STATE OF CONNECTICUT *v.* RAMON A. G.* (SC 20358)

Robinson, C. J., and Palmer, McDonald, D'Auria, Mullins, Kahn and Ecker, Js.**

Syllabus

Convicted of assault in the third degree, the defendant appealed to the Appellate Court, claiming that the trial court improperly had declined to instruct the jury on the defense of personal property with respect to the assault charge. The victim, who had been romantically involved with the defendant, visited with the defendant during a gathering at his mother's apartment. The victim surreptitiously took a set of car keys belonging to the defendant's mother from that apartment and began to walk home. The victim threw the keys into a bush along her route home, and, shortly thereafter, the defendant emerged from a car, physically attacked her, rummaged through her backpack for his mother's keys, and left the area with the backpack. At trial, the defendant filed a written request to charge, seeking an instruction on the defense of personal property pursuant to statute (§ 53a-21). The trial court held a formal charging conference, and defense counsel did not voice any concern with respect to the court's draft instructions, which limited the defense of personal property instruction to the charge of second degree robbery, of which the defendant was found not guilty. The Appellate Court affirmed the judgment of conviction, concluding, inter alia, that the defendant's written request to charge was insufficient to preserve his claim that the trial court improperly failed to instruct the jury on the defense of personal property with respect to the assault charge and that the defendant implicitly waived appellate review of that claim under *State* v. *Kitchens* (299 Conn. 447). On the granting of certification, the defendant appealed to this court. *Held*:

1. The Appellate Court correctly concluded that the defendant's claim of instructional error was unpreserved: the trial court clearly believed that it had satisfied the defendant's written request to charge on the defense of personal property, as that court granted the request without qualification, provided multiple drafts of its instructions to the parties, and expressly reviewed the proposed defense of personal property instruction with counsel during a formal charging conference, and this court could not conclude that the trial court and the state were given fair

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

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

notice of the fact that the defendant took issue with this particular aspect of its instructions on assault; moreover, although the applicable rule of practice (§ 42-16) allows a defendant to preserve a claim of instructional error by filing a written request to charge or by taking an exception on the record, the information conveyed in connection with either of these alternatives must be specific enough to afford the trial court and the state fair notice of the defect subsequently claimed on appeal, and the record contained no indication that the defense ever brought to the trial court's attention that the charge on the defense of personal property should have been given with respect to the assault charge.

2. The Appellate Court correctly concluded that the defendant waived his unpreserved claim of instructional error: the trial court granted the defendant's request to charge without qualification, expressly indicating that it intended to incorporate that request in its proposed instructions, the court then drafted its charge, distributed copies to counsel, and reviewed the language it had proposed on the defense of personal property during a formal charging conference, during which the court highlighted the location of the relevant instruction and discussed the content of the instruction with counsel, and, throughout the proceedings, the defense did not voice any concern regarding the location, scope or structure of that particular charge; accordingly, the defendant, through counsel, engaged in conduct demonstrating his assent to the manner in which the court incorporated his request to charge; moreover, the defendant possessed a tactical reason not to pursue a defense of personal property instruction with respect to the charge of assault, as the defendant's testimony was that the victim was the aggressor and that any contact between them was merely the result of his attempts to escape, and, thus, the defendant could reasonably have decided to forgo the defense of personal property instruction with respect to the assault charge because his account of the events would have been conceptually inconsistent with a claim that he had intentionally, but justifiably, used force against the victim to regain possession of the car keys.

Argued May 6—officially released July 28, 2020***

Procedural History

Two part substitute information charging the defendant, in the first part, with the crimes of robbery in the first degree, assault in the second degree, and criminal violation of a protective order and, in the second part, with having committed an offense while on release, brought to the Superior Court in the judicial district of

*** July 28, 2020, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

New Britain, where the first part of the information was tried to the jury before *Keegan*, *J.*; verdict of guilty of the lesser included offense of assault in the third degree and criminal violation of a protective order; thereafter, the defendant was presented to the court on a plea of guilty to the commission of an offense while on release; judgment in accordance with the verdict and the plea, from which the defendant appealed to the Appellate Court, *Keller*, *Elgo* and *Moll*, *Js.*, which affirmed the trial court's judgment, and the defendant, on the granting of certification, appealed to this court. *Affirmed*.

Jennifer B. Smith, for the appellant (defendant).

James M. Ralls, assistant state's attorney, with whom, on the brief, were *Brian Preleski*, state's attorney, and *Elizabeth Moseley*, senior assistant state's attorney, for the appellee (state).

Opinion

KAHN, J. The defendant, Ramon A. G., appeals from the judgment of the Appellate Court affirming the judgment of conviction, rendered after a jury trial, of, among other crimes, assault in the third degree in violation of General Statutes § 53a-61.[1] The defendant claims that the Appellate Court incorrectly concluded that he had (1) failed to preserve his claim that the trial court violated his constitutional rights by omitting a defense of personal property instruction with respect to the charge of assault, and (2) waived that unpreserved instructional claim. See *State* v. *Ramon A. G.*, 190 Conn. App. 483, 211 A.3d 82 (2019). We disagree with the defendant and, accordingly, affirm the judgment of the Appellate Court.

[1] Although the defendant was also convicted of criminal violation of a protective order in violation of General Statutes § 53a-223 (a), defense counsel expressly abandoned any challenge to that conviction during oral argument before this court.

The following facts and procedural history are relevant to our consideration of the present case. The victim became romantically involved with the defendant in August, 2012. That relationship deteriorated over the months that followed, and, on March 18, 2013, a judge of the Superior Court issued a protective order prohibiting the defendant from having any contact with the victim. Although the defendant had lived with the victim previously, on that particular date, he was residing in his mother's apartment. Notwithstanding the existence of the protective order, the victim visited with the defendant during a gathering at his mother's apartment approximately four days later.[2] The victim surreptitiously took a set of car keys belonging to the defendant's mother from that apartment and began to walk home around 10:45 p.m.[3] At trial, the victim admitted to deliberately throwing those keys into a bush along her route home because she "felt like something was gonna happen . . . ."

Testimony from the victim and the defendant provided different accounts of the events that followed. The victim testified that she was carrying a backpack that night containing, among other things, her cell phone and some cash. The victim stated that, after she had discarded the keys, the defendant emerged from a nearby vehicle and proceeded to attack her. Specifically, the victim told the jury that the defendant was angry and began swinging her around by her backpack. The victim testified that she fell to the ground and that the defen-

[2] The precise series of events preceding the victim's arrival was disputed at trial. The victim testified that the defendant had sent her text messages asking to meet up and that, although she was initially hesitant, she eventually agreed. The defendant testified that the victim had called him that day and that, after he declined to speak, she had "demanded to come to the apartment . . . ." This discrepancy, however, is not relevant to the issues in the present appeal.

[3] The defendant testified that his mother was suffering from terminal cancer, that he had been using her vehicle to visit her at the hospital, and that he did not have another set of keys to that vehicle.

dant then kicked her repeatedly while wearing a set of tan Timberland boots. According to the victim, the defendant ultimately took the backpack and rummaged through it for his mother's keys, spilling her cell phone and some other contents on the ground. The victim testified that the defendant then left with her backpack. A bystander who witnessed this confrontation called 911.[4] The victim was taken to the hospital, treated, and released the following morning.[5] The victim stated that, after she returned home, the defendant sent her text messages asking to exchange the backpack for his mother's car keys. The victim testified that, although the backpack was ultimately returned, the cash that had been inside of it was gone.

The defendant, against the advice of counsel, testified in his own defense at trial. The defendant told the jury that he exited a vehicle driven by a friend, approached the victim while she was on the sidewalk, and said "please give me my mother's keys." The defendant stated that the victim "began to swing" at him, that he grabbed her hands to stop her, and that he ended up falling on the ground repeatedly because of ice. The defendant testified that he tried to get up to leave but that the victim grabbed his foot to impede him. The defendant testified that he eventually "shook [his] foot loose," crossed the street, got into his friend's car, and left. The defendant indicated that he did not take anything from the victim that evening and that he had been wearing sneakers, not boots. The defendant told the jury that the victim's injuries must have been caused by

[4] A recording of the 911 call placed by the bystander was admitted into evidence as a full exhibit at trial and was played for the jury. That same bystander subsequently testified at trial as follows: "I looked out the window and . . . I saw some kicking. I saw [the female] on the ground, and I saw someone—the male, you know, really giving it to her, stomping on her."

[5] At trial, the state introduced into evidence medical records and photographs detailing the victim's various injuries.

his attempts to escape and that he "never intentionally assaulted her . . . ."[6]

The defendant had been arrested and charged with robbery in the first degree in violation of General Statutes § 53a-134 (a) (3), assault in the second degree in violation of General Statutes § 53a-60 (a) (2), and criminal violation of a protective order in violation of General Statutes § 53a-223 (a). On the first day of trial, the defendant filed a one page request to charge, seeking an instruction on the defense of personal property pursuant to General Statutes § 53a-21. The defendant did not identify the evidentiary basis for this request or indicate to which charges it related. Instead, the defendant merely stated that "[t]he evidence supports this request."

The following day, the trial court indicated that it had received the defendant's request and that it wanted to discuss its preliminary instructions with counsel in chambers. After taking a recess, the trial court made the following statement on the record: "[W]e've had the opportunity to have a preliminary discussion on the jury charge. And I have given to each attorney a very rough draft of what I call my overinclusive jury charge. I intend to take out the areas that do not apply in this case and then to also work further on the charges with respect to the crimes that are alleged in this case. And I intend to send this out via e-mail tonight to the two attorneys so that you will have that for review tonight. *I am going to grant the defendant's request to charge the jury on defense of personal property. I will put that in there.* And [if the prosecutor has] any objections

[6] Officer Marcus Burrus of the New Britain Police Department arrived at the scene shortly after this confrontation in response to the 911 call. See footnote 4 of this opinion. Burrus testified at trial that, while he and the victim were waiting for medical assistance to arrive, the victim's cell phone received an incoming call from the defendant. Burrus stated that, during this call, which he had answered, the defendant admitted to confronting the victim about his mother's car keys but denied ever touching the victim.

to it, [she] can do that formally tomorrow on the record." (Emphasis added.) A set of draft instructions subsequently produced by the trial court contained a defense of personal property instruction only with respect to the charge of robbery in the first degree. See footnote 8 of this opinion (quoting in part trial court's instruction to jury).

