App. 318, 349, 137 A.3d 837 (2016) ("[w]hile not dispositive of the adequacy of the [jury] instruction, an instruction's uniformity with the model instructions is a relevant and persuasive factor in our analysis" (internal quotation marks omitted)), aff'd, 331 Conn. 1, 201 A.3d 989 (2019). Although the court's instruction included a definition for only one type of serious physical injury set

[20] See part I B of this opinion.

forth in § 53a-3 (4) (i.e., serious disfigurement), "[j]ury instructions need not be exhaustive, perfect or technically accurate, so long as they are correct in law, adapted to the issues and sufficient for the guidance of the jury." (Internal quotation marks omitted.) *Sanchez* v. *Hartford*, 227 Conn. App. 771, 779, 322 A.3d 1108, cert. denied, 350 Conn. 922, 325 A.3d 1093 (2024). The defendant cites no authority, nor did our research disclose any, that supports his claim that a jury instruction is constitutionally deficient in the absence of such definitions, particularly where, as here, the court's charge incorporated the controlling statutory language and case law and, furthermore, tracked the language of the model jury instruction.[21] Accordingly, we conclude that the instruction the court gave was correct

[21] Moreover, defense counsel's requested instruction and the proposed definitions therein have no basis in the statutes or case law of our state. See footnote 15 of this opinion. The defendant asserts that the requested instruction on the modifier "serious" is "derived from *Petion* and [our] Supreme Court's review of sister state definitions of 'serious impairment . . . .' " Specifically, the requested instruction incorporates language from a Rhode Island decision and a New York decision that were among the many decisions from other states' courts that our Supreme Court in *Petion* looked to for guidance when formulating its own definition of serious disfigurement so as to distinguish it from mere disfigurement. See *State* v. *Petion*, supra, 332 Conn. 482–87. Significantly, however, although the court in *Petion* considered the New York and Rhode Island decisions quoted in defense counsel's requested instruction in the present case, the court in *Petion* ultimately declined to adopt the language of those decisions in its own definition. See id., 491–92.

Additionally, although the defendant asserts that his proposed definitions for " 'serious impairment of health' " and " 'serious loss or impairment of the function of any bodily organ' " are "logical extension[s] of *Petion*'s principles," the court in *Petion* expressly stated that it was "not attempt[ing] . . . to draw comprehensive distinctions for general application." *State* v. *Petion*, supra, 332 Conn. 482. Rather, "[its] focus [was] on one type of serious physical injury—serious disfigurement." Id. Moreover, the defendant's proposed definition, that such loss or impairment must be " 'of a significant degree which greatly hindered the injured party,' " uses language that does not appear anywhere in the *Petion* decision.

Finally, the defendant acknowledges that the remaining portions of his requested charge are "taken in part from *DiFranco* v. *Pickard*, [427 Mich. 32, 38–40, 398 N.W. 2d 896 (1986)], and *Washington* v. *Baxter*, [553 Pa. 434, 447–48, 719 A.2d 733 (1998)] . . . ."

in law and sufficient for the guidance of the jury, and, therefore, the defendant's claim fails.[22]

III

Finally, the defendant claims that prosecutorial improprieties during closing argument deprived him of his due process right to a fair trial. Specifically, he claims that the prosecutor improperly argued in summation that the defendant (1) intended to kill the victim because his "hookup" with Woodward was ruined, and (2) deliberately testified falsely and fabricated evidence.[23]

"In analyzing claims of prosecutorial impropriety, we engage in a two step analytical process. . . . We first

[22] We additionally note that, even if we assume that the trial court's instruction failed to adequately guide the jury in determining whether the victim had sustained injuries that caused serious impairment of his health or a serious loss or impairment of the function of any bodily organ, the defendant would not be entitled to a reversal of his conviction. Although the defendant challenges the lack of definitions in the court's instruction as to those types of serious physical injury, he concedes that the instruction included a verbatim iteration of the definition of serious disfigurement set forth in *Petion*. See footnote 18 of this opinion. As we concluded in part I B of this opinion, there was sufficient evidence to support a finding of serious disfigurement. Accordingly, even if we had found the defendant's arguments to be meritorious, we would have no basis to conclude that the alleged inadequacy of the court's instruction affected the jury's verdict.

