STATE OF CONNECTICUT *v.* ROBERT HONSCH
(SC 20742)

Robinson, C. J., and McDonald, D'Auria, Mullins,
Ecker, Dannehy and Moll, Js.

Syllabus

Convicted of murder in connection with the disappearance and death of his daughter, E, the defendant appealed to this court. In September, 1995, E's body was discovered in New Britain. E's remains were wrapped in trash bags and sleeping bags, and, although the police were initially unable to identify E, they collected hairs from E's body, as well as a hair and palm prints from the trash bags. At about the same time the police discovered E's body, the defendant told a family member that he was leaving the country imminently to take a job and that E and the defendant's wife, M, had already departed the country. In October, 1995, M's body was found in Massachusetts, and the police were unable to identify her remains at that time. In October or November, 1995, E and M were reported missing, but authorities were unable to locate them. In 2014, law enforcement officers executed a search warrant at the defendant's home in Ohio, where he was using his new wife's last name, and collected samples of his DNA and hair, as well as his finger and palm prints. DNA tests linked the defendant to, among other things, palm prints on the trash bags used to wrap E's remains. The commonwealth of Massachusetts subsequently charged the defendant with, and he was

convicted of, M's murder. Thereafter, the state of Connecticut charged the defendant with murdering E in Connecticut. Before trial, the defendant moved to dismiss the case for lack of territorial jurisdiction because the state, which conceded that the actual location of E's murder was unknown, had failed to establish that E was murdered in Connecticut. The trial court, however, applied a permissive presumption, consistent with § 1.03 (4) of the Model Penal Code, that the death of a homicide victim occurred in the state where the body was found and, accordingly, denied the motion to dismiss. The trial court also denied the defendant's request for a jury instruction that the presence of his palm prints on the trash bags could not establish his connection with the crime unless it was demonstrated that the prints could have been impressed only at the time that the crime was perpetrated. *Held*:

1. The trial court properly denied the defendant's motion to dismiss for lack of territorial jurisdiction:

The state has territorial jurisdiction to enact criminal laws and to enforce them when the criminal conduct, or the result of the criminal conduct, occurs within its territorial limits, and, to temper the state's burden of proving territorial jurisdiction in murder cases, the common law recognizes a permissive presumption, set forth in § 1.03 (4) of the Model Penal Code, that a murder took place where the victim's body was discovered.

This court embraced that presumption as a rule of criminal procedure and concluded that the trial court properly applied the presumption in light of the robust public policy supporting it and its widespread use around the country.

Specifically, the presumption ensures that the state's interests in enforcing its criminal laws and in pursuing justice for its citizens and the victim's family are vindicated, while also providing the defendant with the opportunity to rebut the presumption with evidence establishing that the murder did not occur within the state.

Contrary to the defendant's contention that the adoption of the presumption set forth in § 1.03 of the Model Penal Code is a question reserved for the legislature and that the legislature did not adopt it when it revised this state's criminal statutes, the presumption survived the enactment of this state's Penal Code because it was a procedural rule, rather than a substantive crime or defense, that existed at common law, and nothing in the Penal Code clearly preempted it.

Moreover, the presumption did not violate the defendant's due process rights by shifting to him the burden of disproving an element of a charged offense, as the location of E's death was not an element of the crime of murder, and the presumption applied to the trial court's preliminary determination of where the murder occurred, which was separate from

the subsequent determination of whether the defendant committed the murder.

2. The evidence was sufficient to establish the defendant's identity as the person who murdered E:

The state offered an abundance of consciousness of guilt evidence from which the jury could have reasonably determined that the defendant had murdered E, as the jury could have inferred that certain fabricated statements by the defendant were designed to conceal the fact that he had murdered E, including those in which he deflected responsibility away from himself for the disappearance of E and M and claimed to have selective memory or amnesia preventing him from remembering where he was and what he was doing around the time the bodies were discovered.

Moreover, the jury could have inferred consciousness of guilt because, two months after E's murder, the defendant fled the country for almost four years, when he returned, he assumed the last name of his new wife and began a new life with a new family, and, despite claiming to have loved E, he took no action for twenty years to locate her, which could have led to a reasonable inference that he knew she was not missing because he had murdered her.

Furthermore, there was direct physical evidence that tied the defendant to E's body, insofar as the defendant admitted that he owned the sleeping bags used to wrap E's remains, his palm prints were on the trash bags, and his DNA was concordant with DNA from hairs that were discovered on E's body and one of the trash bags.

3. The trial court properly declined to provide the jury with the defendant's proposed instruction that the presence of his palm prints could not establish his connection with the crime unless it was demonstrated that they could have been impressed only at the time that the crime was perpetrated, as such an instruction was not reasonably supported by the evidence adduced at trial:

This court has held that such a jury instruction is appropriate only when the fingerprint or palm print constitutes the only or the principal evidence of connection to the crime, and, in the present case, evidence of the defendant's palm prints was not the only evidence that connected him to E's body, as there was an abundance of consciousness of guilt evidence, as well as certain other physical evidence.

(*One justice concurring in part and concurring in the judgment*)

Argued March 18—officially released July 19, 2024*

* July 19, 2024, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Procedural History

Information charging the defendant with the crime of murder, brought to the Superior Court in the judicial district of New Britain, where the court, *Baldini*, *J.*, denied the defendant's motion to dismiss; thereafter, the case was tried to the jury; verdict and judgment of guilty, from which the defendant appealed to this court. *Affirmed.*

James B. Streeto, senior assistant public defender, for the appellant (defendant).

Timothy J. Sugrue, assistant state's attorney, with whom, on the brief, were *Christian M. Watson*, state's attorney, and *Christopher A. Griffin*, former deputy assistant state's attorney, for the appellee (state).

Opinion

D'AURIA, J. In this appeal, we must consider the extent of the state's territorial jurisdiction to prosecute a defendant when the defendant disputes whether the crime occurred within Connecticut's geographical boundaries. The defendant, Robert Honsch, appeals from his conviction of murder in violation of General Statutes § 53a-54a (a). On appeal, the defendant claims that (1) the trial court incorrectly denied his pretrial motion to dismiss for lack of territorial jurisdiction because the state had failed to establish that the murder occurred in Connecticut, (2) the evidence was insufficient to establish his identity as the perpetrator of the murder, and (3) the trial court erroneously declined his request to provide the jury with an instruction on fingerprint evidence. We disagree with all three of the defendant's claims and affirm the trial court's judgment.

The jury reasonably could have found the following facts. At approximately 1 a.m. on September 28, 1995, New Britain police officers responded to the rear parking area of a strip mall in New Britain to investigate the report of a dead body. Upon arriving, the police

officers discovered the remains of a recently deceased young woman, identified two decades later as the defendant's then seventeen year old daughter, Elizabeth Honsch (victim). The victim's body was wrapped in two partially zipped sleeping bags, one pulled over her head, the other pulled over her feet. After removing the sleeping bags, the police officers observed black trash bags covering the victim's head and feet. The victim was fully clothed, warm to the touch, and wearing a watch that displayed the correct time. The police officers observed a gaping head wound above the victim's right temple and air bubbles around her mouth evincing the escape of residual air from her lungs, a condition that remains visible only within several hours after death. Bloodstains on the sleeping bags and the victim's clothes were in various stages of drying, some already coagulated and dry, others still wet.

The police officers did not find any weapons, guns, shell casings, or other physical evidence where the body was found. But they collected several hairs found on the victim's thigh, backside, and wrists, as well as one present on the trash bags, which, along with the sleeping bags, trash bags, and the victim's clothing, they retained for future scientific testing. An autopsy revealed that the victim had died as a result of a contact gunshot wound to the head, meaning that the gun's muzzle was pressed against her head when it was fired and that she died very shortly after that. From the evidence collected at the scene and further investigation into reported missing persons, the police officers were initially unable to identify the victim or the perpetrator.

The defendant had married Marcia Honsch in 1977 in New York, and their daughter, the victim, was born in 1979. The defendant, Marcia, and the victim, along with Marcia's four daughters from a prior marriage (Sheila, Angelina, Debra, and Diana), lived together in the Bronx, New York, until 1984. In 1984, the defendant,

Marcia, and the victim moved to Brewster, New York, until 1987, when the defendant and Marcia separated. For the next eight years, the defendant continued to reside in Brewster, while Marcia moved around the country with her daughters. The victim split time living with Marcia and the defendant. In 1995, Marcia and the victim moved back in with the defendant in Brewster to "try to work it out."

In September, 1995, at about the same time that the victim's body was discovered in New Britain, the defendant visited Debra alone at her home in New York, which was not something he had done before. Debra described the defendant's appearance as "unusual" because he was unshaven, "looked really stressed," did not make much eye contact, and his shirt was wrinkled and untucked, which was "totally unlike him." The defendant informed Debra that "his job had offered him an opportunity to work in another country," potentially Australia, England, or in continental Africa, and that, because "he had to make up his mind right away," he did not have time to prepare or tell anyone. He said that, of the options, he had chosen Australia and that he had sent Marcia and the victim "off without . . . saying goodbye to anyone because there was no time . . . ." Just a few months earlier during the summer of 1995, the defendant, Marcia, and the victim made surprise visits to Angelina, Debra, Diana, and Sheila at their homes. There was no indication during any of these visits that the defendant, Marcia, or the victim had planned to move out of the country imminently. To the knowledge of Diana and Debra, Marcia did not have a driver's license or a passport. In October or November of 1995, Diana and Angelina reported to the authorities in Brewster that Marcia and the victim were missing,[1] but the authorities were not able to locate them.

[1] Marcia also was killed, and her body was found in the Tolland State Forest in Massachusetts on October 6, 1995. Like the victim in the present

In 2009, Angelina's Internet searches led her to information that the defendant was living in Ohio and was married to Sheryl Tyree. After years of coordination with Sheryl, Diana finally spoke with the defendant on the phone in November, 2013. The defendant informed Diana that, when he, Marcia, and the victim traveled to Australia, Marcia "found a new man, and she left with the new man . . . and, of course, [the victim] went with her." Diana challenged the defendant, indicating to him that she knew this explanation to be a lie, and the defendant responded, "I don't know if you know, but I have amnesia." The defendant continued his conversation with Diana for approximately thirty minutes, asking about everyone else in the family, including her sisters, and had no trouble remembering their names. After receiving additional information from Diana and Angelina, law enforcement officers from New York determined that a person using the name Robert Tyree, and the defendant's Social Security number, was residing in Ohio, and that he might have information about what had happened to the victim and Marcia.

In 2014, law enforcement officers from New York, Connecticut, and Massachusetts went to the defendant's home in Ohio. The officers informed the defendant that they were investigating two missing persons, and, pursuant to an Ohio search warrant, the police collected samples of his DNA and hair, as well as fingerprints and palm prints. That day, a forensic scientist in Ohio performed a side-by-side comparison between the defendant's fingerprints and palm prints, and the prints

case, Marcia was not identified until 2014. The Commonwealth of Massachusetts charged the defendant with murder in the first degree for Marcia's homicide, a jury found him guilty, he was sentenced to life in prison without the possibility of parole, and the Supreme Judicial Court of Massachusetts recently affirmed his conviction. See *Commonwealth* v. *Honsch*, 493 Mass. 436, 437, 440, 226 N.E.3d 287 (2024). Massachusetts did not bring an indictment in connection with the victim's death in the present case, her body having been found in Connecticut. See id., 440.

recovered from the trash bags used to wrap the victim. The analysis revealed that the defendant's left palm was the source of one palm print on the trash bag covering the victim's head, and the defendant's right palm was the source of two palm prints on the trash bag covering the victim's feet. Contemporaneously, a forensic scientist in Connecticut performed a DNA analysis of the defendant's hair that showed that two hairs that were discovered on the victim, and one hair that was discovered on one of the trash bags that had been placed on the victim, were "concordant" with the defendant's DNA, meaning that the defendant or another member of the same maternal lineage could not be excluded as being the source of those hairs. Statistically, the defendant's DNA profile would be expected to appear in 3.26 percent of the Caucasian population.

On the same day, the defendant voluntarily spoke with the police both at his home and at an Ohio police station, and provided the police with a handwritten statement.[2] In his interviews and statement, the defendant generally had a clear memory of his life, including his time with Marcia and the victim, but his recollection was "hazy" about events that occurred between July and September, 1995, when Marcia and the victim were murdered. He told the police that he had fond memories of Marcia and the victim, and that he cared for them and loved them. He provided the police with the specific locations where they had lived in New York and other locations that Marcia had traveled to, and he recalled that he and Marcia were separated for a time but that they reunited in 1995. When asked what they enjoyed doing together as a family, the defendant responded that they often went camping together with tents and sleeping bags.

[2] The officers recorded the audio of both interviews and later created transcripts of both interviews, which, along with the defendant's written statement, cumulatively more than 450 pages, were introduced into evidence at trial.

To the best of the defendant's recollection, the last time he had seen or spoken to Marcia and the victim was at some point between June and September, 1995, most likely in Brewster. He could not remember how they became separated or what happened to them. He said that neither Marcia nor the victim had attempted to contact him in the past twenty years, and he did not attempt to locate, contact, or report them as missing.

He did not independently recall a job transfer to Australia, traveling to Australia himself, sending Marcia and the victim to Australia, or telling Debra that is what happened to Marcia and the victim. Rather, he told the police that, in 1995,[3] for some reason he could not recall, he left his job as a door-to-door vacuum salesman for Electrolux in Brewster to traverse the African conti nent. He said that, for four years, he "wander[ed] around" thirty countries in Africa working "odd jobs" while struggling to converse with the residents. He "vivid[ly]" recalled his time in Africa eating "pap and mealie-meal," which caused him to lose weight.

Upon his return to the United States in 1999, the defendant began a new life in a new place with a new name and a new family. In 1999, the defendant began working at a truck stop in Illinois, where he met Sheryl Tyree, whom he married in April, 2000. The defendant told the police that he had changed his last name to Tyree because he could no longer stand the last name Honsch. The defendant and Sheryl had three sons, born between 2001 and 2008. The jury reasonably could have believed, from his interview with the police, that the defendant had falsely told his new wife, Sheryl, that he had never been married, had no children or siblings, and that both of his parents were deceased.