The trial court held a formal charging conference following the close of evidence on May 18, 2016. Defense counsel indicated that he had received a copy of the court's draft instructions and had been able to review it. The court specifically indicated that it had included a defense of personal property instruction as requested by the defendant and then noted the particular page on which that instruction appeared. The state then asked if the court, in crafting the instruction for defense of personal property, had drawn from particular language from the model criminal jury instructions found on the Judicial Branch website. See Connecticut Criminal Jury Instructions § 2.8-5 (B), available at https://www.jud.ct.gov/JI/Criminal/Criminal.pdf (last visited July 27, 2020). The trial court responded in the affirmative and then asked defense counsel whether he had noticed its use of the model instruction. Defense counsel responded, "I did." After the court addressed certain other issues related to its proposed instructions, it asked whether the parties had "[a]nything else." Defense counsel replied: "No, Your Honor . . . I'm all set, Your Honor. Thank you." The trial court then asked defense counsel whether he had been given sufficient time to review the draft instructions, and defense counsel responded, "[y]es, Your Honor."

During his closing argument, defense counsel stated that the defense of personal property "is a complete defense to robbery in the first degree" and then reviewed the elements of that defense in detail. Although defense counsel briefly mentioned the stolen car keys when dis-

cussing assault and criminal violation of a protective order, he did not explicitly mention the defense of personal property with respect to those charges.[7] Consistent with its draft instructions, the final version of the court's charge, electronic copies of which were provided to counsel in advance, again limited the defense of personal property instruction to the robbery count.[8] After charging the jury, the trial court asked whether there were any objections, and defense counsel replied: "No objections, Your Honor, at all."

On May 19, 2016, the jury returned a verdict finding the defendant not guilty of robbery and assault in the second degree, but guilty of the lesser included offense of assault in the third degree, and guilty of criminal violation of a protective order. The trial court rendered a judgment of conviction in accordance with that verdict and, on August 3, 2016, imposed a concurrent sentence of seven years of imprisonment for criminal violation of a protective order and one year of imprisonment for assault in the third degree, with three years of special parole.

[7] In arguing that the jury should find the defendant not guilty of assault, defense counsel emphasized the defendant's testimony that any contact was unintentional and again posited that the defendant "was just trying to shake [his leg] to get away."

[8] The trial court instructed the jury in relevant part: "The evidence in this case raises the issue of the use of force against another to defend personal property. This defense applies to the charge of robbery in the first degree. After you have considered all the evidence in this case on the charge of robbery in the first degree, if you find that the state has proved each element beyond a reasonable doubt, then you must go on to consider whether or not the defendant acted justifiably in the defense of personal property. In this case, you must consider this defense in connection with count one of the information." The present appeal does not require this court to address the propriety of such an instruction in connection with a robbery charge. Cf. *State* v. *Smith*, 317 Conn. 338, 354, 118 A.3d 49 (2015) ("a defendant who used unreasonable force to take his own property (or, indeed, a third person's property) from another person in order to prevent an attempted larceny could not be charged with robbery in the first instance, but could be charged only with an offense involving the use or threatened use of physical force, such as assault or unlawful restraint").

The defendant thereafter appealed to the Appellate Court, claiming, inter alia, that "the trial court improperly declined to furnish a jury instruction on the defense of personal property with respect to . . . assault . . . ." *State* v. *Ramon A. G.*, supra, 190 Conn. App. 484. The Appellate Court concluded that the defendant's written request to charge was insufficient to preserve his particular claim of error and that the defendant had implicitly waived appellate review of that claim under *State* v. *Kitchens*, 299 Conn. 447, 10 A.3d 942 (2011). *State* v. *Ramon A. G.*, supra, 500, 503. After considering an unrelated claim of error,[9] the Appellate Court ultimately affirmed the trial court's judgment. Id., 510.

We subsequently granted the defendant's petition for certification to appeal, limited to the following issues: (1) "Did the Appellate Court correctly conclude that the defendant's claim of instructional error was not preserved?" And (2) "[i]f the answer to the first question is [yes], did the Appellate Court incorrectly conclude that the defendant had implicitly waived his instructional claim pursuant to *State* v. *Kitchens*, [supra, 299 Conn. 447]?"[10] (Internal quotation marks omitted.) *State* v. *Ramon A. G.*, 333 Conn. 909, 215 A.2d 735 (2019).

I

We begin by examining the issue of whether the Appellate Court correctly concluded that the defendant's claim of instructional error was unpreserved. The defendant's sole contention with respect to this issue is that his written request to charge adequately notified the trial court of the particular claim he now

[9] The defendant also claimed that he was deprived of his constitutional right to a fair trial as a result of alleged prosecutorial impropriety. *State* v. *Ramon A. G.*, supra, 190 Conn. App. 484. The Appellate Court's resolution of that claim is not at issue in the present appeal.

[10] We note that the second certified question, as originally drafted, contained a scrivener's error. For the sake of clarity, we have reformulated that question to conform to the issues actually presented in this appeal. See, e.g., *State* v. *Ouellette*, 295 Conn. 173, 183–84, 989 A.2d 1048 (2010).

advances on appeal, namely, that a defense of personal property instruction should have been given with respect to the charge of assault. Specifically, the defendant claims that he complied with our rules of practice; see Practice Book § 42-16; and that any ambiguity relating to the scope of his request to charge should be resolved in his favor pursuant to *State* v. *Ramos*, 271 Conn. 785, 801, 860 A.2d 249 (2004). For the reasons that follow, we agree with the Appellate Court's conclusion that the defendant's claim of instructional error was unpreserved.

It is axiomatic that the appellate tribunals of this state are not bound to consider claims of law that are not distinctly raised at trial. See Practice Book § 60-5; see also, e.g., *State* v. *Edwards*, 334 Conn. 688, 703, 224 A.3d 504 (2020). "[B]ecause the sine qua non of preservation is fair notice . . . the determination of whether a claim has been properly preserved will depend on a careful review of the record to ascertain whether the claim on appeal was articulated below with sufficient clarity to place the trial court on reasonable notice of that very same claim." (Internal quotation marks omitted.) *State* v. *Dixon*, 318 Conn. 495, 500, 122 A.3d 542 (2015). "These requirements are not simply formalities. They serve to alert the trial court to potential error while there is still time for the court to act. . . . Assigning error to [the trial court's] rulings on the basis of objections never raised at trial unfairly subjects the court and the opposing party to trial by ambush." (Internal quotation marks omitted.) *State* v. *Jorge P.*, 308 Conn. 740, 753, 66 A.3d 869 (2013).

In the present case, the trial court was clearly operating under the belief that it had satisfied the defendant's written request to charge on the defense of personal property. The trial court granted that request without qualification, provided multiple drafts of its instructions to the parties, and then expressly reviewed the proposed

defense of personal property instruction with counsel during a formal charging conference. On the basis of the record presently before us, we simply cannot conclude that the trial court and the state were given fair notice of the fact that the defendant took issue with this particular aspect of its instructions on assault. See *State* v. *Ross*, 269 Conn. 213, 335–36, 849 A.2d 648 (2004) ("the essence of the preservation requirement is that *fair notice* be given to the trial court of the party's view of the governing law and of any disagreement that the party may have had with the charge actually given" (emphasis in original)); cf. *Begley* v. *Kohl & Madden Printing Ink Co.*, 157 Conn. 445, 453–54, 254 A.2d 907 (1969) ("The trial court specifically corrected this portion of the charge after the plaintiffs excepted to it, and no further exception was taken by the plaintiffs. There is therefore no claim of error properly before us.").

The defendant correctly notes that our rules of practice permit criminal defendants to preserve claims of instructional error by filing a timely written request to charge. See Practice Book § 42-16;[11] see also, e.g., *State* v. *Paige*, 304 Conn. 426, 433–34, 40 A.3d 279 (2012). Appellate decisions, however, consistently reject the suggestion that this provision allows defendants to rely on general or ambiguous language to preserve more specific claims of error. See *State* v. *Ramos*, 261 Conn. 156, 170–71, 801 A.2d 788 (2002) ("[i]t does not follow, however, that a request to charge addressed to the subject matter generally, but which omits an instruction on a specific component, preserves a claim that the trial court's instruction regarding that component was defective" (emphasis omitted)), overruled in part on other grounds by *State* v. *Elson*, 311 Conn. 726, 91 A.3d

[11] Practice Book § 42-16 provides in relevant part: "An appellate court shall not be bound to consider error as to the giving of, or the failure to give, an instruction unless the matter is covered by a written request to charge or exception has been taken by the party appealing immediately after the charge is delivered. Counsel taking the exception shall state distinctly the matter objected to and the ground of exception. . . ."