[23] Following closing arguments, defense counsel took exception to the prosecutor's repeated "reference[s] to killing someone . . . ." In response, the court stated that it would "reiterate [to the jury] . . . that what either [lawyer] . . . said . . . during closing argument about the facts is not testimony or evidence. The lawyers are not witnesses. . . . It is not proper for the attorneys to express their opinions on the ultimate issues in the case, or to appeal to your emotions." Defense counsel indicated that he had no exceptions to the court's instruction.

Thereafter, following the jury's verdict and before the imposition of sentence, defense counsel filed a motion for a new trial, arguing, inter alia, that the prosecutor had engaged in impropriety during closing argument by "repeatedly suggesting that the defendant was trying to 'kill' [the victim]" and by "making repeated comments that suggested that the prosecutor knew that the defendant was lying or fabricating claims . . . ." The court subsequently denied defense counsel's motion, finding, inter alia, that the prosecutor's arguments were not improper.

examine whether prosecutorial impropriety occurred. . . . Second, if an impropriety exists, we then examine whether it deprived the defendant of his due process right to a fair trial." (Internal quotation marks omitted.) *State* v. *Albino*, 312 Conn. 763, 771, 97 A.3d 478 (2014). In addition, where the alleged improprieties occurred during closing argument, we look to the following legal principles. "It is well established that prosecutorial [impropriety] of a constitutional magnitude can occur in the course of closing arguments. . . . When making closing arguments to the jury, [however, counsel] must be allowed a generous latitude in argument, as the limits of legitimate argument and fair comment cannot be determined precisely by rule and line, and something must be allowed for the zeal of counsel in the heat of argument. . . . Thus, as the state's advocate, a prosecutor may argue the state's case forcefully, [provided the argument is] fair and based [on] the facts in evidence and the reasonable inferences to be drawn therefrom." (Internal quotation marks omitted.) *State* v. *Courtney G.*, 339 Conn. 328, 341, 260 A.3d 1152 (2021). With these principles in mind, we address each of the defendant's claims in turn.

A

The defendant first claims that the prosecutor improperly argued throughout his closing and rebuttal arguments that the defendant was trying to kill the victim and that he was motivated by the fact that his "hookup" with Woodward was ruined.[24] The defendant

[24] During closing argument, the prosecutor played for the jury the video of the assault and argued that it "shows you [the defendant's] intent. He wants to kill [the victim] or cause serious physical injury to him. He could back off at any point. . . . But remember, he's on this date. He was hoping to hook up with . . . Woodward, that's been broken up. . . . He's upset and he wants to take out his frustration on [the victim]." With respect to the defendant's claim of self-defense, the prosecutor argued: "[Y]ou know from your common sense and life experience, when you crack somebody in the head with . . . that beer glass and you stab him all those times; that's deadly force. . . . That many stabbings to that area of the face, trying to

asserts that these arguments were improper because they had no basis in the evidence.[25] Conversely, the state asserts that the prosecutor's arguments were supported by the evidence and the reasonable inferences drawn therefrom. We agree with the state.