[3] During his interviews, the defendant was unable to recall the exact date that he arrived in Africa. At trial, the parties stipulated that the defendant arrived in South Africa on November 24, 1995, two months after Marcia and the victim had been murdered.

The defendant claimed that, after his trip to Africa, he had no memory of Marcia and the victim, and was reminded of their existence only when Debra called asking about their whereabouts twenty years later, a conversation that prompted him to begin piecing together "[c]ertain early memories" of them prior to 1995. For instance, the defendant was able to recall the years, brands, makes, and colors of many cars that he owned prior to 1995 but was unable to remember how or why he lost contact with Marcia and the victim. He told the police that his memory with respect to Marcia and the victim "just stop[s]. That's where everything—we hit this dead end here, where everything just blacks out." When the officers questioned the defendant's selective memory, he responded that, although not officially diagnosed, "it's not actually amnesia, but it's a form," and he said someone in South Africa had told him that his narrow loss of memory was the result of his deteriorating health caused by his minimalist diet while he was in Africa. The defendant was unable to explain why he did not search for Marcia and the victim for twenty years, and he admitted that, if one of his current children went missing for one day, "[o]f course" he would begin searching for them.

The officers also pressed the defendant to explain his connection to the physical evidence found on the victim's body. Regarding his palm prints on the trash bags, the defendant explained that, because the trash bags were his property, it was not surprising that his prints were on them, and he detailed the precise method he used to take out trash in 1995. Specifically, the defendant said that his practice was to remove the trash bags from their box, flap them open, roll them back up again, and leave them on the kitchen counter until he used them to wrap other paper garbage bags containing trash in case of rain. When shown the photographs of the victim's body wrapped in the sleeping bags, the defen-

dant instantly recognized the sleeping bags as "[d]efinitely" belonging to his family. He said he must have slept in them one thousand times and that he kept them in a closet at their house in New York. With respect to the presence of hairs found on the victim's body that had a DNA profile concordant with his DNA profile, he explained that was not unexpected because he spent a great deal of time with her. The defendant said it was possible that someone had come into his house, killed Marcia and the victim, used his trash bags and sleeping bags to wrap the victim, and then left their dead bodies in different states.

After the defendant was charged with and convicted of murdering Marcia in Massachusetts; see footnote 1 of this opinion; the state of Connecticut charged the defendant with murdering the victim in Connecticut. A jury found the defendant guilty, and the court sentenced him to sixty years of imprisonment. The defendant appealed directly to this court pursuant to General Statutes § 51-199 (b) (3).

I

The defendant first claims that the trial court incorrectly denied his pretrial motion to dismiss for lack of territorial jurisdiction because the state had failed to establish that the victim was murdered in Connecticut. The defendant's main contention is that the trial court erred by applying a permissive presumption consistent with Model Penal Code § 1.03 (4), which provides that, if the body of a homicide victim is found within the state, the victim was presumably murdered within the state. See 1 A.L.I., Model Penal Code and Commentaries (1985) § 1.03 (4), p. 34 (Model Penal Code and Commentaries). We disagree that the trial court erroneously denied the defendant's motion to dismiss.

Prior to trial, the defendant moved to dismiss the charge against him for lack of territorial jurisdiction on

the ground that the state could not establish that the victim was murdered in Connecticut. He argued, and the state later conceded, that the location where the victim was murdered was "unknown." For this reason, the state advocated that the court apply a presumption, not yet applied in Connecticut, but applied by many courts across the country, that the murder occurred in the state where the body was found. The state contended further that this presumption, combined with evidence establishing that the victim's body was deposited in New Britain shortly after she was murdered, was sufficient to establish territorial jurisdiction.

After a two day evidentiary hearing, the court issued a memorandum of decision in which it denied the defendant's motion to dismiss. The court found that,"[a]lthough the evidence conclusively established that [the victim] died of a gunshot wound to her head, the evidence available does not establish precisely where or when she was shot. Specifically, the location where her body was found was devoid of evidence such as blood splatter, a weapon, footprints, drag marks, or shell casings; i.e., evidence that would tend to support a finding that the murder took place where her body was located." Nevertheless, the court found that the victim's body was discovered in Connecticut, which triggered a permissive presumption, applied in many other jurisdictions, that she was murdered within the state. The court held that, in addition to the presumption, there was "compelling and persuasive evidence to indicate that the victim had recently been killed" before she was discovered, including the "condition of her body (intact, warm to the touch, bubbles emanating from her mouth and nose, and blood in various stages of drying)," and that her body was found in New Britain, a city centrally located in Connecticut. The court further held that the state had met its burden despite the defendant's contrary evidence—testimony by the state's chief medical exam-

iner that rigor mortis was fully developed when he examined the victim's body several hours after she was discovered, and testimony by a detective that it was possible the victim was murdered with Marcia in the Tolland State Forest in Massachusetts.

On appeal, the defendant contests the trial court's application of the presumption to deny his motion to dismiss. He argues that adopting such a presumption is a question strictly reserved for the legislature, that the statute establishing the jurisdiction of our courts, General Statutes § 51-1a (b), does not expressly contain the presumption, and that the presumption violates his due process rights by shifting the burden to him to disprove an element of a charged offense. The state responds that this court need not apply the presumption because the circumstantial evidence introduced at the hearing sufficiently proved beyond a reasonable doubt that the victim was murdered in Connecticut and, alternatively, that this court should apply the presumption as consistent with the common law and not proscribed by our statutes.

Under the common law, a state has "territorial jurisdiction" to enact criminal laws and to enforce them when the criminal conduct takes place, or the result of the criminal conduct occurs, within its territorial limits.[4]

[4] The parties and the trial court have characterized the defendant's territorial jurisdiction challenge as involving the trial court's subject matter jurisdiction. Although "the distinction between territorial jurisdiction and subject matter jurisdiction is not always clear"; *In re Teagan K.-O.*, 335 Conn. 745, 765 n.22, 242 A.3d 59 (2020); we view the issue of criminal territorial jurisdiction as separate from the issue of subject matter jurisdiction. See, e.g., A. Spinella, Connecticut Criminal Procedure (1985) p. 19 (advocating that it is "more appropriate" that concept of territorial jurisdiction be treated as separate from "question of subject matter or [personal] jurisdiction"); see also *Romero* v. *Commonwealth*, Docket No. 0050-13-4, 2014 WL 1227696, *10 (Va. App. March 25, 2014) (holding that territorial jurisdiction is different from subject matter jurisdiction). Territorial jurisdiction concerns the geographical boundaries of the *state's authority* to enact and enforce its criminal laws, and to mete out punishment when those laws are violated. See *State* v. *Cardwell*, 246 Conn. 721, 739, 718 A.2d 954 (1998) (territorial jurisdiction "limits the state's interest in vindicating its criminal statutes to within the

See, e.g., *State* v. *Cardwell*, 246 Conn. 721, 739, 718 A.2d 954 (1998); 4 W. LaFave et al., Criminal Procedure (4th Ed. 2015) § 16.4 (c), pp. 925–26; A. Spinella, Connecticut Criminal Procedure (1985) pp. 18–19. "[I]t is well established that jurisdiction over a criminal offense is determined by the place where the crime was committed. . . . The extent of a sovereignty's jurisdiction to enforce its civil and criminal laws has long been viewed as being coterminous with its territory." (Citation omitted; internal quotation marks omitted.) *State* v. *Lee*, 229 Conn. 60, 77, 640 A.2d 553 (1994). For more than 250 years, we have recognized that the state has territorial jurisdiction to prosecute a defendant if the conduct, or the result of that conduct, occurs, at least in part, inside Connecticut.[5] In contrast, there is no territorial jurisdic-

boundaries of its territory"); 4 W. LaFave et al., Criminal Procedure (4th Ed. 2015) § 16.4 (a), pp. 906–907 (issues presented as a result of "limitations that flow from restrictions on the permissible geographical scope of penal legislation . . . are often roughly analogous to those considered in determining venue" (footnotes omitted)). On the other hand, subject matter jurisdiction concerns the *court's authority* to adjudicate the type of controversy presented in the action before it. See *State* v. *McCleese*, 333 Conn. 378, 386, 215 A.3d 1154 (2019). Subject matter jurisdiction "may not be waived by any party, and also may be raised by a party, or by the court sua sponte, at any stage of the proceedings, including on appeal." (Internal quotation marks omitted.) *State* v. *Delgado*, 323 Conn. 801, 810, 151 A.3d 345 (2016).

The state's alleged failure to prove territorial jurisdiction—i.e., that it has the legal authority to police the criminal conduct at issue—is an issue distinct from the court's authority to adjudicate the case. "The Superior Court hearing a criminal matter acquires subject matter jurisdiction from its authority as a constitutional court of unlimited jurisdiction." (Internal quotation marks omitted.) *State* v. *Carey*, 222 Conn. 299, 305, 610 A.2d 1147 (1992). Our research has not revealed any Connecticut case in which the court's analysis of territorial jurisdiction has involved any of the unique characteristics attributable to subject matter jurisdiction. Specifically, we are not aware of a decision in which a Connecticut court has held that territorial jurisdiction may be raised by any party or by the court at any time, including after the case has ended, or that it may not be waived and, by implication, that the state must prove that territorial jurisdiction exists in every case, even when it is undisputed.

[5] See, e.g., *State* v. *Ross*, 230 Conn. 183, 192, 195, 646 A.2d 1318 (1994) (territorial jurisdiction existed to prosecute defendant for capital felony charges when victims were kidnapped in Connecticut but murdered in Rhode

tion if *both* the criminal conduct and its results occur outside the state's territory. See *State* v. *Volpe*, 113 Conn. 288, 294, 155 A. 223 (1931) ("[i]t is a general rule of universal acceptation that one [s]tate or sovereignty cannot enforce the penal laws of another, nor punish offenses committed in and against another [s]tate or sovereignty"); see also *State* v. *Cardwell*, supra, 732, 741 (no territorial jurisdiction to prosecute defendant for ticket scalping because he did not sell tickets to Connecticut events in Connecticut).

In Connecticut, whether territorial jurisdiction exists to prosecute a defendant for the crime of murder is an issue for the court to decide. In *State* v. *Beverly*, 224 Conn. 372, 618 A.2d 1335 (1993), the defendant claimed "that the jury, not the trial court, should have made the decision concerning the sufficiency of the facts proven to establish territorial jurisdiction in Connecticut." Id., 378. We rejected this claim, holding that the trial court is required to " 'submit to the jury all controverted questions of fact relating to an element making up [the] crime,' " but "that the location of the site of the victim's death is not an element of the crime of murder." Id., 378–79; see also *State* v. *Weinberg*, 215 Conn. 231, 232, 251–52, 575 A.2d 1003 (location of death is not essential element of murder), cert. denied, 498 U.S. 967, 111 S. Ct. 430, 112 L. Ed. 2d 413 (1990). Consequently, we concluded that, "[a]lthough some authorities have held

Island and their bodies were returned to Connecticut), cert. denied, 513 U.S. 1165, 115 S. Ct. 1133, 130 L. Ed. 2d 1095 (1995); *State* v. *Beverly*, 224 Conn. 372, 373, 375–78, 618 A.2d 1335 (1993) (territorial jurisdiction existed to prosecute defendant for murder of Massachusetts victim found dead in Connecticut); *State* v. *Pambianchi*, 139 Conn. 543, 546–47, 95 A.2d 695 (1953) (territorial jurisdiction existed to prosecute defendant for stolen automobile received in New York and subsequently taken to Connecticut); *State* v. *Ellis*, 3 Conn. 185, 186 (1819) (territorial jurisdiction existed to prosecute defendant for horse stolen in Rhode Island and taken to Connecticut); *Rex* v. *Peas*, 1 Root 69, 69 (1774) (territorial jurisdiction existed to prosecute defendant for horse stolen in New York and taken to Connecticut).

otherwise . . . we agree with the decisions holding that the question of where a murder occurred generally is not an element of the offense, but is merely an issue of territorial jurisdiction to be decided by the court. . . . A defendant's constitutional right to a jury does not extend beyond the factual issues that are relevant to the ultimate question of guilt or innocence under the relevant statute." (Citations omitted.) *State* v. *Beverly*, supra, 379.[6]

It is well established that the state bears the burden of proving territorial jurisdiction.[7] See *State* v. *Ross*, 230

[6] We acknowledge that "a substantial majority" of states treat the determination of whether territorial jurisdiction exists as, "in part, a jury issue. The court decides as a matter of law whether a particular act or consequence occurring within the boundaries of the state is sufficient to [confer] jurisdiction, and the jury then decides the factual question of whether those acts or consequence which would be sufficient actually occurred in the state." (Footnotes omitted.) 4 W. LaFave et al., supra, § 16.4 (d), pp. 935–36. The defendant, however, does not contend that the jury should have decided territorial jurisdiction, and he does not ask that we overrule *Beverly*.

[7] We once again leave unresolved the question of the quantum of evidence by which the state must prove territorial jurisdiction. In *State* v. *Ross*, supra, 230 Conn. 195, we stated that "the Superior Court has no territorial jurisdiction to adjudicate a charge of murder unless the state proves, beyond a reasonable doubt, that the victim was murdered in Connecticut," but this statement was dictum. The state's burden of proof was not at issue in *Ross*, and the authorities we cited in support of this statement—§ 51-1a (b), *State* v. *Beverly*, supra, 224 Conn. 375–76, and *State* v. *Volpe*, supra, 113 Conn. 294—did not affirmatively resolve that question. Indeed, in *Beverly*, we stated that "[t]he state does not agree with the trial court that the necessary quantum of proof was 'beyond a reasonable doubt.' It contends that its burden was to prove territorial jurisdiction only by a preponderance of the evidence. Because the trial court applied the higher standard in this case, it is not necessary that we reach this issue." *State* v. *Beverly*, supra, 376 n.5.