862 (2014); *State* v. *Carter*, 198 Conn. 386, 395 and n.6, 503 A.2d 576 (1986) (written request to charge applying statutory definition of insanity was insufficient to preserve defendant's claim that additional instructions on common-law definitions was improper); see also *State* v. *Johnson*, 165 Conn. App. 255, 284–85, 138 A.3d 1108 ("Under either method, some degree of specificity is required, as a general request to charge or exception will not preserve specific claims. . . . Thus, a claim concerning an improperly delivered jury instruction will not be preserved for appellate review by a request to charge that does not address the specific component at issue . . . or by an exception that fails to articulate the basis relied upon on appeal with specificity." (Citations omitted.)), cert. denied, 322 Conn. 904, 138 A.3d 933 (2016); *State* v. *Cook*, 8 Conn. App. 153, 156–57, 510 A.2d 1383 (1986) (exception to charge on different ground was not sufficient to preserve alternative claim of error with respect to same instruction). Put differently, although § 42-16 allows a defendant to preserve a claim of instructional error by filing a written request to charge *or* by taking an exception on the record, the information conveyed by either of these alternative means must be specific enough to afford the trial court and the state fair notice of the particular defect subsequently claimed on appeal.[12]

The defendant claims that *State* v. *Ramos*, supra, 271 Conn. 785, established a legal presumption that requires this court to resolve any ambiguity regarding the scope of his written request to charge in his favor. We disagree.The defendant in that case, who was charged with assault in the second degree and having a weapon in a motor vehicle, requested that the trial court instruct the jury on the affirmative defense of self-defense. Id., 787, 800. As in the present case, that request did not

[12] Our rules of practice also expressly require written requests to charge to detail the evidentiary basis for the requested instruction. Practice Book § 42-18 (a). We note that the defendant's written request failed to do so.

specify the count or counts at issue. Id., 800. The state then filed a supplemental request to charge asking the trial court to affirmatively instruct the jury that self-defense was not a defense to the crime of having a weapon in a motor vehicle. Id. After considering the matter, the trial court in that case ultimately "gave a self-defense instruction with respect to the assault charge, but . . . instructed the jury that self-defense was not a defense to the charge [of having a weapon in a motor vehicle]." Id. On appeal, we held that the defendant's challenge to the latter was preserved, concluding that, "[a]lthough . . . the record leaves some doubt as to whether the defendant's general request to charge was adequate to place the trial court on notice that he believed that the claim of self-defense applied to both charges, we read the failure to specify as an indication that it applied to both charges . . . ." Id., 801.

We agree with the Appellate Court's assessment that our decision in *State* v. *Ramos*, supra, 271 Conn. 785, is distinguishable for two distinct reasons. First, the defendant in the present case affirmatively disclaims any argument that a defense of personal property instruction should have been given with respect to the charge of criminal violation of a protective order. As a result of that concession, the defendant cannot maintain that his submission was a blanket request that should have been read to apply to all of the charges against him. See *State* v. *Ramon A. G.*, supra, 190 Conn. App. 496 and n.9. Second, the trial court in *State* v. *Ramos*, supra, 801, expressly considered the question of whether to instruct the jury on self-defense with respect to the crime of having a weapon in a motor vehicle and purposely declined to provide such an instruction. As previously noted in this opinion, "the sine qua non of preservation is fair notice . . . ." (Internal quotation marks omitted.) *State* v. *Dixon*, supra, 318 Conn. 500. The record before us contains no indication that the particular instructional error claimed in the present appeal—that a charge on the

defense of personal property should have been given with respect to the charge of assault—was ever brought to the trial court's attention, and, accordingly, we conclude that the defendant's claim was not preserved.[13]

II

We turn next to the question of whether the Appellate Court correctly concluded that the defendant waived this unpreserved claim of instructional error. We note at the outset that this question raises an issue of law over which we exercise plenary review. See, e.g., *State* v. *Davis*, 311 Conn. 468, 477, 88 A.3d 445 (2014). Although we agree with the Appellate Court's finding of waiver, we reach that conclusion on the basis of defense counsel's conduct with respect to the instruction at issue, rather than his general review and acceptance of the trial court's proposed instructions as a whole pursuant to *Kitchens*.

It is well established that "[a] constitutional claim that has been waived does not satisfy the third prong of [*State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015)][14] because, in such circumstances, we simply cannot conclude that injustice [has been] done to either party . . . or that the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial . . . ." (Footnote added; internal quotation marks omitted.) *State* v. *McClain*,

[13] Having reached this conclusion, we need not consider whether the defendant would prevail under the heightened standard set forth in *State* v. *Paige*, supra, 304 Conn. 443, and *State* v. *Johnson*, 316 Conn. 45, 54–55, 111 A.3d 436 (2015).

[14] "Under *Golding*, it is well settled that a defendant may prevail on an unpreserved claim when: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt." (Internal quotation marks omitted.) *State* v. *McClain*, 324 Conn. 802, 809 n.5, 155 A.3d 209 (2017).

324 Conn. 802, 809, 155 A.3d 209 (2017). "[W]aiver is an intentional relinquishment or abandonment of a known right or privilege. . . . It involves the idea of assent, and assent is an act of understanding. . . . The rule is applicable that no one shall be permitted to deny that he intended the natural consequences of his acts and conduct. . . . In order to waive a claim of law . . . [i]t is enough if he knows of the existence of the claim and of its reasonably possible efficacy. . . . Connecticut courts have consistently held that when a party fails to raise in the trial court the constitutional claim presented on appeal and affirmatively acquiesces to the trial court's order, that party waives any such claim [under *Golding*]." (Citation omitted; internal quotation marks omitted.) Id. "Such a determination by the reviewing court must be based on a close examination of the record and the particular facts and circumstances of each case." (Internal quotation marks omitted.) Id., 810.

We need not rely on the central holding of *Kitchens* in order to conclude that the defendant waived his claim of instructional error.[15] The trial court in the present case granted the defendant's request to charge without qualification and expressly indicated that it intended

[15] In *Kitchens*, this court concluded that, "when the trial court provides counsel with a copy of the proposed jury instructions, allows a meaningful opportunity for their review, solicits comments from counsel regarding changes or modifications and counsel affirmatively accepts the instructions proposed or given, the defendant may be deemed to have knowledge of any potential flaws therein and to have waived implicitly the constitutional right to challenge the instructions on direct appeal." *State* v. *Kitchens*, supra, 299 Conn. 482–83. In the present case, the Appellate Court concluded that this standard was satisfied because the trial court solicited input from defense counsel on multiple occasions and distributed various drafts of its proposed instructions. *State* v. *Ramon A. G.*, supra, 190 Conn. App. 503. Although the record before us contains ample evidence that may have supported a finding of waiver under *Kitchens*, we need not look to defense counsel's mere review and acceptance of the trial court's instructions as a whole to support a finding of a waiver. Because we conclude that the defendant, through counsel, engaged in conduct that was itself sufficient to establish waiver under our previously existing jurisprudence; see, e.g., *State* v. *Fabricatore*, 281 Conn. 469, 481–82, 915 A.2d 872 (2007); the present appeal simply does not call for an application of the rule pronounced in *Kitchens*.

to incorporate that request in its proposed instructions. The trial court then drafted its charge, distributed electronic copies to counsel, and reviewed the language it had proposed on the defense of personal property during a charging conference with counsel, held on the record. During that conference, the trial court not only highlighted the precise location of the relevant instruction, but also engaged in a discussion with counsel regarding its content. Throughout these proceedings, the defense did not voice any concern regarding the location, scope, or structure of that particular charge.

We conclude that the defendant, through counsel, engaged in conduct clearly demonstrating his assent to the manner in which the trial court incorporated his request to charge. See *State* v. *Fabricatore*, 281 Conn. 469, 481–82, 915 A.2d 872 (2007) (defendant waived claim that trial court improperly included duty to retreat exception by failing to object to state's original request to charge, failing to object to instruction as given, expressing satisfaction with instruction, failing to object at trial when state referred to duty to retreat in closing argument, and referring to duty to retreat in his own closing argument); see also *State* v. *Holness*, 289 Conn. 535, 542, 544–45, 958 A.2d 754 (2008) (unpreserved constitutional claim was waived when defendant expressed satisfaction with limiting instruction and took no exception). Although the burden of proof with respect to the defense of personal property ultimately falls to the state to disprove that defense, the defendant retained the responsibility of asserting that defense in the first instance. See *State* v. *Ebron*, 292 Conn. 656, 695, 975 A.2d 17 (2009) ("assertion and proof of the justification defense . . . remains the defendant's responsibility in the first instance"), overruled in part on other grounds by *State* v. *Kitchens*, 299 Conn. 447, 10 A.3d 942 (2011).

A finding of waiver in the present case is further supported by the fact that the defendant possessed a tactical reason not to pursue a defense of personal property

instruction with respect to the charge of assault. See *State* v. *Kitchens*, supra, 299 Conn. 479–80 (noting previous line of cases finding waiver "when defense counsel did not object to the challenged instruction for what clearly appeared . . . to have been tactical reasons"). The defendant's testimony, which was echoed by defense counsel during closing argument, was that the victim was the aggressor and that any contact between them was merely the result of his attempts to escape. The defendant specifically testified that the victim's injuries must have occurred when he tried to shake his leg loose from the victim's grasp and that he had "never intentionally assaulted" the victim. The defendant could reasonably have decided to forgo the defense of personal property instruction with respect to the charge of assault because his own sworn account of the events on the night in question would have been conceptually inconsistent with a legal claim that he had intentionally, but justifiably, used force against the victim in order to regain possession of his mother's car keys. See, e.g., *Santiago* v. *Commissioner of Correction*, 125 Conn. App. 641, 647, 9 A.3d 402 (2010) ("[t]he petitioner's counsel determined that, as a matter of trial strategy, presenting inconsistent, alternative defenses of intoxication and self-defense risked alienating the jury"), cert. denied, 300 Conn. 910, 12 A.3d 1006 (2011).