Although a prosecutor "may not invite sheer speculation unconnected to evidence," he "may invite the jury to draw reasonable inferences from the evidence . . . ." (Internal quotation marks omitted.) *State* v. *Billings*, 217 Conn. App. 1, 50, 287 A.3d 146 (2022), cert. denied, 346 Conn. 907, 288 A.3d 217 (2023). Here, the prosecutor's argument that the defendant was trying to kill the victim was based on a reasonable inference the jury could have drawn from the evidence adduced at trial, namely, the surveillance video and the witness testimony describing the attack, as well as the weapon and the manner in which it was used. The prosecutor's

kill him, trying to seriously injure him, can reasonably expect it to do so. . . . [The defendant testified that he] attacked like this because [he] was being . . . repeatedly threatened by somebody who was bigger than [he was]. Threatened by someone bigger than you equals I can kill you. Does that offend your common sense?" The prosecutor further suggested that "[t]his was not defensive force" but, rather, "[the] defendant wanted to attack because he was frustrated his date got broken up." During his rebuttal argument, the prosecutor stated with respect to the defendant's self-defense claim: "You can't just kill someone because you have some adrenaline going through you. . . . [The defendant] doesn't get to make the decision to kill someone rather than run away."

[25] The defendant also argues that the purpose of the prosecutor's arguments "was to inflame the passions of the jur[ors]" because the defendant "was not charged with an offense that required an intent to cause death . . . ." We are not persuaded. Under § 53a-59 (a), the state was required to prove that the defendant intended to cause the victim serious physical injury, a term that encompasses "physical injury which creates a substantial risk of death . . . ." General Statutes § 53a-3 (4). In addition, the state was required to disprove the defendant's claim of self-defense, and, whether the defendant used deadly physical force or had a duty to retreat was at issue. See footnote 12 of this opinion. In context, it is clear that the prosecutor's arguments with respect to the defendant's intent to kill were directly related to satisfying the state's evidentiary burden rather than an attempt to improperly inflame the passions of the jurors. See footnote 24 of this opinion.

argument concerning motive was also based on a reasonable inference the jury could have drawn from the evidence presented at trial. It was uncontested that the defendant and Woodward had met on Tinder, and the defendant acknowledged during cross-examination that he had used "sexual innuendos" in his messages to Woodward. During closing argument, the prosecutor specifically pointed to this evidence by inviting the jury to infer that the defendant was motivated to attack the victim because his "hookup" was ruined: "[The defendant] won't even admit [that Tinder is] a hookup app. You know that from your life experience and your common sense. . . . [Y]ou can look at [the messages in evidence] and make a determination for yourself based on those texts . . . . He's asking her to go to a restaurant. He's complimenting her appearance. He's having these sexual innuendos. . . . [H]e was trying to have sexual relations with . . . Woodward. That's why he was at that bar that night."

Accordingly, we conclude that the prosecutor's arguments concerning the defendant's intent to kill and his motive for the attack were properly rooted in the evidence presented at trial.

B

The defendant next claims that the prosecutor improperly expressed his opinion as to the credibility of the defendant by arguing that the defendant had "deliberately testified falsely" and was attempting to "fabricate evidence . . . ." We are not persuaded.

"[A] prosecutor may not express his [or her] own opinion, directly or indirectly, as to the credibility of the witnesses. . . . Such expressions of personal opinion are a form of unsworn and unchecked testimony, and are particularly difficult for the jury to ignore because of the prosecutor's special position. . . . Put another way, the prosecutor's opinion carries with it

the imprimatur of the [state] and may induce the jury to trust the [state's] judgment rather than its own view of the evidence. . . . Moreover, because the jury is aware that the prosecutor has prepared and presented the case and consequently, may have access to matters not in evidence . . . it is likely to infer that such matters precipitated the personal opinions. . . . However, [i]t is not improper for the prosecutor to comment upon the evidence presented at trial and to argue the inferences that the jurors might draw therefrom . . . . We must give the jur[ors] the credit of being able to differentiate between argument on the evidence and attempts to persuade them to draw inferences in the state's favor, on one hand, and improper unsworn testimony, with the suggestion of secret knowledge, on the other hand. The state's attorney should not be put in the rhetorical straitjacket of always using the passive voice, or continually emphasizing that he [or she] is simply saying I submit to you that this is what the evidence shows, or the like." (Citation omitted; internal quotation marks omitted.) *State* v. *Stevenson*, 269 Conn. 563, 583–84, 849 A.2d 626 (2004).