In the trial court in the present case, the state again took the position that the correct standard of proof should be a preponderance of the evidence, but it does not on appeal renew that argument or otherwise contend that the burden of proof should be less than beyond a reasonable doubt. Nor does the defendant argue that, *with the benefit of the presumption*, the trial court's finding of territorial jurisdiction beyond a reasonable doubt was improper. Rather, the defendant limits his challenge to whether the trial court properly applied a presumption when determining territorial jurisdiction. Therefore, as in *Beverly*, we uphold the trial court's decision applying the higher standard—beyond a reasonable doubt—and have no occasion to decide whether, with the benefit of the presumption, the state should none-

Conn. 183, 195, 646 A.2d 1318 (1994), cert. denied, 513 U.S. 1165, 115 S. Ct. 1133, 130 L. Ed. 2d 1095 (1995); *State* v. *Beverly*, supra, 224 Conn. 375. It is not disputed in the present case that the criminal conduct and the result of that conduct occurred in the same location because the victim died very shortly after sustaining a contact gunshot wound to the head. Therefore, to establish territorial jurisdiction to prosecute the defendant for murder, the state had to prove that the victim had been shot within Connecticut's territorial boundaries.

To temper the state's burden of proving territorial jurisdiction in murder cases, the common law recognizes a permissive presumption, or a permissible inference, that the murder took place where the body was discovered. See, e.g., *People* v. *Kamaunu*, 110 Cal. 609, 613, 42 P. 1090 (1895); *Breeding* v. *State*, 220 Md. 193, 200, 151 A.2d 743 (1959); *Commonwealth* v. *Knowlton*, 265 Mass. 382, 388, 163 N.E. 251 (1928); *State* v. *Fabian*, 263 So. 2d 773, 775 (Miss. 1972); *State* v. *McDowney*, 49 N.J. 471, 475, 231 A.2d 359 (1967); *State* v. *Williams*, 321 S.C. 327, 334, 468 S.E.2d 626, cert. denied, 519 U.S. 891, 117 S. Ct. 230, 136 L. Ed. 2d 161 (1996); *Reynolds* v. *State*, 199 Tenn. 349, 350, 287 S.W.2d 15 (1956). This common-law permissive presumption, recognized by courts for many years, eventually was engrafted in Model Penal Code § 1.03 (4), published in 1962, which provides in relevant part that, "if the body of a homicide victim is found within the [s]tate, it is presumed that such result occurred within the [s]tate." Model Penal Code and Commentaries, supra, § 1.03 (4), p. 34. This presumption is permissive because it "permits such a finding upon proof of the location of the body," and, "[i]f the defendant wishes to defeat jurisdiction, he generally must make some showing as to where the death or

theless be able to satisfy its burden by proving territorial jurisdiction under a lower standard.

injury took place. That showing may, in turn, lay the predicate for a proceeding in the proper jurisdiction." Id., § 1.03, comment 8, p. 64; see also 4 W. LaFave et al., supra, § 16.4 (d), pp. 938–39 (describing Model Penal Code § 1.03 (4) as "establishing a permissible presumption").

No Connecticut court has yet had occasion to apply this presumption.[8] We embrace the presumption and conclude that the trial court properly applied it here because of the robust public policy supporting it and its widespread use across the country.

To conceal a murder, a criminal defendant may transport the body of the victim from the scene of the murder to a different location, sometimes across state borders. See, e.g., *State* v. *Ross*, supra, 230 Conn. 192, 195 (defendant murdered victims in Rhode Island and returned their bodies to Connecticut); *State* v. *Gojcaj*, 151 Conn. App. 183, 192–93, 92 A.3d 1056 (defendant murdered victim in Connecticut and later left victim's body in New York), cert. denied, 314 Conn. 924, 100 A.3d 854 (2014). Because a murder victim is unable to provide an account of the offense, the defendant's actions to coverup a murder may create inherent and even insurmountable difficulties for the state to prove the location where the murder occurred. The presumption "endeavors to prevent abortion of the prosecution in cases where the body of the victim is found within the state but it is unclear where the death, injury, or conduct occurred. It may be provable, for example, that the body was thrown from a car driven by the defendant at a place near the state line and that the defendant owned the lethal weapon. That alone might make a

[8] The defendant also argues that we "twice rejected requests for judicial adoption of such a presumption" in *State* v. *Ross*, supra, 230 Conn. 198, and in *State* v. *Stevens*, 224 Conn. 730, 620 A.2d 789 (1993). The defendant is not correct because, although *Ross* and *Stevens* involved the question of territorial jurisdiction, in neither case were we asked to adopt a presumption similar to that of Model Penal Code § 1.03 (4).

circumstantial case of murder, without establishing a locus for jurisdiction." (Footnote omitted.) Model Penal Code and Commentaries, supra, § 1.03, comment 8, pp. 63–64.

In the absence of this presumption, a murderer may succeed in avoiding prosecution simply by moving the body of the victim. This outcome is unjustifiable. We repeatedly have recognized that, when "the fact that the place of death is unknown or that there may be a variance in the proof thereof . . . [n]o person should escape punishment for murder because he is so clever as to conceal . . . the place where the victim was killed or died." (Internal quotation marks omitted.) *State* v. *Weinberg*, supra, 215 Conn. 252; *State* v. *Morrill*, 197 Conn. 507, 552, 498 A.2d 76 (1985). We also recognize the conundrum, applicable in some situations, that, "[i]f . . . the defendant cannot be effectively prosecuted in Connecticut, she cannot be prosecuted at all." *State* v. *Stevens*, 224 Conn. 730, 738, 620 A.2d 789 (1993). The presumption ensures that the state's interests in enforcing its criminal laws and in pursuing justice for its citizens and the victim's family are vindicated, while also providing the defendant with the opportunity to rebut the presumption with evidence establishing that the murder did not occur within the state. See Model Penal Code and Commentaries, supra, § 1.03, comment 8, p. 64.

A majority of the states apply this presumption. The legislative bodies of at least twenty states have codified some form of a presumption or inference in favor of territorial jurisdiction that is congruent with Model Penal Code § 1.03 (4).[9] Seven other states have applied

[9] See, e.g., Ariz. Rev. Stat. Ann. § 13-108 (B) (2020) ("[i]f the body of a homicide victim is found in this state it is presumed that the result occurred in this state"); Colo. Rev. Stat. § 18-1-201 (2) (2023) ("if the body of a criminal homicide victim is found within the state, the death is presumed to have occurred within the state"); Del. Code Ann. tit. 11, § 204 (c) (2007) ("if the body of a homicide victim is found within this State it is presumed that the result occurred within the State"); Fla. Stat. Ann. § 910.005 (2) (West 2014)

("if the body of a homicide victim is found within the state, the death is presumed to have occurred within the state"); Ga. Code Ann. § 17-2-1 (c) (2013) ("if the body of a homicide victim is found within this state, the death is presumed to have occurred within the state"); Haw. Rev. Stat. § 701-106 (4) (2014) ("[i]f the body of a homicide victim is found within the State, it is prima facie evidence that the result occurred within the State"); 720 Ill. Comp. Stat. Ann. 5/1-5 (b) (West 2016) ("if the body of a homicide victim is found within the State, the death is presumed to have occurred within the State"); Ind. Code Ann. § 35-41-1-1 (c) (LexisNexis 2020) ("[i]f the body of a homicide victim is found in Indiana, it is presumed that the result occurred in Indiana"); Iowa Code § 803.1 (2) (2001) ("[i]f the body of a murder victim is found within the state, the death is presumed to have occurred within the state"); Kan. Stat. Ann. § 21-5106 (c) (2023) ("[i]f the body of a homicide victim is found within the state, a person who is charged with committing the homicide is subject to prosecution and punishment under the laws of this state for commission of the homicide"); Ky. Rev. Stat. Ann. § 500.060 (3) (LexisNexis 2014) ("[i]f the body of a homicide victim is found within this state, it shall be prima facie evidence that the result occurred within the state"); Me. Rev. Stat. Ann. tit. 17-A, § 7 (3) (Cum. Supp. 2024) ("[p]roof that the body of a homicide victim is found within this State gives rise to a permissible inference under the Maine Rules of Evidence, rule 303 that such death or impact occurred within the State"); Mo. Rev. Stat. § 541.191.2 (West 2002) ("[i]f the body of a homicide victim is found in this state, it is presumed that the result occurred in this state"); Mont. Code Ann. § 46-2-101 (2) (2023) ("[i]f the body of a homicide victim is found within the state, the death is presumed to have occurred within the state"); N.H. Rev. Stat. Ann. § 625:4 (III) (2016) ("if the body of a homicide victim is found within this state, it is presumed that such result occurred within the state"); N.J. Stat. Ann. § 2C:1-3 (d) (West 2015) ("if the body of a homicide victim is found within the State, it may be inferred that such result occurred within the State"); N.Y. Crim. Proc. Law § 20.20 (2) (a) (McKinney 2018) ("[i]f the offense was one of homicide, it is presumed that the result, namely the death of the victim, occurred within this state if the victim's body or a part thereof was found herein"); Ohio Rev. Code Ann. § 2901.11 (B) (West 2020) ("[i]f any part of the body of a homicide victim is found in this state, the death is presumed to have occurred within this state"); Or. Rev. Stat. § 131.235 (2) (2023) ("[i]f the body, or a part thereof, of a criminal homicide victim is found within this state, it shall be prima facie evidence that the result occurred within this state"); 18 Pa. Cons. Stat. Ann. § 102 (c) (West 2015) ("if the body of a homicide victim, including an unborn child, is found within this Commonwealth, it is presumed that such result occurred within this Commonwealth"); Tex. Penal Code Ann. § 1.04 (b) (West 2021) ("If the body of a criminal homicide victim is found in this state, it is presumed that the death occurred in this state. If death alone is the basis for jurisdiction, it is a defense to the exercise of jurisdiction by this state that the conduct that constitutes the offense is not made criminal in the jurisdiction where the conduct occurred."); Utah Code Ann. § 76-1-201 (3) (a) (LexisNexis 2012) ("[i]f the body of a homicide victim is found within the state, the death shall be presumed to have occurred within the state").

the presumption as a matter of their common law.[10] To our knowledge, the presumption has not been squarely rejected in any jurisdiction that has considered it.

That twenty state legislatures have codified the presumption statutorily does not persuade us, as the defendant argues, that the adoption of the presumption is a question strictly reserved for the legislature. At the outset, we observe that, contrary to the defendant's argument, the legislature has not yet considered whether to adopt the presumption contained in Model Penal Code § 1.03 (4). In 1963, the legislature established the Commission to Revise the Criminal Statutes (commission) "to revise and codify the criminal statutes of the state," in light of the then recently drafted Model Penal Code and the New York Penal Law, and to "report its findings and specific recommendations for substantive and clarifying changes in said statutes to the [G]eneral [A]ssembly" by February 1, 1965. 31 Spec. Acts 348, No. 351, § 1 (1963); see also 32 Spec. Acts 323–24, No. 315, § 1 (1965) (extending to February 1, 1967, deadline for commission to report findings and recommendations to General Assembly). In its initial report to the General Assembly, the commission, comprised of law professors, state legislators, and attorneys, limited its recommendations to the "substantive criminal statutes, [and] not . . . problems of criminal procedure." Report of the Commission to Revise the Criminal Statutes, as Provided by Special Act No. 351 of the 1963 Session of the General Assembly, p. 1. In its 1967 report, the

[10] See, e.g., *People* v. *Kamaunu*, supra, 110 Cal. 613; *Commonwealth* v. *Knowlton*, supra, 265 Mass. 388; *State* v. *Fabian*, supra, 263 So. 2d 775; *State* v. *McDowney*, supra, 49 N.J. 475; *State* v. *Williams*, supra, 321 S.C. 334; *Reynolds* v. *State*, supra, 199 Tenn. 350. Compare *Breeding* v. *State*, supra, 220 Md. 200 ("the finding of a dead body in a particular county raises a presumption, or supports an inference, that the killing took place there"), with *Pennington* v. *State*, 308 Md. 727, 729 n.2, 521 A.2d 1216 (1987) ("[a]t one time, adoption of a similar provision apparently was considered but rejected in Maryland").

commission did not include Model Penal Code § 1.03, or any similar version of that section, in the draft penal code that it submitted to the General Assembly. See Report of the Commission to Revise the Criminal Statutes (1967) pp. 3, 5–37. Although the commission considered Model Penal Code § 1.03 and the parallel provision in the New York Penal Law, it explained that it did not recommend adoption of this section because it was a procedural rule rather than a substantive crime or defense, and, as with New York law, such procedural questions presumably were left to existing law and the courts. See id., p. 43 (recommending against adoption of proposed New York Penal Law provisions limiting applicability of Penal Code because such provisions, "while perhaps helpful, [are] not necessary for our purposes since it is obvious that the procedural rules are not being affected"); see also *Valeriano* v. *Bronson*, 209 Conn. 75, 92, 546 A.2d 1380 (1988) ("adoption of the comprehensive [P]enal [C]ode in 1969 . . . set out *substantive* crimes and defenses" (emphasis added)). Consequently, the legislature's consideration of the commission's report, in connection with the overhaul of our substantive criminal code in 1969, did not include any legislative discussion as to whether to adopt Model Penal Code § 1.03, or any similar version of that section, because the commission did not recommend the adoption of that section. See *State* v. *Ross*, supra, 230 Conn. 197 (although commission "apparently noted and discussed an earlier version of the Model Penal Code incorporating the same expanded view of jurisdiction . . . that discussion did not result in any textual articulation of legislative intent" (citation omitted)). It is inaccurate, therefore, to conclude that the legislature has rejected the presumption contained in Model Penal Code § 1.03 (4). We are not aware of, and the parties have not directed our attention to, any legislative efforts in Connecticut since 1969 to adopt Model Penal Code § 1.03

(4) or any similar presumption in favor of criminal territorial jurisdiction.