For these reasons, we agree with the Appellate Court's ultimate conclusion that the defendant waived his claim that the trial court improperly omitted an instruction on the defense of personal property with respect to the charge of assault. As a result, the defendant's conviction must stand.[16]

[16] The defendant also requests relief under the plain error doctrine. See Practice Book § 60-5. Although this court has recently stated that an implied waiver under *Kitchens* does not necessarily preclude review under the plain error doctrine; see *State* v. *McClain*, supra, 324 Conn. 805; our decision in that case does not explicitly state whether its holding extends to other forms of instructional waiver. Cf. *Mozell* v. *Commissioner of Correction*, 291 Conn. 62, 70, 967 A.2d 41 (2009) ("a valid waiver . . . thwarts plain error review"

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

SHORELINE SHELLFISH, LLC *v.* TOWN OF BRANFORD (SC 20392)

Robinson, C. J., and Palmer, McDonald, D'Auria, Mullins, Kahn and Ecker, Js.*

Syllabus

The plaintiffs sought damages from the defendant, the town of Branford, for, inter alia, breach of contract in connection with the plaintiffs' unsuccessful attempt to lease a shellfishing ground in Branford known as lot 511. The plaintiffs had entered into an agreement with the town's Shellfish Commission under which the plaintiffs agreed to share information with the commission about potential shellfishing grounds in exchange for the right of first refusal to lease lot 511. Thereafter, when one of the plaintiffs' competitors applied to lease lot 511, the plaintiffs exercised their right of first refusal, but the commission leased the lot to the plaintiffs' competitor. The town moved for summary judgment on the ground that the right of first refusal was not a valid or enforceable contract because the commission lacked the authority to enter into an agreement in view of the provision of the Branford Town Code (§ 88-

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(internal quotation marks omitted)). Even if we were to assume that plain error review remains available to the defendant as a procedural matter, however, we would decline to invoke it under the facts of this particular case. The plain error doctrine is an "extraordinary remedy used by appellate courts to rectify errors committed at trial that, although unpreserved, are of such monumental proportion that they threaten to erode our system of justice and work a serious and manifest injustice on the aggrieved party. . . . [I]t is a doctrine that this court invokes in order to rectify a trial court ruling that, although either not properly preserved or never raised at all in the trial court, nonetheless requires reversal of the trial court's judgment, for reasons of policy." (Internal quotation marks omitted.) *State* v. *Myers*, 290 Conn. 278, 289, 963 A.2d 11 (2009). Because the defendant's own account of the events on the night in question indicates that he did not use force against the victim in an attempt to regain his mother's keys, we can perceive of no manifest injustice in the trial court's failure to instruct the jury with respect to defense of personal property in connection with the assault charge.

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

8) providing that no lease of shellfishing grounds "owned by" the town shall be permitted without the approval of the town's Board of Selectmen. The trial court granted the town's motion, concluding, inter alia, that, pursuant to § 88-8 of the town code, the Board of Selectmen, and not the commission, had the authority to approve any lease of shellfishing grounds located in Branford and that there was no evidence that the Board of Selectmen had approved the agreement between the plaintiffs and the commission. On appeal, the plaintiffs claimed, inter alia, that a genuine issue of material fact existed as to who owned lot 511, which affected whether the Board of Selectmen was required to approve the lease under § 88-8 of the town code. The plaintiffs contended that the phrase "owned by" in § 88-8 limited the authority of the Board of Selectmen to lease shellfishing grounds to only those grounds owned by the town and that the town presented no evidence regarding whether it owned lot 511. *Held* that the trial court improperly granted the town's motion for summary judgment, as there was a genuine issue of material fact as to whether the town "owned" lot 511 and, thus, whether the commission had the authority to lease lot 511 to the plaintiffs under § 88-8 of the town code: under the particular, technical definition of the phrase "owned by" in § 88-8, as established by case law concerning the public trust doctrine, the town owned lot 511 only if it held title to a grant of the private rights to the lot, and the town, having advanced no evidence that it had been granted private rights to lot 511, did not meet its burden of establishing that it owned lot 511 within the meaning of § 88-8 of the town code; moreover, the town's assertion that the phrase, "shellfishing grounds owned by Branford," in § 88-8 must refer to all shellfishing grounds for which the town controlled the proprietary rights to cultivate and harvest shellfish was unreasonable because to interpret "own" to mean "control" was contrary to its plain meaning, both under its dictionary definition and this court's case law discussing the particular meaning of the word in the context of the public trust doctrine, as the phrase to "own" shellfishing grounds means to hold legal title to the private rights to those grounds.

Argued February 25—officially released July 29, 2020**

Procedural History

Action to recover damages for, inter alia, breach of contract, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the court, *Blue*, *J.*, granted the plaintiff's motion to add Shellfish Partners, Ltd., as a plaintiff; thereafter, the court, *Abrams*, *J.*, granted the defendant's motion for

** July 29, 2020, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

summary judgment and rendered judgment thereon, from which the plaintiffs appealed. *Reversed*; *further proceedings*.

Richard W. Callahan, for the appellants (plaintiffs).

Michael T. Cretella, for the appellee (defendant).

Opinion

D'AURIA, J. Given the geography of our state, which is bounded on the south by the Long Island Sound, shellfishing has a long and rich history in Connecticut. The first Connecticut laws regulating the taking of shellfish were created before the revolution, in the early eighteenth century. Connecticut State Register and Manual (2019) p. 825. By the late nineteenth century, oyster farming was a major contributor to the state's economy. Id. For a time, Connecticut had the largest fleet of oyster steamers in the world. Id. Beginning in the mid-nineteenth century, water pollution, disease, overharvesting, and other factors decimated historically abundant shellfish populations, but cleaner water and better management practices contributed to a rebounding shellfish population in recent years. The Nature Conservancy, "Private Shellfish Grounds in Connecticut: An Assessment of Law, Policy, Practice and Spatial Data" (January, 2010) p. 6. The shellfishing industry in Connecticut, too, has begun to rebound; today, the industry makes more than $30 million in annual sales.[1]

The waters of the Sound are both a natural and an economic resource of the state, guarded jealously. Predictably, control over the shellfish industry is also guarded jealously and has long been subject to state and local legislation, including state legislation unique to a particular town in the present case, the defendant,

[1] Connecticut Department of Agriculture, Shellfish Industry Profile and Economic Impact, available at https://portal.ct.gov/DOAG/Aquaculture1/Aquaculture/Connecticut-Shellfish-Industry-Profile (last visited July 29, 2020).

the town of Branford. In this appeal, we are asked to resolve a dispute that has arisen not just between a local business and the town, but among that town's governing entities. At its core, this case involves a dispute over who has authority to lease shellfishing beds on the town's behalf, Branford's Shellfish Commission (commission) or its Board of Selectmen (selectmen).

The plaintiffs, Shellfish Partners, Ltd., and its general partner, Shoreline Shellfish, LLC, which had been granted the right of first refusal by the commission to lease certain shellfishing grounds located in Branford, appeal from the trial court's decision to render summary judgment in favor of the defendant on the ground that there was no genuine issue of material fact that the selectmen, and not the commission, had authority to bind the defendant to agreements relating to the leasing of shellfishing grounds pursuant to General Statutes § 26-266[2] and chapter 88 of the Branford Town Code (code). Specifically, the plaintiffs claim that the trial court improperly interpreted § 26-266 (a), which gives charge of shellfishing grounds to "[t]he selectmen . . . or shellfish commission," to grant both the commission and the selectmen authority to lease shellfishing grounds within the town, and, therefore, that the ordinance, § 88-8 of the code, which splits authority between the commission and the selectmen, is invalid on this basis. In the alternative, the plaintiffs claim that, even if the trial court properly interpreted § 26-266 and the ordinance as granting authority to both the commission and the selectmen, the trial court improperly interpreted the meaning of the phrase "owned by" in the ordinance, and, thus, there is a genuine issue of material fact as to whether the defendant owned the shellfishing ground

[2] General Statutes § 26-266 (a) provides in relevant part: "The selectmen of the town of Branford or shellfish commission established in accordance with section 26-257a shall have charge of all the shellfisheries and shell and shellfish grounds lying in said town not granted to others and not under the jurisdiction of the Commissioner of Agriculture . . . ."

at issue.[3] We agree with the plaintiffs that, assuming that the ordinance does not conflict with § 26-266, on the basis of the clear and unambiguous language of the ordinance, there was a genuine issue of material fact regarding whether the defendant "owned" the shellfishing ground at issue. Therefore, the trial court improperly rendered summary judgment, and we reverse the judgment of the trial court and remand the case for further proceedings.

The following undisputed facts, as found by the trial court and contained in the record, and procedural history are relevant to our disposition of this appeal. This dispute involves a shellfishing ground, lot 511, which was available for lease in the town. The plaintiffs applied to the commission for a right of first refusal to lease lot 511, along with several other lots not at issue in this case. In exchange for the right of first refusal, the plaintiffs agreed to explore certain areas for potential shellfishing grounds and to share the information it collected with the commission. After this agreement was entered into, one of the plaintiffs' competitors applied to lease lot 511. At the commission's next meeting, the commission deferred action on the competitor's application because of the plaintiffs' existing right of first refusal. The plaintiffs then exercised their right of first refusal and applied to lease lot 511, but the commission instead leased lot 511 to the plaintiffs' competitor.

The named plaintiff, Shoreline Shellfish, LLC, then brought this action, alleging breach of contract and promissory estoppel, and, specifically, that it enjoyed a

[3] Alternatively, the plaintiffs argue that, even if § 88-8 applies to lot 511, the shellfishing ground at issue, and the defendant therefore retains authority to approve leases under the ordinance, the ordinance is invalid because it is contrary to controlling state statutes. Specifically, the plaintiffs claim that § 88-8 is invalid insofar as it permanently prohibits the taking of shellfish from certain designated areas, in violation of § 26-266. Because we conclude that § 88-8 only authorizes the selectmen to approve leases of shellfishing grounds to which the defendant holds legal title, we do not reach this claim.

right of first refusal. The defendant moved for summary judgment, arguing that the right of first refusal was not a valid or enforceable contract because the commission lacked authority to enter into it. The defendant argued that the commission's authorization was precluded by § 88-8 of the code, which provides in relevant part that "[n]o lease, license or transfer of shellfishing grounds owned by . . . Branford shall be permitted without the approval of the Board of Selectmen. . . ." The trial court rendered summary judgment in favor of the defendant because there was no evidence that the selectmen had approved the right of first refusal agreement. The trial court based its decision on its interpretation of § 26-266 (a), a statute that is applicable only to the defendant and provides in relevant part that "[t]he selectmen of the town of Branford or shellfish commission . . . shall have charge of all the . . . shellfish grounds lying in said town not granted to others and not under the jurisdiction of the Commissioner of Agriculture . . . ." The trial court determined that § 26-266 unambiguously "provides [the defendant] with discretion to authorize either the . . . [s]electmen or the commission, or both, to exercise the powers and fulfill the duties provided by § 26-266 (a)." The trial court further determined that, although § 88-4 of the code establishes the powers of the commission, which include the authority to issue shellfish licenses, § 88-8 limits the commission's authority by requiring the selectmen to approve any lease of or license to shellfishing grounds. Without explicitly considering whether § 88-8 also places limits on the authority of the selectmen by requiring their approval only with respect to leases of and licenses to shellfishing grounds "owned by" the defendant, the trial court determined that § 88-8 required the selectmen to approve any lease of or license to shellfishing grounds located in the town and, thus, concluded that there was no genuine issue of material fact that the commission lacked authority to lease lot 511.