We reiterate that "a prosecutor may argue about the credibility of witnesses, as long as [his] assertions are based on evidence presented at trial and reasonable inferences that jurors might draw therefrom. . . . The prosecutor may also make these arguments with respect to the credibility of statements by the defendant himself, so long as they are rooted in the evidence at trial." (Internal quotation marks omitted.) *Donald G.* v. *Commissioner of Correction*, 224 Conn. App. 93, 123, 311 A.3d 187, cert. denied, 349 Conn. 902, 312 A.3d 585 (2024).

During closing argument, the prosecutor called the jury's attention to several portions of the defendant's testimony, highlighted the evidence presented at trial that contradicted his testimony, and argued that the

defendant deliberately had testified falsely or was attempting to fabricate evidence.[26] Thus, the arguments made by the prosecutor were rooted in the evidence that was presented to the jury. In addition, the prosecutor prefaced those arguments by informing jurors that the court would provide them with an instruction on credibility and that it was their duty to determine whether the defendant had deliberately testified falsely.[27] Accordingly, it is clear from the context in which the statements were made that the prosecutor did not improperly express his personal opinion or beliefs as to the defendant's

[26] The prosecutor argued that the defendant deliberately testified falsely when he (1) refused to admit that Tinder is a "hookup app" or that he was on a date with Woodward; (2) claimed that he initially continued to attack the victim after the bystanders intervened because he was unsure of whether the bystanders were friends of the victim; and (3) claimed that he knew that the victim was Woodward's former boyfriend prior to the attack. The prosecutor further argued that the defendant was attempting "to fabricate evidence, essentially," and "trying to build up this false fear" when he texted Woodward after the incident, "it'll help my case if [the victim] was stalking you" and when the defendant testified that he was concerned that the victim might have had a gun or another weapon.

In addition, the prosecutor concluded his initial argument by stating: "Don't listen to the defendant's lies. Hold him accountable for what he did. I submit to you that the defendant did not believe that he needed to use deadly physical force to repel some perceived assault from [the victim], and no reasonable person in his position would believe it. He's fabricating evidence. He's making up these claims to try to make you think he was more fearful than he actually was."

[27] Specifically, the prosecutor stated: "[W]e're going to start talking about the defendant's credibility. . . . [The court] is going to give you an instruction on credibility. And . . . one of the things I expect that [the court is] going to say [in its final instructions] is that, if you believe that a witness has deliberately testified falsely, you should seriously consider whether to believe any of that witness' testimony."

We additionally note that the prosecutor, at the outset of his closing argument, explained to the jury: "If there's anything that I say about the evidence, the testimony, that differs from your memory, it is your memory that controls. . . . [I]f you hear me arguing . . . inferences to be drawn from facts, just add that little precursor . . . the state submits the evidence shows . . . . I don't intend to give you my opinion on anything. If you hear me say anything which you believe is me giving my personal opinion, please disregard that; that is not my intention."

credibility but, rather, simply commented on the evidence and invited the jury to draw a reasonable inference that the defendant had deliberately testified falsely or was attempting to fabricate evidence with respect to those portions of his testimony.[28] See *State* v. *Barry A.*, 145 Conn. App. 582, 600, 76 A.3d 211, cert. denied, 310 Conn. 936, 79 A.3d 889 (2013). For the reasons stated, we conclude that the prosecutor did not engage in prosecutorial impropriety during closing argument and, therefore, the defendant was not deprived of his right to a fair trial.

The judgment is affirmed.

In this opinion the other judges concurred.

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[28] With respect to the defendant's testimony that he was not on a date with Woodward, for example, the prosecutor argued: "[The defendant] wouldn't even admit this was a date . . . . Well . . . you've got [exhibits of the Tinder messages between the defendant and Woodward], and you can look at them and make a determination for yourself based on those texts. Was he telling the truth on the stand when he said this wasn't a date?"