Notwithstanding that many states have codified this presumption by enacting a form of § 1.03 (4) of the Model Penal Code; see footnote 9 of this opinion; although the legislature has not taken up the question, legislation is not the exclusive way for a jurisdiction to recognize the presumption. As we have stated, the permissive presumption that a murder occurred where a body is found was a recognized common-law principle that existed prior to the promulgation of the Model Penal Code in 1962 and its subsequent adoption in many states. See, e.g., *People* v. *Kamaunu*, supra, 110 Cal. 613; *Breeding* v. *State*, supra, 220 Md. 200; *Commonwealth* v. *Knowlton*, supra, 265 Mass. 388; *Reynolds* v. *State*, supra, 199 Tenn. 350; see also Conn. Code Evid. § 3-1 (presumptions are governed by principles of common law except as otherwise required by federal and Connecticut constitutions or any rule of practice adopted before June 18, 2014).

Additionally, it is true that the state constitution assigns to the legislature the power to enact laws defining crimes and fixing the degree and method of punishment; see, e.g., *State* v. *Courchesne*, 296 Conn. 622, 711, 998 A.2d 1 (2010); and "the comprehensive Penal Code in 1969 abrogated the common-law authority of Connecticut courts to impose criminal liability for conduct not proscribed by the legislature." (Internal quotation marks omitted.) *State* v. *Leniart*, 333 Conn. 88, 109, 215 A.3d 1104 (2019). The issue of territorial jurisdiction, however, is a rule of procedure unrelated to the substantive elements of the crime. See *State* v. *Beverly*, supra, 224 Conn. 378–79; Report of the Commission to Revise the Criminal Statutes (1967) pp. 42–43.

Even if the issue of territorial jurisdiction were considered a principle of substantive criminal liability, as

opposed to an issue of criminal procedure, "the savings clause to the Penal Code, [General Statutes § 53a-4] provides, and our cases recognize, that the common law is preserved under the code unless clearly preempted; the code does not bar our courts from recognizing other principles of criminal liability or other defenses not inconsistent with statute." (Internal quotation marks omitted.) *State* v. *Leniart*, supra, 333 Conn. 109; see also *Ullmann* v. *State*, 230 Conn. 698, 705, 647 A.2d 324 (1994) ("[a]bsent clear intent to do so, a statute should not be construed as altering the common law rule . . . and should not be construed as making any innovation upon the common law which the statute does not fairly express" (internal quotation marks omitted)). Thus, the presumption survived the enactment of the Penal Code because it existed at common law and nothing in the Penal Code clearly preempted it. This is true even though not until the present case has a Connecticut court recognized the presumption we recognize today as part of our common law. See, e.g., *State* v. *Courchesne*, supra, 296 Conn. 674–82 and nn.36 and 39 (rejecting contention that "doctrine or principle does not represent the common law of this state until it has been expressly recognized and applied by one or more courts of the state," and adopting common-law born alive rule recognized in other states because "reasons for recognizing the rule are compelling and because there is no persuasive reason for not doing so"); *Carl J. Herzog Foundation, Inc.* v. *University of Bridgeport*, 243 Conn. 1, 5–6, 699 A.2d 995 (1997) (considering whether legislature abrogated common-law rule as recognized by other jurisdictions); see also *In re Zakai F.*, 336 Conn. 272, 288, 255 A.3d 767 (2020) (surveying common law of Connecticut and other states in adopting presumption that was not clearly provided for in statutory language).

In the past, when faced with an absence of legislation governing an issue presented to us, we have found it

prudent to adopt other procedural provisions of the Model Penal Code. See, e.g., *State* v. *Crawford*, 202 Conn. 443, 450–51, 521 A.2d 1034 (1987) (adopting Model Penal Code § 1.06 (5) concerning tolling of statute of limitations). We also have gone further, as expressly permitted by the statutory savings clause, and recognized principles of criminal liability and defenses in the absence of applicable language in our Penal Code. See, e.g., *State* v. *Terwilliger*, 314 Conn. 618, 654, 104 A.3d 638 (2014) (self-defense); *State* v. *Courchesne*, supra, 296 Conn. 622, 679–88 and n.44 (born alive principle); *State* v. *Walton*, 227 Conn. 32, 45, 630 A.2d 990 (1993) (vicarious liability of conspirator). We are once again compelled to recognize in our law a rule of criminal procedure that ensures that justice is done.

Nor are we persuaded that the absence of the presumption in the language of § 51-1a should impact our analysis. That statute, entitled "Composition of Judicial Department," provides in relevant part: "(b) [t]he territorial jurisdiction of the Supreme Court, the Appellate Court, and the Superior Court shall be coextensive with the boundaries of the state . . . ." General Statutes § 51-1a (b). The defendant asserts that, because this statute, concerning the jurisdiction of the courts, is silent as to whether a permissive presumption exists in a murder case when the body is found in this state, the legislature necessarily rejected this common-law rule. Although the phrase "territorial jurisdiction" is present in the language, the statute plainly defines the geographical reach of the courts of this state to resolve all types of disputes (civil, criminal, and otherwise), not the boundaries of the state's power to enact and vindicate its criminal laws. See footnote 4 of this opinion. Even if we assume, without deciding, that § 51-1a could be read to restrict the state's criminal territorial jurisdiction, we cannot construe it in the present case to prohibit the common law's permissive presumption

that the murder occurred where the body is found because there is no clear indication that the legislature intended to foreclose the presumption. See *State* v. *Courchesne*, supra, 296 Conn. 711. Thus, the fact that our statutes are silent on the recognition of the presumption cuts *against* the defendant's assertion.

Finally, we reject the defendant's contention that the presumption violates his due process rights by shifting the burden to him to disprove an element of a charged offense. As we have recognized, the location of the victim's death is not an element of the crime of murder; see *State* v. *Beverly*, supra, 224 Conn. 378–79; *State* v. *Weinberg*, supra, 215 Conn. 232, 251; and, therefore, the presumption in no way relieves the state of the burden to prove any essential element to the satisfaction of the trier of fact. Compare *State* v. *Francis*, 246 Conn. 339, 354, 717 A.2d 696 (1998) ("'[m]andatory presumptions . . . violate the [d]ue [p]rocess [c]lause if they relieve the [s]tate of the burden of persuasion on an element of an offense' "), with *State* v. *Palmer*, 206 Conn. 40, 47–48, 536 A.2d 936 (1988) (describing permissive presumption as suggesting or allowing—but not requiring—possible conclusion to be drawn if state proves predicate facts), and *State* v. *Diaz*, 237 Conn. 518, 545–46, 679 A.2d 902 (1996) (same). The presumption applies to the court's preliminary determination of *where* the murder occurred, an issue entirely separate from the subsequent determination of whether the defendant committed the murder. The permissive presumption, which places no burden of proof on the defendant, allows but does not require the court to find territorial jurisdiction if the state proves that the victim's body was located in Connecticut. The defendant has not provided us with a case from any of the almost thirty states that have applied the presumption, holding that it is unconstitutional, even in the jurisdictions that submit the question of territorial jurisdiction to the jury as an

element of the offense. See, e.g., *State* v. *Trusty*, 326 S.W.3d 582, 599–601 (Tenn. Crim. App. 2010) (rejecting claim that jury instruction permitting inference in favor of territorial jurisdiction violated defendant's due process rights), appeal denied, Tennessee Supreme Court, Docket No. M2008-02653-SC-R11-CD (September 27, 2010); see also *State* v. *Liggins*, 524 N.W. 2d 181, 185 (Iowa 1994) (same).

We recognize that the permissive presumption may impose a burden of production on defendants to present rebutting evidence to establish that the murder did not occur in Connecticut, but we are not persuaded that any difficulty they might encounter in meeting this burden is sufficient to overcome the important policy reasons supporting the permissive presumption. Criminal defendants face countervailing presumptions in all types of cases. See, e.g., General Statutes § 53a-32 (e) (rebuttable presumption that "serious firearm offender poses a danger to the safety of other persons"); General Statutes § 53a-119 (15) (rebuttable presumption that "person to whom the service is billed has the intent to obtain the service and to avoid making payment for the service" in certain circumstances); General Statutes § 53a-127c (a) (rebuttable presumption that "person is engaged in the business for profit or economic gain of offering for sale a decoder, descrambler or other device, equipment or component" in certain circumstances); General Statutes § 53a-128 (b) (issuer of check is "presumed to know that the check or order, other than a postdated check or order" would not be paid in certain circumstances); General Statutes § 53a-282 (imposing four separate presumptions in money laundering cases). Moreover, it is feasible for a defendant to submit evidence to rebut the presumption in favor of territorial jurisdiction. As the defendant sought to do in the present case, an accused may attempt to present noninculpatory evidence that the murder occurred in a different state,

such as the extent of the victim's rigor mortis in conjunction with the time it would take to travel from a different state, or that the victim was murdered with a close family member outside of this state's borders.[11] Even if the burden of production would require the defendant to consider proffering less than exculpatory evidence—an undertaking the defendant might choose strategically to avoid—the defendant has advanced no authority for the proposition that such a burden of production violates due process.

In sum, we disagree with the defendant that the trial court improperly applied the presumption in favor of territorial jurisdiction. We agree with the trial court that the presumption, coupled with evidence establishing that the victim's body was recently deposited in New Britain, was sufficient to establish territorial jurisdiction.

II

The defendant next claims that the evidence was insufficient to establish his identity as the person who murdered the victim. He concedes that the evidence was sufficient to establish that the victim was killed intentionally, but he argues that the state's circumstantial evidence—"consciousness of guilt and fingerprint evidence on the garbage bags, a common household

[11] The presumption in favor of territorial jurisdiction is not conclusive because there is a possibility that the defendant can overcome it. Although it may prove difficult for a defendant to muster evidence to defeat territorial jurisdiction and to seek prosecution in another state, it is not as impossible as it may seem. See, e.g., *People* v. *Holt*, 91 Ill. 2d 480, 492, 440 N.E.2d 102 (1982) (reversing murder conviction for lack of territorial jurisdiction because defendant's own statements, which were "only evidence of exactly what happened," showed that events occurred in another state). With advances in technology and science, it is not difficult to imagine fact patterns—even if rare—involving forensics (where the victim's death cannot be explained as occurring in Connecticut) or a video recording of a homicide (where the perpetrator cannot be identified) that would rebut any permissive presumption that the victim was killed in Connecticut, proving that any presumption is not at all conclusive.

item"—was insufficient to prove that the defendant had committed the murder.[12] We are not persuaded.

"[T]he question of identity of a perpetrator of a crime is a question of fact that is within the sole province of the jury to resolve. . . . To determine whether the evidence was sufficient to establish the essential element of identity, we apply a two part test. First, we construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom, the [jury] reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt . . . . In doing so, we are mindful that the trier of fact is not required to accept as dispositive those inferences that are consistent with the defendant's innocence. . . . The trier [of fact] may draw whatever inferences from the evidence or facts established by the evidence it deems to be reasonable and logical." (Internal quotation marks omitted.) *State* v. *Patrick M.*, 344 Conn. 565, 574–75, 280 A.3d 461 (2022).

"[W]e must focus on the evidence presented, not the evidence that the state failed to present . . . . [W]e do not draw a distinction between direct and circumstantial evidence so far as probative force is concerned . . . . Indeed, [c]ircumstantial evidence . . . may be more certain, satisfying and persuasive than direct evidence. . . . It is not one fact . . . but the cumulative impact of a multitude of facts [that] establishes guilt in a case involving substantial circumstantial evidence." (Citations omitted; internal quotation marks omitted.)

[12] We also reject the defendant's argument that the state failed to present evidence of his motive to murder the victim. The state is not required to prove motive, as "[i]t is axiomatic that motive is not an element of the crime of murder . . . ." (Citation omitted.) *State* v. *Ortiz*, 343 Conn. 566, 603, 275 A.3d 578 (2022); see also *State* v. *Pinnock*, 220 Conn. 765, 793, 601 A.2d 521 (1992).

State v. *Abraham*, 343 Conn. 470, 477, 274 A.3d 849 (2022).

We conclude that the evidence the state offered was more than sufficient to establish the defendant's identity as the person who murdered the victim. Primarily, the state presented an abundance of consciousness of guilt evidence, consisting of the defendant's own statements and his actions following the murder, from which the jury could have reasonably concluded that the defendant murdered the victim. "[T]he state of mind that is characterized as 'guilty consciousness' or 'consciousness of guilt' is strong evidence that a defendant is indeed guilty." *State* v. *Moody*, 214 Conn. 616, 626, 573 A.2d 716 (1990); see also *State* v. *Rodriguez*, 337 Conn. 175, 201, 252 A.3d 811 (2020) ("'a jury may infer guilt based on consciousness of guilt evidence in conjunction with other evidence' "); *State* v. *McClain*, 324 Conn. 802, 819, 155 A.3d 209 (2017) (consciousness of guilt is "indirect evidence of the defendant's guilt").

Jurors reasonably could have concluded that several of the defendant's statements constituted inconsistent or partial truths manifesting his participation in the crime or evidencing his consciousness of guilt. See *State* v. *Moody*, supra, 214 Conn. 626 (consciousness of guilt evidence may include " 'misstatements of an accused, which a jury could reasonably conclude were made in an attempt to avoid detection of a crime or responsibility for a crime or were influenced by the commission of the criminal act' "). For example, the state presented evidence of the defendant's statements to Marcia's and his own family members that the jury could have found to be lies told to deflect responsibility away from himself for the disappearance of Marcia and the victim. Specifically, he told Debra in 1995 that he took a new job in Australia and sent the victim there ahead of him; he told Diana in 2013 that Marcia ran off with a new man in Australia and that the victim followed her; and

he told Sheryl that he had never been married, had no children or siblings and that both of his parents were deceased. Further, the state presented evidence that the defendant had told the police that, unlike other parts of his life that he could recall, he had no recollection of the fall of 1995 when the victim was murdered and that his selective memory was, as he was told, a result of his malnourishment caused amnesia that he had sustained in Africa. The jury could have reasonably disbelieved this fanciful explanation to the police for his inability to explain where he was and what he was doing at about the time the police discovered the bodies of his wife in Massachusetts and his daughter, the victim in the present case, in New Britain. See, e.g., *State* v. *Diaz*, 348 Conn. 750, 767, 311 A.3d 714 (2024) (lying to police can indicate consciousness of guilt). The jury could have inferred that these fabricated statements were designed to conceal the fact that the defendant had murdered the victim.