The plaintiffs appealed to the Appellate Court. We then transferred the appeal this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

On appeal, the plaintiffs claim that the trial court improperly granted summary judgment in favor of the defendant because it misconstrued § 26-266. They argue that § 26-266, which the parties do not dispute applies,[4] does not allow the defendant to split authority between the commission and the selectmen, as provided in § 88-8, and, thus, § 88-8 is invalid. Alternatively, the plaintiffs claim that, even if the ordinance is valid under § 26-266, there is a genuine issue of material fact as to who owns lot 511, which affects whether the selectmen are required to approve the lease or license under § 88-8. Specifically, the plaintiffs argue that the phrase "owned by" in § 88-8 limits the authority of the selectmen to lease shellfishing grounds owned by the defendant and that the defendant presented no evidence regarding ownership of the lot.

The defendant responds that the trial court correctly concluded that § 26-266 authorizes the town to share authority between the commission and the selectmen, and, thus, the trial court properly rendered summary judgment in favor of the defendant. The defendant further responds that there is no genuine issue of material fact regarding ownership because the phrase "owned by" in § 88-8 means "shellfishing grounds for which [the defendant] controls the proprietary right to cultivate and harvest shellfish" or "shellfish ground lying in [Branford]," and, thus, any lease of or license to the shellfishing grounds located in the town must be approved by the selectmen. In support of this argument, the defen-

[4] We note that § 26-266 (a) applies only if lot 511 has not been "granted to others . . . ." The parties do not dispute that this exception is inapplicable. No evidence was offered in support of the defendant's motion for summary judgment regarding whether lot 511 ever has been "granted to others . . . ."

dant stresses that, because the public trust doctrine applies, "owned by" cannot mean ownership of the underlying fee.

We agree with the plaintiffs that, even if we assume that § 88-8 does not conflict with § 26-266, on the basis of the clear and unambiguous language of § 88-8, a genuine issue of material fact as to who owns lot 511 prevents the granting of summary judgment.

The scope of our review of the trial court's decision to grant the defendant's motion for summary judgment is plenary. See, e.g., *Rutter* v. *Janis*, 334 Conn. 722, 729, 224 A.3d 525 (2020). "Practice Book [§ 17-49] provides that summary judgment shall be rendered forthwith 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 party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . . A material fact . . . [is] a fact which will make a difference in the result of the case." (Internal quotation marks omitted.) Id.

To the extent that the trial court's decision to render summary judgment requires us to construe a municipal ordinance, our review is also plenary and is guided by our well established legal principles regarding statutory construction. See, e.g., *Ventura* v. *East Haven*, 330 Conn. 613, 631–32, 199 A.3d 1 (2019). "A local ordinance is a municipal legislative enactment and for purposes of appeal is to be treated as though it were a statute." *Duplin* v. *Shiels*, *Inc.*, 165 Conn. 396, 398, 334 A.2d 896 (1973). In construing statutes, "General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the mean-

ing of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Gonzalez* v. *O & G Industries, Inc.*, 322 Conn. 291, 302–303, 140 A.3d 950 (2016).

Because we assume, without deciding, that the trial court properly interpreted § 26-266 not to conflict with § 88-8 of the code, we begin our analysis by examining the language of that ordinance, which provides in relevant part: "No lease, license or transfer of shellfishing grounds *owned by* . . . Branford shall be permitted without the approval of the Board of Selectmen. . . ." (Emphasis added.) Branford Town Code, c. 88, § 88-8. The word "owned" is not defined in § 88-8 or elsewhere in the code. When words or phrases are not statutorily defined, "General Statutes § 1-1 (a) directs that we construe [a] term according to its commonly approved usage, mindful of any peculiar or technical meaning it may have assumed in the law. We may find evidence of such usage, and technical meaning, in dictionary definitions, as well as by reading the statutory language within the context of the broader legislative scheme." *State* v. *Menditto*, 315 Conn. 861, 866, 110 A.3d 410 (2015). Further, "[i]t is well established that, to construe technical legal terms, we look for evidence of their familiar legal meaning in a range of legal sources, including other statutes, judicial decisions, and the common law." Id., 868. Technical terms can be legal terms as well as terms associated with the trade or business with which a given statute is concerned, and "the terms in question should be accorded the meaning which they would convey to an informed person in the [applicable] trade or business." *Hardware Mutual Casualty Co.* v. *Premo*, 153 Conn. 465, 475, 217 A.2d 698 (1966).

Dictionary definitions from the time the ordinance was enacted are especially instructive. See, e.g., *State* v. *Menditto*, supra, 315 Conn. 866. At the time that § 88-8 was adopted in 1997, Black's Law Dictionary defined the verb "own" as "[t]o have good legal title; to hold as property; to have a legal or rightful title to; to have; to possess." Black's Law Dictionary (6th Ed. 1990) p. 1105. Webster's Third New International Dictionary similarly defined this term as "to have or hold as property or appurtenance: have a rightful title to, whether legal or natural: possess." Webster's Third New International Dictionary (1991) p. 1612.

However, our inquiry does not end here because the phrase "owned by" has taken on a particular meaning in the context of shellfishing grounds located below the mean high watermark, which are subject to the public trust doctrine. See *State* v. *Sargent & Co.*, 45 Conn. 358, 372 (1877). The public trust doctrine is a legal doctrine that controls the nature of legal title to and ownership of submerged lands of this kind. See, e.g., *Leydon* v. *Greenwich*, 257 Conn. 318, 332 n.17, 777 A.2d 552 (2001). Therefore, interpreting the meaning of the phrase "owned by" in § 88-8 requires us to look to a range of legal sources that explain the contours of Connecticut's public trust doctrine.

The public trust doctrine evolved from English common law. At common law, the king, "as parens patriae, held the title to the soil under the sea between high and low [watermark]; he held it not for his own benefit but for his subjects at large . . . he held it in trust for public uses . . . the most important of which are those of fishing and navigation." *State* v. *Sargent & Co.*, supra, 45 Conn. 372. In Connecticut, it has been settled for centuries that "the public, representing the former title of the king, is the owner in fee of such flats up to high [watermark] . . . ." *Simons* v. *French*, 25 Conn. 346, 352 (1856). These lands are held in trust for the public

by the state legislature. See *Rowe* v. *Smith*, 48 Conn. 444, 447 (1880).

Title to shellfishing grounds, as land subject to the public trust doctrine, is composed of two parts: the private rights and the public rights. "The ownership of the soil, analogous to the ownership of dry land, was regarded as [a private right], and was vested in the crown. But the right to use and control both the land and water was deemed a [public right], and was vested in parliament. . . . In this country the state has succeeded to all the rights of both crown and parliament in the navigable waters and the soil under them, and here the [private rights] and the [public rights] are both vested in the state." (Internal quotation marks omitted.) *Illinois Central Railroad Co.* v. *Illinois*, 146 U.S. 387, 466, 13 S. Ct. 110, 36 L. Ed. 1018 (1892) (Shiras, J., dissenting); see *Lane* v. *Board of Harbor Commissioners*, 70 Conn. 685, 694–95, 40 A. 1058 (1898).

The public trust doctrine allows the state, through the legislature, to grant the private rights to these grounds to private individuals or other entities. See *Lovejoy* v. *Norwalk*, 112 Conn. 199, 212, 152 A. 210 (1930). "In Connecticut, the title to the soil underneath the waters of the marginal sea, below [high watermark] . . . is in the state as trustee for the public, subject only to navigation, except as the title may be affected by lawfully acquired privileges or franchises of littoral proprietors or others, such as shellfishermen, who by statute may acquire, by lease or perpetual franchise, the exclusive right to plant, cultivate and harvest shellfish on designated grounds." *State* v. *Hooper*, 3 Conn. Cir. 143, 148–49, 209 A.2d 539 (1965).

Although the legislature always retains ultimate responsibility for lands subject to the public trust doctrine, it may delegate authority to manage these lands to designees, including municipalities. *State* v. *Sargent*

& Co., supra, 45 Conn. 373. For example, the legislature may delegate directly to town selectmen authority to make grants of private rights. See General Statutes (1902 Rev.) § 3261 ("[t]he selectmen of East Haven shall have exclusive authority to designate, for the planting and cultivation of oysters thereon . . . the grounds covered by the navigable waters"). The legislature also may delegate to municipalities authority to create a shellfish commission, which may then receive a delegation of authority from the state. For example, § 26-266 (a) gives "charge of all the . . . shellfish grounds lying in [Branford]" to the "selectmen . . . or shellfish commission," leaving it to the defendant to decide whether to create a commission.