The jury also could have inferred the defendant's consciousness of guilt because he had fled to Africa two months after the victim was murdered and her body was discovered. See, e.g., *State* v. *Patrick M.*, supra, 344 Conn. 577 (" '[F]light, when unexplained, tends to prove a consciousness of guilt. . . . The flight of the person accused of a crime is a circumstance [that], when considered together with all the facts of the case, may justify an inference of the accused's guilt.' "). The defendant offered no reason why, just after their disappearance and the discovery of their bodies, he suddenly left his wife and child (Marcia and the victim), whom he claimed to care for very deeply, as well as his home and job, to "[wander] around" Africa for almost four years. In the absence of an explanation, it was permissible for the jury to infer that the defendant's flight showed a consciousness of guilt caused by his murder of the victim. Although the defendant

contends that the evidence of flight was insignificant because he waited two months to fly to Africa, it was the responsibility of the jury to weigh the significance of that evidence. See, e.g., *State* v. *Kelly*, 256 Conn. 23, 57, 770 A.2d 908 (2001) ("it is the province of the jury to sort through any ambiguity in the evidence in order to determine whether the defendant's flight warrants the inference that he possessed a guilty conscience").

When he returned from Africa, the defendant shed his last name and took the last name of his new wife, Sheryl, which also could constitute evidence of consciousness of guilt. See, e.g., *State* v. *Sivri*, 231 Conn. 115, 130, 646 A.2d 169 (1994) (consciousness of guilt can be proven by "use of aliases upon [defendant's] return to the United States"); *State* v. *Avis*, 209 Conn. 290, 310, 551 A.2d 26 (1988) (evidence that defendant used "number of aliases . . . supported the inference that he was conscious of his guilt"), cert. denied, 489 U.S. 1097, 109 S. Ct. 1570, 103 L. Ed. 2d 937 (1989). Although the defendant claimed that he changed his last name because he did not like the name Honsch, the jury reasonably could have inferred that he did so to avoid detection by the authorities investigating the victim's murder. He began a new life with a new family, never actively searching for the whereabouts of the victim, his own daughter. These actions and inaction reasonably could have led the jury to infer a consciousness of guilt. The defendant claimed to have loved the victim, but he never noticed her disappearance from his life and took no action for twenty years to locate her or to determine what had happened to her. In contrast, the defendant admitted that, if one of his current children went missing for one day, "[o]f course" he would begin searching for them. The defendant's failure to take any action to locate his daughter could have led to a reasonable inference that he knew the victim

was not, in fact, missing for twenty years because he had murdered her in 1995.

The state also presented direct physical forensic evidence that tied the defendant to the victim's dead body. The state presented unrefuted evidence that the defendant's left palm was the source of one palm print on the trash bag covering the victim's head, and the defendant's right palm was the source of two palm prints on the trash bag covering the victim's feet. It was reasonable for the jury to conclude that the defendant had imprinted his palm prints on the trash bags while disposing of the victim's body after murdering her. See *State* v. *Rhodes*, 335 Conn. 226, 240, 249 A.3d 683 (2020) (jury is entitled to use common sense, experience, and knowledge of human nature). The state also established that two hairs that were discovered on the victim's body and one hair that was discovered on one of the trash bags that had been placed on the victim's body were "concordant" with the defendant's DNA. Furthermore, the defendant repeatedly admitted that he owned the two sleeping bags used to wrap the victim's dead body. This direct physical evidence, combined with the indirect consciousness of guilt evidence, was sufficient to establish the defendant's identity as the person who murdered the victim. See, e.g., *State* v. *Rodriguez*, supra, 337 Conn. 201–202 (state sufficiently proved identity with circumstantial and direct DNA evidence).

The defendant nevertheless contends that the existence of his palm prints on the garbage bags is explicable because he owned them, and that fact alone was not sufficient to convict him of murder. In contrast to the defendant's contention, the jury was free to reject as farfetched his explanation that his palm prints were present on the bags because he removed, opened, and then rerolled all of the trash bags in his home prior to use. See, e.g., *State* v. *Gray*, 221 Conn. 713, 721, 607 A.2d 391 (jury is entitled to reject defendant's theories),

cert. denied, 506 U.S. 872, 113 S. Ct. 207, 121 L. Ed. 2d 148 (1992).

In short, construing the evidence as favorably as possible to sustaining the guilty verdict, we conclude that the state's case was sufficient for the jury to find beyond a reasonable doubt that the defendant had murdered the victim.

III

The defendant finally claims that the trial court erred by declining to provide the jury with defense counsel's requested instruction on fingerprint evidence. We do not agree.

Prior to the final charge conference, defense counsel requested, in accordance with *State* v. *Santangelo*, 205 Conn. 578, 598, 534 A.2d 1175 (1987), that the court provide the jury with a fingerprint evidence instruction, stating that, "[u]nless it can be shown that the circumstances are such that the fingerprints could have been impressed only at the time the crime was perpetrated, the presence of the defendant's fingerprints does not establish his connection with the crime charged." At the charge conference, defense counsel acknowledged that *Santangelo* contained the "caveat" that this instruction is appropriate only when the fingerprint evidence is the primary or principal evidence of the defendant's connection to the crime. Defense counsel argued that the instruction was appropriate because, although some hairs on the victim's body were concordant with the defendant's DNA, the palm print evidence was "really the only evidence establishing [the defendant's] connection to the [victim's] body . . . ." The state responded that the instruction was inappropriate pursuant to *Santangelo* because the palm print evidence was not "the only evidence, or the principal evidence," that the jury could use to find the defendant guilty since the state had presented evidence that he had a guilty conscience,

his DNA profile was concordant with hairs found on the victim's body, and she was wrapped in his sleeping bags. The court, relying on *Santangelo*, denied defense counsel's request to instruct the jury for the same reasons that the state articulated.

"In determining whether the trial court improperly refused a request to charge, [w]e . . . review the evidence presented at trial in the light most favorable to supporting the . . . proposed charge. . . . A request to charge [that] is relevant to the issues of [a] case and [that] is an accurate statement of the law must be given. . . . If, however, the evidence would not reasonably support a finding of the particular issue, the trial court has a duty not to submit it to the jury. . . . Thus, a trial court should instruct the jury in accordance with a party's request to charge [only] if the proposed instructions are reasonably supported by the evidence." (Internal quotation marks omitted.) *State* v. *Ashby*, 336 Conn. 452, 497–98, 247 A.3d 521 (2020). Whether the evidence supported defense counsel's requested charge is a question of law over which our review is plenary. See, e.g., *Brown* v. *Robishaw*, 282 Conn. 628, 633–34, 922 A.2d 1086 (2007).

We have repeatedly held "that a conviction may not stand on fingerprint evidence alone unless the prints were found under such circumstances that they could only have been impressed at the time the crime was perpetrated." (Internal quotation marks omitted.) *State* v. *Santangelo*, supra, 205 Conn. 598; see also *State* v. *Edwards*, 325 Conn. 97, 139, 156 A.3d 506 (2017); *State* v. *Payne*, 186 Conn. 179, 184, 440 A.2d 280 (1982); *State* v. *Mayell*, 163 Conn. 419, 426, 311 A.2d 60 (1972). In *Santangelo*, we held that an instruction in accordance with this principle "is germane where the fingerprints of an accused constitute *the only evidence*, *or the principal evidence to convict*." (Emphasis added.) *State* v. *Santangelo*, supra, 599; see also *State* v. *Lytell*, 206

Conn. 657, 663, 539 A.2d 133 (1988) (upholding trial court's refusal to provide jury with *Santangelo* instruction because, in addition to fingerprint evidence, jury also had evidence that witness had positively identified defendant as perpetrator of robbery, and defendant knew that victims "kept a large sum of money in the cafe to cash payroll checks").

We agree with the trial court that the defendant's requested *Santangelo* instruction was not warranted because the palm print evidence was not the only or principal evidence against him. As we explained in part II of this opinion, there was an abundance of consciousness of guilt evidence, including the defendant's false statements to Marcia's family members and the police, his unexplained flight to Africa after the murders, his adoption of a new life and identity when he returned to the United States, and his failure for twenty years to search for the whereabouts of his purportedly missing child. There also was physical evidence that the defendant's DNA was concordant with the hairs found on the victim's body, and he admitted that she was wrapped in sleeping bags that belonged to him. Consequently, "the trial court was under no obligation to give the requested fingerprint instruction because of the significant other evidence in [the] case." *State* v. *Lytell*, supra, 206 Conn. 663. Therefore, we conclude that the court properly declined to give the jury a *Santangelo* instruction because the evidence did not reasonably support that instruction.

The judgment is affirmed.

In this opinion ROBINSON, C. J., and MULLINS, ECKER, DANNEHY and MOLL, Js., concurred.

McDONALD, J., concurring in part and concurring in the judgment. I agree with, and join, parts II and III of the majority opinion. Specifically, I agree with the

majority that the evidence was sufficient to establish the identity of the defendant, Robert Honsch, as the person who murdered the victim and that the trial court properly declined to provide the jury with an instruction regarding fingerprint evidence. I also agree with the result, but not the reasoning, of part I of the majority opinion. As to part I, I agree that this court should adopt a "permissive presumption" that provides that, when the location of a killing is unknown, and the victim's body is found in the forum state, it may be inferred or presumed that the death occurred in the state for purposes of establishing territorial jurisdiction. See, e.g., 1 A.L.I., Model Penal Code and Commentaries (1985) § 1.03 (4), p. 34 (Model Penal Code and Commentaries); 4 W. LaFave et al., Criminal Procedure (4th Ed. 2015) § 16.4 (c), p. 931; see also, e.g., *State* v. *McDowney*, 49 N.J. 471, 475, 231 A.2d 359 (1967) ("circumstantial evidence [such] as the presence of the body within the [s]tate has been held sufficient to allow the drawing of an inference that the crime was committed at that place"). I write separately with respect to part I of the majority opinion to emphasize that this "permissive" or "rebuttable" presumption is effectively a conclusive presumption.

As the majority opinion aptly lays out, there is significant support for our adoption of a presumption that permits an inference that a homicide occurred in the state where the victim's body was found for purposes of establishing jurisdiction when there is no other evidence concerning the location of the homicide. See part I of the majority opinion. At least twenty states have codified the presumption in legislation; see footnote 9 of the majority opinion and accompanying text; and seven other states apply the presumption as a matter of common law. See footnote 10 of the majority opinion and accompanying text. More important, there is a strong public policy rationale that weighs heavily in

favor of adoption. See part I of the majority opinion. The presumption "endeavors to prevent abortion of the prosecution in cases [in which] the body of the victim is found within the state but it is unclear where the death, injury, or conduct occurred. It may be provable, for example, that the body was thrown from a car driven by the defendant at a place near the state line and that the defendant owned the lethal weapon. That alone might make a circumstantial case of murder, without establishing a locus for jurisdiction." (Footnote omitted.) Model Penal Code and Commentaries, supra, § 1.03, comment 8, pp. 63–64. As we have explained, when "the place of [the victim's] death is unknown or [when] there [is] a variance in the proof thereof . . . [n]o person should escape punishment for murder because he is so clever as to conceal . . . the place where the victim was killed or died." (Internal quotation marks omitted.) *State* v. *Weinberg*, 215 Conn. 231, 252, 575 A.2d 1003, cert. denied, 498 U.S. 967, 111 S. Ct. 430, 112 L. Ed. 2d 413 (1990). In short, a presumption ensures that a homicide will not go unprosecuted simply because the culprit was able to conceal the location of the crime.

Nevertheless, I think it is important to recognize the presumption for what it is—an effectively conclusive presumption. See, e.g., *Francis* v. *Franklin*, 471 U.S. 307, 314 n.2, 105 S. Ct. 1965, 85 L. Ed. 2d 344 (1985) ("A mandatory presumption may be either conclusive or rebuttable. A conclusive presumption removes the presumed element from the case once the [s]tate has proved the predicate facts giving rise to the presumption. A rebuttable presumption does not remove the presumed element from the case but [instead] requires the jury to find the presumed element unless the defendant persuades the jury that such a finding is unwarranted."). Although courts often refer to this presumption as either "rebuttable" or "permissive," the reality is that

a criminal defendant has no meaningful ability to rebut the presumption without incriminating himself in the crime. Indeed, the majority explains that, "[i]f the defendant wishes to defeat jurisdiction, he generally must make some showing as to where the death or injury took place. That showing may, in turn, lay the predicate for a proceeding in the proper jurisdiction." (Internal quotation marks omitted.) Part I of the majority opinion, quoting Model Penal Code and Commentaries, supra, § 1.03, comment 8, p. 64. But, in most situations, the ability to make that showing will run headlong into the defendant's fifth amendment privilege against self-incrimination. Cf. *State* v. *Wogenstahl*, 150 Ohio St. 3d 571, 582, 84 N.E.3d 1008 (2017) (French, J., concurring) (questioning constitutionality of Ohio statute that requires conclusive presumption that crime was committed in Ohio if it "cannot reasonably be determined in which [state] it took place" (internal quotation marks omitted)), cert. denied, 584 U.S. 1004, 138 S. Ct. 2576, 201 L. Ed. 2d 298 (2018). How is a criminal defendant to make a showing that the homicide occurred in another state without implicating himself in the crime?[1] However, given the strong public policy rationale for the adoption of the presumption, and the significant legal support for its adoption, I agree with the majority that it is appropriate for this court to adopt the presumption.

For the foregoing reasons, I respectfully concur in part.

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[1] I recognize, as the majority posits, that there may be circumstances in which it would be "feasible" for a defendant to present noninculpatory evidence as to the location of the crime. Footnote 11 of the majority opinion and accompanying text. In practice, however, it would be highly unlikely that a defendant could muster such evidence in a manner sufficient to rebut the presumption without incriminating himself.

LATONNA COLLIER ET AL. *v.* ADAR HARTFORD REALTY, LLC, ET AL.
(SC 20797)

Robinson, C. J., and McDonald, Mullins, Ecker and Suarez, Js.

Syllabus

The plaintiffs, former residents of a federally subsidized housing complex that was owned and managed by the defendants, appealed from the trial court's denial of their motion for class certification. In their complaint, the plaintiffs alleged, among other causes of action, fraud, recklessness, negligence, breach of the warranty of habitability, and a violation of the Connecticut Unfair Trade Practices Act (42-110a et seq.) in connection with the defendants' alleged failure to maintain the housing complex in a safe and habitable condition and their pattern and practice of delaying inspections, concealing health and safety hazards, and violating federal, state, and local housing laws. The trial court denied the plaintiffs' motion for class certification on the ground that their proposed class, which consisted of all persons who resided at the housing complex between 2004 and 2019 who were adversely affected by the defendants' alleged practices, failed to satisfy the predominance and superiority requirements under the rule of practice (§ 9-8 (3)) governing class action certification. The trial court reasoned that the predominance requirement was not met because the determination of whether each unit in the housing complex was rendered uninhabitable was fact-specific and dependent on individualized factors and that the superiority requirement was not met due to the highly individualized proof required to establish liability. Although the trial court recognized that there could exist a basis for class certification with respect to certain of the plaintiffs' claims for some of the discrete events alleged in the complaint, such as a sewage backup in 2019 that resulted in the tenants' evacuation of the housing complex, the court concluded that the proposed class of all former tenants over a period of many years was too broad.

Held that the trial court did not abuse its discretion in denying the plaintiffs' motion for class certification, as the proposed class of plaintiffs was too broad, and the trial court had no obligation to consider redefining the scope of the class sua sponte:

In support of their claims, the plaintiffs primarily relied on evidence concerning the defendants' efforts, beginning in 2015, to delay inspections and to hide housing code violations, inspection reports from 2018 documenting the squalid living conditions at the housing complex, and evidence of the 2019 sewage backup, and, because there was an absence of evidence regarding the allegedly uninhabitable conditions at the housing complex prior to 2015 at the earliest, the vast majority of the proposed

class members would need to adduce individualized proof to establish the defendants' liability.

Accordingly, there was no evidentiary basis to support the conclusion that common questions of fact or law would be the object of most of the efforts of the litigants and the court, and the proposed class therefore was too broad and failed to satisfy the predominance requirement.

Moreover, this court concluded that the predominance inquiry substantially encompasses the superiority analysis and that, if the predominance requirement is not satisfied, a class action likely will not be the superior mechanism to resolve the dispute between the parties.

Furthermore, a trial court is vested with broad discretion to make class certification decisions, which includes the authority to limit or modify the scope of the class definitions proposed by the plaintiffs, and, although this court urged trial courts to consider redefining the scope of the class sua sponte if the proposed definition of the class is too broad, trial courts have no affirmative obligation to do so, as the burden is on the plaintiff, rather than the court, to propose a narrower, certifiable class.

In the present case, the plaintiffs never asked the trial court to redefine the class definition or to create a subclass consisting of plaintiffs who resided at the housing complex between 2018 and 2019, and, in the absence of such a request, the court was not required to rule on that issue.

Argued March 25—officially released July 23, 2024*

Procedural History

Action to recover damages for, inter alia, the defendants' allegedly unfair trade practices in the operation of a public housing project, and for other relief, brought to the Superior Court in the judicial district of Hartford and transferred to the Complex Litigation Docket; thereafter, the court, *Noble, J.*, denied the plaintiffs' motion for class certification, and the plaintiffs appealed. *Affirmed.*

Eric Del Pozo, with whom were *Sarah E. Dlugoszewski*, *Sarah N. Niemiroski* and, on the brief, *Joette Katz*, *Mark K. Ostrowski*, *Elizabeth Buchanan*, *Alexander T. Taubes* and *James Bergenn*, for the appellants (plaintiffs).

* July 23, 2024, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Michele C. Wojcik, for the appellee (named defendant).

Frank J. Szilagyi, with whom, on the brief, was *Adam D. Miller*, for the appellee (defendant Arco Management Corporation).

William Tong, attorney general, and *Joshua Perry*, solicitor general, filed a brief for the state of Connecticut as amicus curiae.

James J. Healy and *Alinor C. Sterling* filed a brief for the Connecticut Trial Lawyers Association as amicus curiae.

John W. Cannavino, Jr., filed a brief for the Connecticut Defense Lawyers Association as amicus curiae.

Jeffrey Gentes, *Anika Singh Lemar*, and *Eric Crouch* and *Cooper Kohnstamm*, law student interns, filed a brief for the Housing Clinic of the Jerome N. Frank Legal Services Organization et al. as amici curiae.

Opinion

ECKER, J. This is an interlocutory appeal from the trial court's denial of a motion for class certification. The plaintiffs,[1] former residents of Barbour Gardens, a housing development in the city of Hartford (city), instituted this action in connection with the living conditions at Barbour Gardens during their residency. They sought compensatory and punitive damages and attorney's fees from the owner of Barbour Gardens and its property management company, and alleged various tort, contract, equitable, and statutory claims, including a claim of a violation of a provision of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes

[1] The plaintiffs are Latonna Collier and her children (Renee Beckman and Rodnae Beckman), Roleisha Collier and her children (Janiyah Turner and Jordynn Collier), Tasha M. Jordan and her children (Ly'Asia Thompson and Kwan'Asi Levine), Evelyn Jones, and David Merritt.

§ 42-110g. The plaintiffs filed a motion to certify a class on behalf "of all persons who lived at Barbour Gardens for any or all of the time between June 24, 2004, and October 13, 2019," which the trial court denied on the grounds that individualized issues would predominate over class-wide issues and that a class action is not a superior method to resolve the plaintiffs' claims. See Practice Book § 9-8 (3). In this appeal brought pursuant to General Statutes § 42-110h, the plaintiffs contend that there is sufficient evidence in the record common to the entire class to satisfy the predominance and superiority requirements. We reject this claim due to the lengthy period of time for which class certification was requested—covering all residents at Barbour Gardens at any time over a span of more than fifteen years—and the absence of generalized evidence in the record concerning the living conditions at Barbour Gardens during most of the proposed class period. Accordingly, we conclude that the trial court did not abuse its discretion in denying the plaintiffs' motion for class certification.

I

BACKGROUND

The record reflects the following facts, which are either undisputed or taken as true for the purpose of the plaintiffs' motion for class certification.[2] Barbour Gardens is a four building, eighty-four unit, federally

[2] "In applying the criteria for certification of a class action, the [trial] court must take the substantive allegations in the complaint as true, and consider the remaining pleadings, discovery, including interrogatory answers, relevant documents, and depositions, and any other pertinent evidence in a light favorable to the plaintiff. However, a trial court is not required to accept as true bare assertions in the complaint that [class certification] prerequisites were met. . . . Class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff's cause of action." (Internal quotation marks omitted.) *Standard Petroleum Co.* v. *Faugno Acquisition, LLC*, 330 Conn. 40, 49, 191 A.3d 147 (2018).

subsidized housing complex located in the city's north end neighborhood. The property was owned by the named defendant, Adar Hartford Realty, LLC (Adar), from 2004 until 2019, and managed by the defendant Arco Management Corporation (Arco) from 2005 until at least 2018.[3]

The federal Department of Housing and Urban Development (HUD) subsidized the rental units at Barbour Gardens through the Section 8 Project-Based Rental Assistance (PBRA) program benefiting low income families. See 42 U.S.C. § 1437f (2018). PBRA benefits are tied to a specific property, and recipients cannot move without losing their federal housing subsidy. HUD regulations require the Real Estate Assessment Center (REAC), a unit within HUD's Office of Public and Indian Housing, to inspect Section 8 properties every one to three years. See 24 C.F.R. § 200.857 (b) (1) (2023); see also Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE), 88 Fed. Reg. 30,442, 30,492 (May 11, 2023) (to be codified at 24 C.F.R. § 5.705 (c) (2024)). REAC inspectors may award inspection scores ranging from 1 to 100, and any score below 60 is considered deficient. See Consolidated and Further Continuing Appropriation Act, 2015, Pub. L. No. 113-235, § 226 (a), 128 Stat. 2130, 2755. A score below 30 may result in the imposition of civil penalties or the abatement of the Section 8 contract. See id., § 226 (b) (2) (A) and (B), 128 Stat. 2755.

Under the defendants' stewardship, Barbour Gardens fell into a state of egregious disrepair. The defendants were aware of the poor condition of the property and, beginning as early as 2015, "successfully availed them-

[3] The defendants also include the following individual members of Adar, who did not file a brief in the present appeal: Saied Soleimani, Albert Soleimani, and Vivid Management, LLC. All references to the defendants are solely to Adar and Arco.

selves of the ability to reschedule inspections in order to pass inspections." For example, an email communication between Arco employees dated March 4, 2015, reflects their efforts to delay a REAC inspection scheduled for April 17, 2015, because the employees believed that, if the property was inspected on that date, it would fail inspection with a score of "about a 15c" out of 100.[4] The REAC inspection was rescheduled for August 29, 2015, and, after an Arco employee again expressed concern that, if the property was inspected "[o]n that day [it] would get a FAIL," the inspection ultimately was postponed until October 1, 2015.[5]

Barbour Gardens was inspected again by REAC inspectors in February, 2018. Prior to the 2018 inspection, Arco employees were aware that "[a]lmost 100 [percent] of [the] windows" were "impossible to lock," causing "a pretty big security issue" and "a tremendous" loss of heat. One Arco employee described Barbour Gardens as "a mold and cockroach infested slum with major plumbing leaks all over the property" and as "[m]issing shower walls, etc." To pass inspection, Arco employees decided to take about one "half the place . . . [offline]," meaning to exempt it from inspection. Despite these problems, Barbour Gardens received a passing score of 81 out of 100 on its REAC inspection.

Local community activists and Barbour Gardens residents knew that the score did not reflect the true conditions at Barbour Gardens. Due to pressure from the community, the Licenses and Inspections Division of

[4] According to HUD, "[t]he [lowercase] letter 'c' is given if one or more exigent/fire safety (calling for immediate attention or remedy) [health and safety] deficiencies were observed." United States Dept. of Housing and Urban Development, Physical Inspection Summary Report (Ver 2.3), available at https://www.hud.gov/program offices/public indian housing/reac/products/pass/pass isrpt (last visited July 22, 2024).

[5] There are no factual allegations or evidence in the record as to the results of the 2015 inspection.

the city's Department of Development Services inspected the property on September 12, 2018. The city inspection uncovered more than 200 violations of the Hartford Municipal Code,[6] including (1) "[b]owing, deflected or sagging floors," (2) "[w]ater damaged ceilings," (3) "[w]ater damaged walls," (4) "[m]ice infestations," (5) "[b]edbug infestations," (6) "[r]oach infestations," (7) "[f]lea infestations," (8) "[i]noperable electric[al] outlets," (9) "[t]hermostats in disrepair," (10) "[i]noperable heating facilities," (11) "[b]roken or inoperable appliances," (12) "[p]eeling paint," (13) "[d]oors that will not latch," (14) "[w]indows that will not stay open," (15) "[m]issing window screens," and (16) "[i]mproperly installed plumbing fixtures, including dysfunctional toilets."

On October 17, 2018, the city's fire marshal inspected Barbour Gardens to evaluate the safety of the building. The fire marshal discovered that emergency exit lights were not operational, apartment doors did not close, smoke alarms were missing from apartments, and there were no maintenance records for the property's fire system. The fire alarm panels were not operational, and a Barbour Gardens maintenance staff member asserted that he had never seen them operational. Due to the significant risk to the residents' health and safety posed by fire, the fire marshal placed Barbour Gardens on an around-the-clock fire watch.[7]

[6] HUD regulations require subsidized housing under the PBRA program to comply with all "[s]tate or local housing codes . . . ." Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE), 88 Fed. Reg. 30,442, 30,492 (May 11, 2023) (to be codified at 24 C.F.R. § 5.703 (f) (2) (2024)); see also id., 30,498 (to be codified at 24 C.F.R. § 200.850 (2024)).

[7] In March, 2019, the fire marshal conducted another inspection of Barbour Gardens, during which new code violations were found. The fire marshal intensified the fire watch, assigning four individuals to monitor the property at all times to ensure that, in the event of a fire, residents were adequately warned.

HUD scheduled another REAC inspection for October 30, 2018. Prior to this inspection, one Arco employee predicted that Barbour Gardens "will come back as possibly the lowest score ever received." This prediction proved accurate; Barbour Gardens received a score of 9c—the lowest score received by any project in Connecticut's history. During the inspection of 20 rental units, 138 health and safety deficiencies were observed, including electrical hazards, inoperable windows and doors, mold and mildew, water damage, and a bedbug infestation. REAC inspectors noted that, "[i]f all buildings and units were inspected, it is projected that a total of 423 health and safety deficiencies would apply to the property." Because the residents at Barbour Gardens were "not receiving the quality of housing to which they [were] entitled," REAC referred Barbour Gardens to HUD's Departmental Enforcement Center for an enforcement action.

The defendants did not correct any of the deficiencies documented by the city or the REAC inspectors. As a result, the city instituted criminal proceedings against the owners of Barbour Gardens, and HUD cancelled Barber Gardens' participation in the PBRA program. The residents of Barbour Gardens no longer were eligible to receive a project based federal subsidy and needed to find new housing. Given the limited number of housing units that qualify for federal subsidies, the low income residents at Barbour Gardens struggled to find affordable housing. Many residents who had nowhere else to go were forced to remain at Barbour Gardens, despite the deplorable living conditions.