Whether directly or through a designee, such as a municipality, the state historically has chosen to make perpetual grants, or perpetual franchises, of the private rights to shellfishing grounds. These grants convey legal title via written instrument and are recorded in the municipality's land records. See General Statutes (1887 Rev.) § 2317 ("[The Board of Commissioners of Shellfisheries] shall . . . be empowered, in the name and in behalf of the State, to grant by written instruments, for the purpose of planting and cultivating shell-fish, perpetual franchises in . . . undesignated grounds . . . . [A]ll such grants . . . shall also be recorded in the town clerk's office . . . ."). The grants, once made, similarly can be transferred by quitclaim deed. For example, in *Ball* v. *Branford*, 142 Conn. 13, 110 A.2d 459 (1954), this court explained how "the plaintiff obtained, by quitclaim deed, the rights in numerous oyster lots then owned by the Stony Creek Oyster Company, a [company] that had been in the business of planting and cultivating oysters since 1870. During the course of its long existence this [company] had from time to time bought from others various oyster grants." Id., 15.

The recipients of these state grants of private rights are considered the "owners" of the shellfishing grounds. See, e.g., General Statutes § 26-196 ("the owner or owners of the adjoining grounds"); General Statutes § 26-207 ("[a]ny owner of shellfish grounds . . . lying within the exclusive jurisdiction of the state"); *Lovejoy* v. *Norwalk*, supra, 112 Conn. 200 (preliminary statement of facts and procedural history) ("[t]he plaintiff is the owner of oyster grounds situated under the navigable waters of [the] Long Island Sound"); *White* v. *Petty*, 57 Conn. 576, 577, 18 A. 253 (1889) ("[t]he complainant alleges that she is the owner of various oyster lots in the town of Darien"). Although a recipient of a state grant of private rights is deemed the "owner," because of the public trust doctrine, ownership is limited to the private rights to the shellfishing grounds. This is because, even when the private rights have been granted, the public retains its rights, which remain held in trust by the state. "The control of the state for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining." *Illinois Central Railroad Co.* v. *Illinois*, supra, 146 U.S. 453. Shellfishing grounds subject to the public trust doctrine "cannot be disposed of to the detriment of the public interest." *Lovejoy* v. *Norwalk*, supra, 205. Accordingly, any ownership right in shellfishing grounds is limited in that it cannot interfere with the public rights. Id.; see also *Illinois Central Railroad Co.* v. *Illinois*, supra, 453.

Thus, our prior case law regarding the public trust doctrine makes clear that ownership of shellfishing grounds means holding legal title to the exclusive right to plant, cultivate and harvest shellfish on a specified lot. This title may be acquired by direct grant from the state or its designee, or by transfer from the previous

owner of the private rights to the shellfishing grounds. Because of the public trust doctrine, the state's inability to transfer the public rights to these grounds means that "ownership" in the context of shellfishing grounds cannot mean fee simple absolute ownership.[5] See *Lovejoy* v. *Norwalk*, supra, 112 Conn. 205.

When the private rights to shellfishing grounds have not been granted, then both the public rights and the private rights to those grounds remain owned by the people of Connecticut, held in trust by the state. See *Rowe* v. *Smith*, supra, 48 Conn. 447 ("[In] the people of the state . . . remains the proprietorship of fisheries, shell and floating, in its navigable waters. Towns have no ownership in or control over them. The legislature alone can create an individual proprietorship in them."). When ownership of the private rights to shellfishing grounds is retained by the people, held in trust by the state, the legislature has the authority to license or lease these grounds to private individuals or entities. In the present case, the people of Connecticut are the licensors or lessors of the private rights, and the license or lease is executed by the state or its designee, on behalf of the people. As with the authority to grant ownership of shellfishing grounds, which we discussed previously, the legislature may delegate the authority to license or lease shellfishing grounds to a state agency or a municipality without conveying an ownership interest to that designee. For example, § 26-266 (a) establishes that, in Branford, the state has delegated "charge of all the . . . shellfish grounds . . . not granted to others" to the "selectmen . . . or shellfish commission . . . ." When shellfishing grounds are leased or licensed rather than granted, the people of Connecticut are the licensors or lessors of the private rights, and the license or lease is executed by the state or its designee on the people's behalf.

[5] "Fee simple absolute" is defined as "[a]n estate of indefinite or potentially infinite duration . . . ." Black's Law Dictionary (11th Ed. 2019) p. 760.

Thus, under the public trust doctrine, shellfishing grounds are "owned by" whoever has been granted the private rights to those grounds, although to maintain the public's rights to these lands under that doctrine, the private rights are limited. If no one has been granted these private rights, then the people of Connecticut remain the owners of the grounds, although the state or its designee, including a municipality or commission, may lease or license the grounds to private individuals. Shellfishing grounds, however, are not "owned by" a municipality in the absence of a granting of private rights, even if the legislature enables a municipality to lease or license shellfishing grounds located within its borders. See *Rowe* v. *Smith*, supra, 48 Conn. 447.

In light of this case law, we return to the language of § 88-8, which requires the approval of the selectmen only for the "lease, license or transfer" of shellfishing grounds "owned by . . . Branford . . . ." Under the particular, technical definition of the phrase "owned by," established by our case law regarding the public trust doctrine, the defendant owns lot 511 only if it held title to a grant of the private rights to the lot. Thus, under the clear and unambiguous language of the ordinance, the selectmen had authority to approve the leasing of lot 511 only if the defendant had been granted the private rights over lot 511. Because the defendant offered no evidence regarding whether it had been granted the private rights to lot 511, there remained a genuine issue of material fact as to whether lot 511 was "owned by" the defendant, and, thus, the trial court improperly granted summary judgment in the defendant's favor.

Nevertheless, the defendant contends that the phrase "shellfishing grounds owned by . . . Branford" within § 88-8 must refer to all "shellfishing grounds for which the [defendant] controls the proprietary right to cultivate and harvest shellfish," which, the defendant argues, is the same as "shellfish grounds lying in [Branford]" under § 26-266 (a). This interpretation is unrea-

sonable. To interpret the word "own" to mean "control" is contrary to its plain meaning, both under its dictionary definition and our case law discussing the particular meaning of the word under the public trust doctrine. The defendant's only rationale for its desired interpretation appears to be that the term "owned" "cannot be reasonably construed to mean ownership of the underlying fee interest." While we agree with the defendant about what the word "owned" does *not* mean; see footnote 4 of this opinion; we cannot agree that we must therefore adopt the defendant's proffered alternative definition, "control." We have established that to "own" shellfishing grounds means to hold legal title to the private rights to those grounds. By contrast, "control" is defined as the "[p]ower or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee." Black's Law Dictionary (6th Ed. 1990) p. 329. These definitions clearly are distinct. Here, "control of the proprietary right to harvest and cultivate shellfish" refers to the authority—delegated to the defendant by the state—to manage and direct the license, lease, or grant of shellfishing grounds on the state's behalf, not to ownership of the private rights to the shellfishing grounds themselves.

The defendant has not met its burden of establishing that it owns lot 511, as § 88-8 requires, because it advanced no evidence or documentation establishing that it has been granted the private rights to lot 511. On remand, evidence of ownership, to the extent necessary, on the basis of the claims raised and litigated by the parties, might include a written instrument—a quitclaim deed, for example—listing the defendant as the owner. Written instruments are required for the transfer of an ownership interest in shellfishing grounds under General Statutes § 26-249.[6] Evidence of ownership also

[6] General Statutes § 26-249 provides in relevant part: "[A]ny place lawfully designated [for the cultivation of shellfish] . . . shall be transferable by written assignment . . . ."

could include evidence that a grant in the defendant's name was recorded in the town's land records or oyster book, as required by General Statutes § 26-243 and its predecessors.[7] Evidence that the defendant does not own lot 511, on the other hand, might include the defendant's bed numbering system, as contained in this record, which uses different numbers for privately granted beds and lots available for lease by the commission.

We recognize that, on remand, the defendant might be unable to prove that it owns lot 511, that the court might ultimately resolve this dispute on other grounds or that, to resolve this dispute, it might become necessary to engage in further statutory construction of § 26-266 or §§ 88-3 and 88-4 of the code. For example, if the defendant does not own lot 511, the trial court might need to determine whether § 88-3 or § 88-4 actually authorizes the commission to lease shellfish beds not owned by the town. The trial court might also need to determine whether the ordinance divides authority between the commission and the selectmen, and, if so, whether that division conforms with the language of § 26-266 (a), which gives charge of the shellfish beds to the "selectmen . . . or shellfish commission." Finally, regardless of whether the defendant proves that it owns lot 511, the trial court might need to determine whether § 26-266 applies at all, as discussed in footnote 3 of this opinion. We do not reach these issues here because the

[7] General Statutes § 26-243 provides in relevant part: "The selectmen of each town in which places have been designated in its navigable waters for planting or cultivating oysters, clams or mussels shall provide a book, to be kept by the town clerk, for recording . . . the written designation and descriptions of the places designated and set out thereon, and all assignments of such places. The town clerk shall . . . make an alphabetical index of all such applications, designations and assignments, specifying the names of the applicants and of the assignors and assignees, separately; and an attested copy of any such application, designation or assignment, with a certificate that it has been recorded, shall be conclusive evidence of the fact of such record and prima facie evidence of the validity of such application, designation or assignment."

plain meaning of "owned by" in § 88-8 is dispositive of the issue before us, namely, whether the trial court properly granted summary judgment in favor of the defendant.

Because we conclude that there is a genuine issue of material fact regarding whether lot 511 was "owned by" the defendant and, thus, who had authority to lease lot 511 under § 88-8 of the code, we conclude that the trial court improperly granted summary judgment in favor of the defendant.

The judgment is reversed and the case is remanded for further proceedings consistent with this opinion.

In this opinion the other justices concurred.

MARTIN J. PRAISNER, JR. *v.* STATE OF CONNECTICUT (SC 20315)

Robinson, C. J., and Palmer, McDonald, Mullins, Kahn, Ecker and Vertefeuille, Js.*

Syllabus

Pursuant to statute ((Rev. to 2013) § 53-39a), "[w]henever, in any prosecution of an officer of the Division of State Police . . . or a local police department for a crime allegedly committed by such officer in the course of his duty as such, the charge is dismissed or the officer is found not guilty, such officer shall be indemnified by his employing governmental unit for economic loss sustained by him as a result of such prosecution . . . ."

The plaintiff, who had been a member of a special police force maintained by the defendant state of Connecticut for Eastern Connecticut State University, sought, pursuant to statute ((Rev. to 2013) § 53-39a), indemnification from the state for economic losses that he allegedly had incurred as a result of federal criminal charges filed against him, but that ultimately were dismissed, for alleged misconduct while he was a member of that special police force. The state filed a motion to dismiss for lack of subject matter jurisdiction, claiming that members of a university's special police force do not fall within the class of individuals who are

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

expressly authorized to bring an action against the state pursuant to § 53-39a. The trial court denied the motion to dismiss, concluding that a member of a university's special police force did fall under the category of a member of a local police department, as that term is used in § 53-39a. The trial court subsequently denied the state's motion for summary judgment, in which the state renewed its claim that the court lacked subject matter jurisdiction. Thereafter, the court granted the plaintiff's motion for summary judgment as to liability only and, after a hearing in damages, rendered judgment for the plaintiff, from which the state appealed to the Appellate Court. The Appellate Court reversed the trial court's judgment, concluding that the trial court incorrectly determined that the plaintiff was authorized to bring the present action pursuant to § 53-39a. The Appellate Court reasoned that the legislature did not intend to include members of a university's special police force within the definition of "local police department," as used in § 53-39a, because the legislature's explicit inclusion of members of some police forces within the limited jurisdictional authority in the language of the statute indicated that its failure to specifically mention members of a university's special police force was intentional. The Appellate Court noted that the university's special police force was created pursuant to a statute ((Rev. to 2013) § 10a-142) that provides that such a force has some, but not all, of the duties, responsibilities and authority of local police departments, limitations that provided further indication that the legislature understood a university's special police force to be a separate and distinct entity from a local police department. The Appellate Court further noted that § 10a-142 (e) contains an indemnification provision applicable only to members of a university's special police force, indicating that the legislature did not intend the more general provisions of § 53-39a to apply to such members. On the granting of certification, the plaintiff appealed to this court. *Held* that the Appellate Court correctly determined that a member of a university's special police force is not a member of a local police department entitled to indemnification under § 53-39a, and, because that court's well reasoned decision correctly resolved the issue on which certification was granted, any further analysis regarding the interpretation of § 53-39a served no useful purpose; moreover, the legislative history of a 2017 amendment to § 53-39a, which eliminated the phrase "local police department" and added the phrase "any member of a law enforcement unit," indicated that the change was not clarifying in nature and, thus, one that would retroactively apply to the plaintiff, but, instead, was a subsequent, substantive change; furthermore, there was no indication that the legislature enacted the 2017 amendment in direct response to any judicial decision that the legislature deemed incorrect, as the trial court had not yet rendered judgment in the present case when that amendment was enacted.

Argued January 13—officially released August 3, 2020**

** August 3, 2020, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Procedural History

Action for indemnification for economic losses allegedly incurred by the plaintiff as a result of a federal criminal action filed against him in his capacity as a member of a special police force, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the court, *Hon. Richard M. Rittenband*, judge trial referee, denied the defendant's motion to dismiss; thereafter, the court, *Scholl*, *J.*, denied the defendant's motion for summary judgment and granted the plaintiff's motion for summary judgment as to liability; subsequently, after a hearing in damages, the court, *Pittman*, *J.*, rendered judgment for the plaintiff, from which the defendant appealed to the Appellate Court; thereafter, the court, *Pittman*, *J.*, granted the plaintiff's motion for attorney's fees and costs, and the defendant filed an amended appeal with the Appellate Court, *DiPentima*, *C. J.*, and *Prescott* and *Elgo*, *Js.*, which reversed the trial court's judgment, and the plaintiff, on the granting of certification, appealed to this court. *Affirmed.*

Elliot B. Spector, with whom was *David Yale*, for the appellant (plaintiff).

Emily V. Melendez, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Clare Kindall*, solicitor general, for the appellee (defendant).

Opinion

MULLINS, J. The sole issue in this certified appeal is whether the Appellate Court correctly concluded that a university police officer is not a member of a "local police department" entitled to indemnification under General Statutes (Rev. to 2013) § 53-39a.[1] The plaintiff, Martin J. Praisner, Jr., argues that the Appellate Court

[1] Hereinafter, unless otherwise indicated, all references to § 53-39a are to the 2013 revision of the statute.

erred in concluding that a university's special police force is not a "local police department" for purposes of § 53-39a, and that the legislature, by limiting coverage to local police departments, did not intend for university special police forces to be covered under this statute. We conclude that the Appellate Court correctly interpreted § 53-39a and, accordingly, affirm the judgment of the Appellate Court.

The opinion of the Appellate Court sets forth the following relevant facts and procedural history. At all relevant times, the defendant, the state of Connecticut, "maintained a special police force for Eastern Connecticut State University (university). The plaintiff was a member of that special police force and an employee of the state. While on duty on September 1, 2008, the plaintiff was involved in an incident in which he allegedly 'deployed pepper spray against an intoxicated and violent prisoner in a converted Sheetrock coat closet, which was used as a holding cell, and failed to promptly decontaminate the prisoner.' Weeks later, the plaintiff was placed on paid administrative leave by the university. He thereafter applied for a position with the . . . Department of Correction (department) and was hired as a correction officer on August 15, 2009.

"On December 1, 2009, the plaintiff was indicted by the federal government and charged with the crimes of conspiracy to violate an individual's civil rights in violation of 18 U.S.C. § 241 and deprivation of an individual's civil rights in violation of 18 U.S.C. § 242. Following his arrest, the plaintiff's employment with the department was terminated. After two federal trials that both resulted in hung juries, the United States District Court for the District of Connecticut on August 10, 2011, granted the government's motion to dismiss the indictment against the plaintiff.

"The plaintiff subsequently demanded reimbursement from the state for economic losses that he alleg-

edly incurred as a result of his federal prosecution. When the state declined to do so, the plaintiff commenced the present action. His one count complaint sought indemnification pursuant to § 53-39a 'for economic losses sustained . . . as a result of the aforesaid arrest and prosecution, including the payment of any legal fees incurred in pursuing these damages.'[2]

"In response, the state moved to dismiss the action for lack of subject matter jurisdiction. In the memorandum of law that accompanied [the motion to dismiss], the state acknowledged that § 53-39a 'waives the [s]tate's immunity to liability and suit,' but only with respect to 'those individuals who fall within the designated classifications' set forth in that statute. The state then argued that (1) members of the university's special police force do not fall within the class of individuals who expressly are authorized to bring an action against the state pursuant to § 53-39a, and (2) the complaint contained no allegation that the plaintiff had obtained permission from the Claims Commissioner to institute the action for monetary relief. See General Statutes § 4-160. The plaintiff filed an objection to the motion to dismiss, [in response] to which the state filed a reply brief.

"The court, *Hon. Richard M. Rittenband*, judge trial referee, heard argument from the parties on March 17, 2014. In an order issued later that day, the court concluded that a member of the university's special police force 'falls under the category of a member of a local police department' as that term is used in § 53-39a. The court therefore denied the motion to dismiss. The state filed a motion to reargue that ruling, which the court denied.

[2] "The plaintiff's claimed damages included 'lost overtime' with the university's special police force; 'lost employment' and 'lost overtime' with the department; 'lost pension benefits and contributions'; 'lost insurance, sick time and vacation time'; and 'future lost earnings.' " *Praisner* v. *State*, 189 Conn. App. 540, 544 n.3, 208 A.3d 667 (2019).

"The state then answered the complaint, and the plaintiff filed a certificate of closed pleadings, in which he requested a court trial. On January 13, 2017, the state filed a motion for summary judgment, renewing its claim that the court lacked subject matter jurisdiction due to sovereign immunity. Relying on the law of the case doctrine, the court, *Scholl*, *J.*, denied that motion. The court at that time also granted the plaintiff's . . . motion for summary judgment as to liability only. A hearing in damages followed, at the conclusion of which the court, *Pittman*, *J.*, rendered judgment in favor of the plaintiff 'in the amount of $658,849 in lost earnings and benefits . . . .' Approximately one month later, the court rendered a supplemental judgment, in which it awarded the plaintiff $118,196.04 in attorney's fees and costs." (Footnote in original; footnotes omitted.) *Praisner* v. *State*, 189 Conn. App. 540, 543–45, 208 A.3d 667 (2019).

The state appealed from the judgment of the trial court to the Appellate Court. On appeal, the state claimed that the trial court incorrectly determined that the plaintiff was authorized to bring the present action pursuant to § 53-39a. See id., 545. The Appellate Court agreed with the state; id.; and concluded that "the plaintiff has not established a reasonable basis on which to conclude that his claim for indemnification falls within the statutory waiver of sovereign immunity contained in § 53-39a." Id., 555.

The Appellate Court began by noting that the "term 'local police department' is not defined in § 53-39a or elsewhere in the General Statutes." Id., 549. As a result, the court relied on the text of § 53-39a and its relationship to other statutes to conclude that the legislature did not intend to include members of a university's special police force within the definition of "local police department." (Internal quotation marks omitted.) Id., 549–50. Specifically, the Appellate Court concluded that, because the legislature chose to explicitly include members of some police forces with limited jurisdictional

authority in the language of the statute, its failure to specifically mention members of the university's police force was intentional.[3] See id.