In June, 2019, three feet of standing waste water flooded into the basement of one of Barbour Gardens' four buildings. The plumbing system pumped the sewage from one building into another. As a result, the city evacuated the families who had remained at Barbour Gardens while awaiting the opportunity to transition

to safe and habitable affordable housing. HUD deemed the property too unsafe for residents to return, and these families were permanently displaced.

The plaintiffs filed the present putative class action "on behalf of all persons who resided at Barbour Gardens between 2004 and 2019 who were adversely affected by the defendants' pattern and practice of disregarding the health and safety of residents." The operative complaint raises the following nine claims against the defendants: fraud, recklessness, negligence, negligent infliction of emotional distress, breach of lease, breach of the warranty of habitability, breach of the management agreement between Adar and Arco (to which the plaintiffs claimed to be third-party beneficiaries), unjust enrichment, and a violation of CUTPA. In their request for relief, the plaintiffs sought compensatory and punitive damages, and reasonable attorney's fees.[8] The defendants denied the plaintiffs' claims and raised various affirmative defenses, such as expiration of the applicable statutes of limitations, the plaintiffs' alleged breach of their respective leases, the doctrine of unclean hands, and that the high crime rate in the

[8] The nature and type of damages sought differed for the various counts. As to the fraud count, the plaintiffs claimed that they were entitled to punitive and compensatory damages for, "among other things, emotional distress, anxiety, and frustration . . . ." In connection with their recklessness claim, the plaintiffs sought punitive and compensatory damages for "[t]he distress caused by the conditions and resulting displacement." With respect to their claims of negligence and negligent infliction of emotional distress, the plaintiffs requested compensatory damages for unspecified injuries, including emotional distress that "has resulted and might result in the future illness [of] or bodily harm to the plaintiffs and members of the [class]." The plaintiffs sought rent abatement on their contract claims (breach of lease, breach of the warranty of habitability, and breach of the management agreement). As for their equitable claim for unjust enrichment, the plaintiffs alleged that they were entitled "to restitution and . . . disgorgement . . . ." Finally, as to the CUTPA count, the plaintiffs asked for punitive and compensatory damages, and reasonable attorney's fees, under § 42-110g.

neighborhood was a superseding, intervening cause of the plaintiffs' injuries.

The plaintiffs moved to certify the proposed class, consisting "of all persons who lived at Barbour Gardens for any or all of the time between June 24, 2004, and October 13, 2019," for each of the nine counts alleged in the operative complaint. The defendants opposed the plaintiffs' motion for class certification. They argued, among other things, that the plaintiffs had failed to meet the requirements of predominance and superiority in Practice Book § 9-8 (3) because individualized proof would be required to demonstrate (1) the condition of each plaintiff's apartment, (2) that the defendants' alleged misconduct caused that condition, (3) that each plaintiff suffered an injury as a result, and (4) the amount of damages.

The trial court denied the plaintiffs' motion for class certification, concluding that, although the plaintiffs had satisfied the numerosity, commonality, typicality, and adequacy of representation requirements in Practice Book § 9-7,[9] they had failed to satisfy the predominance and superiority requirements in Practice Book § 9-8 (3). With respect to predominance, the trial court reasoned that "[t]he determination of whether each unit was rendered uninhabitable is necessarily uniquely fact-specific" and "dependent on a number of individualized factors that include the nature and severity of the

[9] With respect to numerosity, the trial court found that the proposed class, which might exceed 300 people, was sufficiently numerous to make it impractical to hold separate trials, particularly because of the lack of financial resources of the class members. The court found that the commonality factor had been "met because the plaintiffs allege[d] a systemic disregard for, and underfunding of, the maintenance and repair of Barbour Gardens . . . ." The "same systemic disregard for, and underfunding of, the maintenance and repair of Barbour Gardens" fulfilled the typicality requirement. Lastly, the court concluded that class counsel was qualified to conduct the litigation and that the plaintiffs were adequate class representatives.

defect, the degree to which it impinges on the tenant's safety, the duration of the defect's existence, the period in which the defect was present, and its relation to other potential defects." The trial court further determined "that superiority is not present due to the highly individualized proof required to establish liability."[10]

Although the trial court denied the plaintiffs' motion for class certification, it recognized, at least with respect to some of the plaintiffs' claims, that there may be "a basis for class certification for some of the discrete events alleged, such as the sewage backup resulting in the tenants' evacuation, the systemic failure of the fire system and alarm panels, as well as [a] sinkhole in the common area . . . ." As part of this observation, the trial court noted that the plaintiffs' flawed request for "a broad [class] certification for tenants over a period of many years, including all past tenants, and for a myriad of defects unrelated to these conditions," could be "cured by amendment" of the operative complaint. The plaintiffs, however, did not seek to file an amended complaint or to certify a narrower class of plaintiffs. Instead, they filed this interlocutory appeal.[11]

On appeal, the parties renew the arguments they made in the trial court. During oral argument before this court, counsel for the plaintiffs acknowledged that the trial court may have had doubts about whether there was generalized evidence of the defendants' alleged misconduct prior to 2015, or whether there was a cogni-

[10] In its memorandum of decision on the plaintiffs' motion for class certification, the trial court stated that, because the predominance requirement had not been met, "it need not address . . . superiority." After filing the present appeal, the plaintiffs sought an articulation of the legal and factual basis for the court's decision regarding superiority. The court granted the plaintiffs' motion for articulation and issued a written memorandum of decision explicating its ruling on superiority, which we have summarized.

[11] The plaintiffs appealed from the decision of the trial court to the Appellate Court pursuant to § 42-110h, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

zable class prior to 2018, but argued that the trial court was required to resolve these doubts in favor of class certification by narrowing and redefining the proposed class. Counsel for Adar responded that, because the plaintiffs had not sought to certify a narrower class of residents, the trial court properly ruled on the plaintiffs' motion for class certification as pleaded. Counsel for Adar also pointed out that a redefined class would be significantly smaller in size and, thus, might not meet the numerosity requirement. Counsel for Arco echoed this viewpoint, arguing that the plaintiffs had moved to certify an overly broad class of residents and that redefinition of the proposed class had not been raised in the trial court. Following oral argument, we ordered the parties to file supplemental briefs addressing "whether the trial court [had] abused its discretion by not considering whether to redefine the proposed class sua sponte before denying the plaintiffs' motion for class certification."

We conclude that, although trial courts have the discretion under our rules of practice to redefine a proposed class sua sponte and ordinarily should consider whether a redefined class would warrant certification, even if redefinition is not formally requested by a party, the trial court is not obligated to do so in the absence of such a request. After examining the briefs and arguments submitted by the parties and the amici curiae,[12] and the evidence in the record, we further conclude that the trial court did not abuse its discretion by denying class certification with respect to the class defined in the plaintiffs' motion.

II

CLASS ACTIONS

"The class action is an exception to the usual rule that litigation is conducted by and on behalf of the

[12] The following entities participated in the present appeal as amici curiae: the Connecticut Defense Lawyers Association, the Connecticut Trial Law-

individual named parties only." (Internal quotation marks omitted.) *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U.S. 338, 348, 131 S. Ct. 2541, 180 L. Ed. 2d 374 (2011). Class actions "promote judicial economy and efficiency," "protect defendants from inconsistent obligations," "protect the interests of absentee parties," and "provide access to judicial relief" for plaintiffs with small, individual claims. (Emphasis omitted; internal quotation marks omitted.) *Rivera* v. *Veterans Memorial Medical Center*, 262 Conn. 730, 735, 818 A.2d 731 (2003). "For [low income] groups in particular, aggregating claims has provided significant access to justice, as individual members of these groups may be in a poor position to seek legal redress, either because they do not know enough or because such redress is disproportionately expensive. Equally important, class actions can secure relief that is not only [longer lasting] but also [broader based], of critical importance to communities that are constantly confronted with nefarious business practices." (Footnote omitted; internal quotation marks omitted.) M. Gilles, "Class Warfare: The Disappearance of Low-Income Litigants from the Civil Docket," 65 Emory L.J. 1531, 1535–36 (2016). Class actions "serve a unique function in vindicating plaintiffs' rights"; *Rivera* v. *Veterans Memorial Medical Center*, supra, 735; and provide low income individuals who are unlikely to file an individual action "an opportunity for relief." *Rodriguez* v. *Kaiaffa, LLC*, 337 Conn. 248, 289, 253 A.3d 13 (2020); see *Amchem Products, Inc.* v. *Windsor*, 521 U.S. 591, 617, 117 S. Ct. 2231, 138 L. Ed. 2d 689 (1997) ("The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights.

yers Association, the Housing Clinic of the Jerome N. Frank Legal Services Organization, the Connecticut Fair Housing Center, and the state of Connecticut.

A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor." (Internal quotation marks omitted.)).

In determining whether to certify a class under our rules of practice, a trial court must follow a two step process. "First, a court must ascertain whether the four prerequisites to a class action, as specified in Practice Book § 9-7, are satisfied. These prerequisites are: (1) numerosity—that the class is too numerous to make joinder of all members feasible; (2) commonality—that the members have similar claims of law and fact; (3) typicality—that the [representative] plaintiffs' claims are typical of the claims of the class; and (4) adequacy of representation—that the interests of the class are protected adequately." (Internal quotation marks omitted.) *Artie's Auto Body, Inc.* v. *Hartford Fire Ins. Co.*, 287 Conn. 208, 213–14, 947 A.2d 320 (2008).

If these prerequisites have been met, the court then proceeds to the second step and evaluates "whether the certification requirements of Practice Book § 9-8 are satisfied. These requirements are: (1) predominance—that questions of law or fact common to the members of the class predominate over any questions affecting only individual members; and (2) superiority—that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. . . . Because our class certification requirements are similar to those embodied in rule 23 of the Federal Rules of Civil Procedure, and our jurisprudence governing class actions is relatively undeveloped, we look to federal case law for guidance in construing the provisions of Practice Book §§ 9-7 and 9-8." (Footnote omitted; internal quotation marks omitted.) Id., 214–15.

The burden is on the party moving for class certification to establish that the requirements of Practice Book

§§ 9-7 and 9-8 have been met, and the trial court should undertake "a rigorous analysis" to ensure that class certification is appropriate. (Internal quotation marks omitted.) *Standard Petroleum Co.* v. *Faugno Acquisition, LLC*, 330 Conn. 40, 48, 191 A.3d 147 (2018); accord *Rodriguez* v. *Kaiaffa, LLC*, supra, 337 Conn. 256; *Collins* v. *Anthem Health Plans, Inc.*, 275 Conn. 309, 320–21, 880 A.2d 106 (2005). In conducting its analysis, the trial court must accept the substantive allegations in the complaint but may go beyond the pleadings when determining whether the requirements for class certification have been satisfied. *Collins* v. *Anthem Health Plans, Inc.*, supra, 321. Class certification does not depend on "whether the . . . plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of [the class action rules] are met." (Internal quotation marks omitted.) Id. Although a trial court has broad discretion in determining whether to certify a class action, it should resolve all doubts regarding the propriety of class certification in favor of certification. Id.

A

Predominance and Superiority

The dispute in the present case centers on the predominance and superiority requirements, which we have described as "intertwined . . . ." (Internal quotation marks omitted.) *Rodriguez* v. *Kaiaffa, LLC*, supra, 337 Conn. 280. "[T]he fundamental purpose of the predominance inquiry is to determine whether the economies of class action certification can be achieved . . . without sacrificing procedural fairness or bringing about other undesirable results." (Internal quotation marks omitted.) *Collins* v. *Anthem Health Plans, Inc.*, supra, 275 Conn. 329. This inquiry substantially encompasses the superiority analysis because the fundamental purpose of the superiority requirement is to ensure that a

class action is the most "fair and efficient" means of resolving the case. Practice Book § 9-8 (3). Because these two requirements overlap, "[i]f the predominance criterion is satisfied, courts generally will find that the class action is a superior mechanism even if it presents management difficulties." *Collins* v. *Anthem Health Plans, Inc.*, supra, 347. Conversely, if the predominance requirement is not satisfied, a class action likely will not be the superior mechanism to resolve the dispute between the parties due to "the management difficulties posed by the individual questions . . . ." (Internal quotation marks omitted.) Id. In the present case, the fulfillment of these two requirements depends on the prevalence of class-wide issues, and, therefore, we consider these requirements together. See, e.g., *Rodriguez* v. *Kaiaffa, LLC*, supra, 277.

Class-wide issues predominate over individualized issues "if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof." (Emphasis omitted; internal quotation marks omitted.) *Collins* v. *Anthem Health Plans, Inc.*, supra, 275 Conn. 329. The focus is on whether class-wide issues have "a direct impact on every class member's effort to establish liability . . . ." (Internal quotation marks omitted.) Id., 330. If the plaintiffs cannot establish liability without introducing "a great deal of individualized proof or argu[ing] a number of individualized legal points to establish most or all of the elements of their individual[ized] claims, such claims are not suitable for class certification . . . ." (Internal quotation marks omitted.) Id.; accord *Rodriguez* v. *Kaiaffa, LLC*, supra, 337 Conn. 279; *Standard Petroleum Co.* v. *Faugno Acquisition, LLC*, supra, 330 Conn. 60–61; *Art-*

ie's Auto Body, Inc. v. *Hartford Fire Ins. Co.*, supra, 287 Conn. 215–16.