The Appellate Court further reasoned that General Statutes (Rev. to 2013) § 10a-142,[4] which created the university's special police force, demonstrates that the legislature did not intend a university's special police force to be treated as a local police department but under-

[3] The plaintiff argued that the term "local police department," as used in § 53-39a, means a police force with limited geographical jurisdiction and, thus, included a university's special police force because it was confined to the geographical limits of the property owned or controlled by the university. See *Praisner* v. *State*, supra, 189 Conn. App. 549. The Appellate Court relied on the text of § 53-39a and its specific mention of "any person appointed under section 29-18 as a special policeman for the State Capitol building and grounds, the Legislative Office Building and parking garage and related structures and facilities . . . ." General Statutes (Rev. to 2013) § 53-39a; see *Praisner* v. *State*, supra, 549–50. The Appellate Court reasoned that, because the legislature chose to specifically include members of these police forces with limited jurisdictional authority in the language of the statute, its failure to specifically mention members of the university's special police forces was intentional. See *Praisner* v. *State*, supra, 549–50, citing *DeNunzi*o v. *DeNunzio*, 320 Conn. 178, 194, 128 A.3d 901 (2016); see also *DeNunzi*o v. *DeNunzio*, supra, 194 ("[u]nder the doctrine of expressio unius est exclusio alterius—the expression of one thing is the exclusion of another—we presume that when the legislature expresses items as part of a group or series, an item that was not included was deliberately excluded"). We agree. This court has frequently recognized the principle of statutory construction that, "[u]nless there is evidence to the contrary, statutory itemization indicates that the legislature intended the list to be exclusive." (Internal quotation marks omitted.) *Feehan* v. *Marcone*, 331 Conn. 436, 472, 204 A.3d 666, cert. denied, U.S. , 140 S. Ct. 144, 205 L. Ed. 2d 35 (2019). Accordingly, the fact that § 53-39a contains express reference to some police forces within the state with limited geographical authority, but does not expressly reference university police officers, indicates that the legislature did not intend to include members of the university's police force in the waiver of sovereign immunity set forth in § 53-39a.

[4] General Statutes § 10a-142 is now codified at General Statutes § 10a-156b. The plaintiff commenced this action on July 19, 2013. Therefore, the operative statute is General Statutes (Rev. to 2013) § 10a-142, as amended by No. 13-195, § 1, of the 2013 Public Acts (P.A. 13-195). Unless otherwise indicated, all references to § 10a-142 in this opinion are to that revision, as amended by P.A. 13-195, § 1.

stood it to be a separate entity with different benefits and duties. See id., 550–51. In support of this analysis, the Appellate Court noted that § 10a-142 (a) provides that a university's special police force has some, but not all, of the duties, responsibilities and authority of local police departments. Id., 551. Those limitations, the Appellate Court determined, provided further evidence that the legislature understood a university's special police force to be a separate and distinct entity from local police departments. See id., 551–52.

The Appellate Court also relied on the fact that § 10a-142 (e) contains an indemnification provision applicable only to members of a university's special police force. See id., 554. The Appellate Court reasoned that the specific indemnification provision applicable to members of a university's special police force signifies that the legislature did not intend the more general provisions of § 53-39a to apply to members of a university's special police force. See id., 554–55. Accordingly, the Appellate Court concluded that the trial court incorrectly determined that the plaintiff's claim fell within the waiver of statutory immunity in § 53-39a and, thus, reversed the trial court's judgment. Id., 543, 555–56.

Thereafter, the plaintiff filed a petition for certification to appeal, which we granted, limited to the following issue: "Did the Appellate Court [correctly] hold that a university police officer is not a member of a 'local police department' entitled to indemnification under . . . § 53-39a?" *Praisner* v. *State*, 332 Conn. 905, 208 A.3d 1239 (2019).

After reviewing the parties' briefs, the record and oral argument, we conclude that the Appellate Court's reasoning and analysis were sound, and that its conclusion was correct. Repeating its analysis regarding the interpretation of the statute, with which we fully agree, would serve no useful purpose.

Nevertheless, we address one additional issue that was not squarely addressed in the Appellate Court's

opinion, namely, whether No. 17-87 of the 2017 Public Acts (P.A. 17-87), which amended § 53-39a, is clarifying legislation.[5] Specifically, the plaintiff claims that, by eliminating the phrase "local police department" and adding the phrase "any member of a law enforcement unit," the legislature was simply clarifying its original intent that all police officers, including a university's special force, are included within the indemnification provisions in § 53-39a. See P.A. 17-87, § 3. The plaintiff asserts, therefore, that P.A. 17-87 supports his interpretation of § 53-39a and that his claim for indemnification against the state is, and has always been, covered by the waiver of sovereign immunity in § 53-39a. We reject this contention.

We begin by discussing the legal standard that we apply in determining whether the legislature intended statutory amendments to be clarifying in nature. "We

[5] Section 3 of No. 17-87 of the 2017 Public Acts provides: "Section 53-39a of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2017):

"Whenever, in any prosecution of [an officer of the Division of State Police within the Department of Emergency Services and Public Protection, or a member of the Office of State Capitol Police or] any member of a law enforcement unit, as defined in section 7-294a, any person appointed under section 29-18 as a special policeman for the State Capitol building and grounds, the Legislative Office Building and parking garage and related structures and facilities, and other areas under the supervision and control of the Joint Committee on Legislative Management, or [a local police department] any inspector in the Division of Criminal Justice for a crime allegedly committed by such [officer] member, person or inspector in the course of [his] duty, [as such,] the charge is dismissed or the [officer] member, person or inspector found not guilty, such [officer] member, person or inspector shall be indemnified by [his] such member's, person's or inspector's employing governmental unit for economic loss sustained by [him] such member, person or inspector as a result of such prosecution, including the payment of attorney's fees and costs incurred during the prosecution and the enforcement of this section. Such [officer] member, person or inspector may bring an action in the Superior Court against such employing governmental unit to enforce the provisions of this section."

We note that the additions to the statute made by the act are underlined and the deletions are in brackets.

presume that, in enacting a statute, the legislature intended a change in existing law. . . . This presumption, like any other, may be rebutted by contrary evidence of the legislative intent in the particular case. An amendment which in effect construes and clarifies a prior statute must be accepted as the legislative declaration of the meaning of the original act. . . . An amendment that is intended to clarify the original intent of an earlier statute necessarily has retroactive effect." (Citations omitted; internal quotation marks omitted.) *State* v. *State Employees' Review Board*, 239 Conn. 638, 648–49, 687 A.2d 134 (1997).

"To determine whether the legislature enacted a statutory amendment with the intent to clarify existing legislation, we look to various factors, including, but not limited to (1) the amendatory language . . . (2) the declaration of intent, if any, contained in the public act . . . (3) the legislative history . . . and (4) the circumstances surrounding the enactment of the amendment, such as, whether it was enacted in direct response to a judicial decision that the legislature deemed incorrect . . . or passed to resolve a controversy engendered by statutory ambiguity . . . . In the cases wherein this court has held that a statutory amendment had been intended to be clarifying and, therefore, should be applied retroactively, the pertinent legislative history has provided uncontroverted support . . . for the conclusion that the legislature considered the amendatory language to be a declaration of the legislature's original intent rather than a change in the existing statute." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Middlebury* v. *Dept. of Environmental Protection*, 283 Conn. 156, 174, 927 A.2d 793 (2007).

Contrary to the plaintiff's claim, a review of the language of P.A. 17-87 does not contain any indication that the legislature intended the act to clarify the existing statute. Instead, a review of the legislative history of

the act demonstrates that the legislature actually understood P.A. 17-87 to create a new right that was not previously applicable to certain classes of police officers. For instance, during a debate on the bill that became P.A. 17-87, Representative Steven Stafstrom explained that "[i]t expands the type of law enforcement officers who must be indemnified." 60 H.R. Proc., Pt. 17, 2017 Sess., p. 7101. In the Senate, Senator Paul R. Doyle introduced this bill. In doing so, and during debate on this bill, the senators did not say anything about the purpose of the legislation. There is also no purpose contained within the act itself. There is simply no indication from the language or the debates that the legislature intended the act merely to clarify the individuals who had always been subject to the indemnification in § 53-39a.

Furthermore, there also is no indication whatsoever that the legislature enacted this act in direct response to any judicial decision that the legislature deemed incorrect. We note that, when the legislature passed P.A. 17-87, the trial court had not yet rendered judgment in the present case, and the rulings of the court allowing the case to move forward to trial were favorable to the plaintiff. Similarly, there is no indication that the legislature passed this act to resolve any controversy engendered by statutory ambiguity.

To be sure, cases in which this court has concluded that an act is clarifying legislation demonstrate the type of legislative history that we have relied on as uncontroverted support that the legislature intended an act to be clarifying legislation. For example, in *Reliance Ins. Co.* v. *American Casualty Co. of Reading, Pennsylvania*, 238 Conn. 285, 679 A.2d 925 (1996), this court relied on a statement by Representative Richard D. Tulisano that, "[i]n drafting this, it was intended to be a recital. What we believe current law was and has been, there is a recent Supreme Court case that may have interpreted [the law] differently and I think it is a restatement

of what we consider [the] law to be at this point in time." (Emphasis omitted; internal quotation marks omitted.) Id., 290–91, quoting 36 H.R. Proc., Pt. 27, 1993 Sess., p. 9673. In the present case, the plaintiff does not point to, and we cannot find, any similar legislative history supporting his claim that the legislature enacted P.A. 17-87 in response to a particular judicial decision or because of statutory ambiguity.

Thus, the language of P.A. 17-87, its legislative history, and the circumstances surrounding its enactment do not provide the "uncontroverted support" required to conclude that the legislature intended P.A. 17-87 to be "a declaration of the legislature's original intent rather than a change in the existing statute." (Emphasis omitted; internal quotation marks omitted.) *Middlebury* v. *Dept. of Environmental Protection*, supra, 283 Conn. 174. Accordingly, we reject the plaintiff's claim that P.A. 17-87 demonstrates that the legislature intended his claim for indemnification against the state to be covered under § 53-39a.

In sum, having reviewed the briefs of the parties and the record on appeal, we conclude that the issue on which we granted certification was correctly resolved in the well reasoned opinion of the Appellate Court. Consistent with that conclusion, we further conclude that P.A. 17-87 was a subsequent, substantive change to the statute and, thus, not retroactively applicable to the plaintiff in this case. On the basis of the foregoing, we conclude that the Appellate Court correctly concluded that a university's special police force is not a local police department for purposes of § 53-39a.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.