The need for individualized proof to adjudicate defenses or to establish the amount of damages to which each class plaintiff is entitled does not necessarily defeat class certification. See, e.g., *Standard Petroleum Co.* v. *Faugno Acquisition, LLC*, supra, 330 Conn. 71; *Collins* v. *Anthem Health Plans, Inc.*, supra, 275 Conn. 330. "The existence of special defenses, which may or may not be subject to common proof, is merely another factor to be considered in [the predominance] assessment." *Standard Petroleum Co.* v. *Faugno Acquisition, LLC*, supra, 71. With respect to damages, class certification is appropriate if the plaintiffs can rely on "plausible statistical or economic methodologies to demonstrate impact on a class-wide basis. . . . Particularly [when] damages can be computed according to some formula, statistical analysis, or other easy or essentially mechanical methods, the fact that damages must be calculated on an individual basis is no impediment to class certification." (Citation omitted; internal quotation marks omitted.) *Collins* v. *Anthem Health Plans, Inc.*, supra, 331; see also *Roach* v. *T.L. Cannon Corp.*, 778 F.3d 401, 408 (2d Cir. 2015) ("it remains the black letter rule that a class may obtain certification under [r]ule 23 (b) (3) [of the Federal Rules of Civil Procedure] when liability questions common to the class predominate over damages questions unique to class members" (internal quotation marks omitted)).

To determine whether class-wide issues of law or fact predominate in any given case, the trial court must undertake a three part inquiry. "First, the court should review the elements of the causes of action that the plaintiffs seek to assert on behalf of the putative class. . . . Second, the court should determine whether generalized evidence could be offered to prove those elements on a class-wide basis or whether individualized

proof will be needed to establish each class member's entitlement to monetary or injunctive relief. . . . Third, the court should weigh the common issues that are subject to generalized proof against the issues requiring individualized proof in order to determine which predominate. . . . Only when common questions of law or fact will be the object of most of the efforts of the litigants and the court will the predominance test be satisfied." (Citations omitted; internal quotation marks omitted.) *Collins* v. *Anthem Health Plans, Inc.*, supra, 275 Conn. 331–32.

B

Analysis

The operative complaint asserts causes of action for fraud, recklessness, negligence, negligent infliction of emotional distress, breach of lease, breach of the warranty of habitability, breach of the management agreement, unjust enrichment, and a violation of CUTPA. Although the essential elements of each of these causes of action differ, the facts on which the plaintiffs rely to support their claims are the same, namely, the defendants' alleged failure to maintain Barbour Gardens in a safe and habitable condition and their pattern and practice of delaying REAC inspections, concealing the health and safety hazards at Barbour Gardens, and violating federal, state, and local housing laws. Because "both the factual and legal issues raised by the class certification order as to both the CUTPA and non-CUTPA counts are inextricably intertwined with each other," we address the plaintiffs' CUTPA and non-CUTPA claims collectively in this interlocutory appeal. *Collins* v. *Anthem Health Plans, Inc.*, 266 Conn. 12, 29, 836 A.2d 1124 (2003); see, e.g., *Standard Petroleum Co.* v. *Faugno Acquisition, LLC*, supra, 330 Conn. 43 n.1; *Macomber* v. *Travelers Property & Casualty Corp.*, 277 Conn. 617, 620, 894 A.2d 240 (2006).

To support their claims, the plaintiffs primarily rely on evidence in the defendants' own records, namely, communications between their employees beginning in 2015 regarding the defendants' efforts to delay inspections and to hide housing code violations, as well as the multiple 2018 inspection reports documenting the squalid living conditions at the property, and evidence of the 2019 sewage backup and permanent relocation of all Barbour Gardens residents. As the trial court recognized, this generalized evidence "may pose a basis for class certification" for the residents of Barbour Gardens during 2018 and 2019 with respect to some claims, but the plaintiffs sought "a broad certification for tenants over a period of many years, including all past tenants" going back to 2004. For many past residents during this proposed class period, there is no generalized evidence in the record regarding the allegedly uninhabitable conditions at Barbour Gardens or the defendants' misconduct. In light of the absence of such evidence prior to 2015 at the earliest, the vast majority of the proposed class members would need to adduce individualized proof to establish the defendants' liability, and there is no evidentiary basis to support the conclusion that "common questions of law or fact will be the object of most of the efforts of the litigants and the court . . . ." (Internal quotation marks omitted.) *Collins* v. *Anthem Health Plans, Inc.*, supra, 275 Conn. 332. Thus, the proposed class of plaintiffs is overbroad, and the predominance requirement is not satisfied. See, e.g., *Mazza* v. *American Honda Motor Co.*, 666 F.3d 581, 596 (9th Cir. 2012) (concluding that class-wide issues did not predominate over individualized issues because class definition was overbroad), overruled in part on other grounds by *Olean Wholesale Grocery Cooperative, Inc.* v. *Bumble Bee Foods, LLC*, 31 F.4th 651 (9th Cir.), cert. denied sub nom. *StarKist Co.* v. *Olean Wholesale Grocery Cooperative, Inc.*, U.S. , 143 S. Ct. 424, 214

L. Ed. 2d 233 (2022); *Circle Click Media, LLC* v. *Regus Management Group, LLC*, Docket No. 3:12-CV-04000-SC, 2015 WL 6638929, *12–14 (N.D. Cal. October 30, 2015) (same). See generally *Babineau* v. *Federal Express Corp.*, 576 F.3d 1183, 1191 (11th Cir. 2009) (predominance requirement is not met, and "[c]ertification is inappropriate if the plaintiffs must . . . introduce a great deal of individualized proof or argue a number of individualized legal points to establish most or all of the elements of their individual claims" (internal quotation marks omitted)).

The plaintiffs argue that, even if the record provides no basis to justify a class period going back to 2004, the trial court nonetheless erred in denying their motion for class certification because the court had an affirmative obligation to certify the "readily" ascertainable and narrower "class of those tenants who resided [at] Barbour Gardens from late 2018 onward." The defendants respond that, although the trial court had the discretion to redefine the class sua sponte, it did not abuse its discretion by declining to do so because the burden is on the plaintiffs, not the trial court, to propose a narrower certifiable class. We agree with the defendants. Although we urge trial courts sua sponte to consider redefining the scope of the class if the proposed definition in the operative complaint and motion for class certification is overbroad, we agree with the defendants that the trial court does not abuse its discretion when it does not do so.

Our rules of practice, like rule 23 of the Federal Rules of Civil Procedure, vest the trial court with broad discretion to make class certification decisions. This broad discretion encompasses the authority "to control proceedings and frame issues for consideration . . . ." (Internal quotation marks omitted.) *Standard Petroleum Co.* v. *Faugno Acquisition, LLC*, supra, 330 Conn. 50. The trial court also can certify a partial class action

or create subclasses with respect to discrete issues. See, e.g., *Collins* v. *Anthem Health Plans, Inc.*, supra, 266 Conn. 25 ("our rules of practice . . . permit the partial class action mechanism" and creation of subclasses); see also Practice Book § 9-9 (a) (4) ("[w]hen appropriate, (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class"). A trial court's discretion to manage the class is ongoing, and "it is within the purview of the trial court to revisit the issue of class certification, and, if facts require, to alter the definition of the class as developments dictate . . . ." *Rivera* v. *Veterans Memorial Medical Center*, supra, 262 Conn. 739; see *Collins* v. *Anthem Health Plans, Inc.*, supra, 266 Conn. 40 ("the trial court is authorized to monitor developments bearing on the propriety of its class certification orders . . . and to amend those orders in light of subsequent developments"); see also Practice Book § 9-9 (a) (1) (C) (class certification order "may be altered or amended before final judgment"). "Under both the federal rule and our similar rule, a trial court's order respecting class status is not final or irrevocable, but rather, it is inherently tentative . . . because the court remains free to modify it . . . ." (Citation omitted; internal quotation marks omitted.) *Collins* v. *Anthem Health Plans, Inc.*, supra, 266 Conn. 40.

Given the breadth of the trial court's discretion, it clearly has the authority to limit or modify the scope of the class definitions proposed by the plaintiffs "to provide the necessary precision." *In re Monumental Life Ins. Co.*, 365 F.3d 408, 414 (5th Cir.), cert. denied sub nom. *American National Ins. Co.* v. *Bratcher*, 543 U.S. 870, 125 S. Ct. 277, 160 L. Ed. 2d 117 (2004); see, e.g., *Rodriguez* v. *Kaiaffa, LLC*, supra, 337 Conn. 290 n.29 (recognizing that "the trial court may deem it advisable to amend the [class] definition . . . on remand").

This authority permits the trial court to act sua sponte when exercising its discretion to redefine the class as appropriate. As the United States Court of Appeals for the Second Circuit has recognized, "[a] court is not bound by the class definition proposed in the complaint and should not dismiss the action simply because the complaint seeks to define the class too broadly. . . . [Although] the court need not take on an onerous burden of identifying issues that may be appropriate for [class action] treatment or of constructing subclasses," it should narrow and redefine the class if doing so does not impose an "undue burden . . . ." (Citation omitted.) *Robidoux* v. *Celani*, 987 F.2d 931, 937 (2d Cir. 1993); see *Messner* v. *Northshore University HealthSystem*, 669 F.3d 802, 825 (7th Cir. 2012) (problems with class definition "can and often should be solved by refining the class definition rather than by flatly denying class certification on that basis"); *In re Monumental Life Ins. Co.*, supra, 414 ("holding [the] plaintiffs to the plain language of their [class] definition would ignore the ongoing refinement and give-and-take inherent in class action litigation, particularly in the formation of a workable class definition"); *Finberg* v. *Sullivan*, 634 F.2d 50, 64 n.9 (3d Cir. 1980) ("[t]he [trial] court should not deny certification on account of [overbreadth] problems without considering the possibility of redefining the classes").

There is one important caveat to these observations, which defeats the plaintiffs' argument that the trial court erred by failing to narrow the class period in the present case. Although the trial court can and should on its own initiative consider modifying the proposed class if such a modification can be made without imposing an undue burden on the court, it has no affirmative obligation to do so. See *United States Parole Commission* v. *Geraghty*, 445 U.S. 388, 408, 100 S. Ct. 1202, 63 L. Ed. 2d 479 (1980) ("[I]t is not the [trial] [c]ourt that

is to bear the burden of constructing subclasses. That burden is [on] the [plaintiff] and it is [the plaintiff] who is required to submit proposals to the court. The court has no sua sponte obligation so to act."); *Rogers* v. *Epson America, Inc.*, 648 Fed. Appx. 717, 719 (9th Cir. 2016) (rejecting plaintiff's claim "that the [trial] court abused its discretion when it did not sua sponte redefine the proposed class and certify that" in light of "the principle that the burden of proposing a narrower class was [the plaintiff's], and not that of the [trial] court"); *Heaven* v. *Trust Co. Bank*, 118 F.3d 735, 738 (11th Cir. 1997) (following denial of class certification, "[t]he [trial] court has no sua sponte obligation to subclassify; it is the plaintiff's burden to designate an appropriate class"); *Borum* v. *Brentwood Village, LLC*, 324 F.R.D. 1, 8 (D.D.C. 2018) ("When appropriate, [trial] courts may redefine classes or subclasses sua sponte prior to certification. . . . Because it is the plaintiff, and not the court, who bears the burden of fashioning appropriate class definitions and demonstrating that the requirements of [r]ule 23 [of the Federal Rules of Civil Procedure] are met for each, it is left to the court's discretion to choose whether to intervene in this way." (Citations omitted.)). A trial court, in short, is not *required* to redefine a proposed class "on its own initiative," and its "refusal to shoulder what, in the final analysis, is [the] plaintiff's burden cannot be regarded . . . as an abuse of discretion." *Lundquist* v. *Security Pacific Automotive Financial Services Corp.*, 993 F.2d 11, 14–15 (2d Cir.), cert. denied, 510 U.S. 959, 114 S. Ct. 419, 126 L. Ed. 2d 365 (1993).

Consistent with the foregoing federal authority, we conclude that the trial court did not abuse its discretion by denying the plaintiffs' motion to certify a class of plaintiffs consisting of all residents at Barbour Gardens between the dates of June 24, 2004, and October 13, 2019, without first considering, on its own initiative,

whether to modify the scope of the proposed class. The plaintiffs never asked the trial court to redefine the class definition or to create a subclass consisting of plaintiffs who resided at Barbour Gardens between the years of 2018 and 2019, and, in the absence of such a request, the trial court was not required to rule on that issue. Accordingly, we affirm the trial court's denial of the plaintiffs' motion for class certification.[13]

The judgment is affirmed.

In this opinion the other justices concurred.

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[13] Federal courts have held that, when class certification is denied because the proposed class definition is overbroad, the movant must be given a reasonable opportunity to propose a narrower class or subclasses that are certifiable. See, e.g., *United States Parole Commission* v. *Geraghty*, supra, 445 U.S. 408 (on remand, plaintiff must be afforded opportunity to request subclasses after proposed class was initially rejected); *Heaven* v. *Trust Co. Bank*, supra, 118 F.3d 738 ("[when] the . . . plaintiff has no real opportunity to request certification of subclasses after his proposed class is rejected, an obligation arises for the [D]istrict [C]ourt to consider subclassification"); *Quintana* v. *Harris*, 663 F.2d 78, 79–80 (10th Cir. 1981) (proposed class was overbroad, but plaintiff must be given reasonable opportunity to propose subclasses after denial of class certification when denial is based on structuring of class and when problems with broad class might be remedied by forming subclasses). Our affirmance of the trial court's denial of class certification does not preclude the plaintiffs on remand from seeking to certify a narrower class or subclasses, because "class certification [decisions] are always interlocutory" and "may be altered or amended at a later date . . . ." (Citations omitted; internal quotation marks omitted.) *Salazar-Calderon* v. *Presidio Valley Farmers Assn.*, 765 F.2d 1334, 1349–50 (5th Cir. 1985), cert. denied sub nom. *Presidio Valley Farmers Assn.* v. *Calderon*, 475 U.S. 1035, 106 S. Ct. 1245, 89 L. Ed. 2d 353 (1986); see *Alger* v. *Dept. of Labor & Industry*, 181 Vt. 309, 328–29, 917 A.2d 508 (2006) (upholding trial court's denial of motion for class certification as overbroad but explaining that "[the] plaintiffs are not barred from seeking certification of a more precisely defined class" on remand). We express no opinion on the merits of any such motion should it be filed.