CASES ARGUED AND DETERMINED

IN THE

SUPREME COURT

OF THE

STATE OF CONNECTICUT

FUELCELL ENERGY, INC. *v.* TOWN OF GROTON
(SC 20804)

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

Syllabus

The defendant, the town of Groton, appealed from the judgment of the trial court. The trial court had sustained the plaintiff's appeal from the defendant's denial of the plaintiff's applications seeking municipal property tax exemptions for certain of the plaintiff's fuel cell modules and related equipment. On appeal, the defendant claimed, inter alia, that the trial court, in concluding that the property at issue was exempt from taxation, had improperly construed the statute (§ 12-81 (57)) exempting class I renewable energy sources from municipal taxation and claimed that § 12-81 (63), which permits but does not require municipalities to exempt congeneration systems from taxation, controlled. *Held*:

The plaintiff was entitled to a tax exemption under § 12-81 (57) for tax years 2017 through 2019, and, accordingly, this court upheld the trial court's determination that the property at issue should have been exempted from taxation under § 12-81 (57) rather than under § 12-81 (63) for those tax years.

The trial court correctly determined that, for the 2016 tax year, the property at issue constituted goods in the process of manufacture and was therefore exempt from taxation in that tax year under § 12-81 (50).

This court upheld the trial court's determination that the plaintiff was not required to file with the defendant a declaration of the personal property at issue, as such property was not subject to taxation, and the penalties

that the defendant levied for the plaintiff's failure to file that declaration therefore were not permitted.

Argued February 7—officially released July 24, 2024*

Procedural History

Appeal from the decision of the defendant's board of assessment appeals concerning an assessment on certain of the plaintiff's property, brought to the Superior Court in the judicial district of New London and transferred to the judicial district of New Britain, where Groton Fuel Cell 1, LLC, was added as a plaintiff; thereafter, the court, *Klau*, *J.*, granted in part the plaintiffs' motion for summary judgment, denied the defendant's motion for partial summary judgment, and rendered judgment thereon; subsequently, the case was tried to the court, *Cordani*, *J.*; thereafter, the plaintiffs withdrew certain counts of the complaint, and the court, *Cordani*, *J.*, rendered judgment for the plaintiffs on the remaining counts, and the defendant appealed. *Affirmed.*

Eric W. Callahan, with whom were *Richard S. Cody* and, on the brief, *Timothy R. Bouchard*, for the appellant (defendant).

Kari L. Olson, with whom was *Joseph D. Szerejko*, for the appellees (plaintiffs).

Opinion

D'AURIA, J. This municipal tax appeal asks us to consider how, and whether, personal property tax exemptions should apply to fuel cell modules that produce both electricity and waste heat. It first asks whether fuel cell modules and related equipment were exempt from property taxation as a class I renewable energy source under General Statutes § 12-81 (57). It then asks whether that same property was exempted from taxation for the October 1, 2016 grand list as

* July 24, 2024, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

"goods in [the] process of manufacture" pursuant to § 12-81 (50). Last, it asks whether the taxpayers were required to formally declare their personal property pursuant to General Statutes §§ 12-40, 12-41 and 12-71, even if it was exempt from taxation, and what, if any, the consequences of failing to do so would be.

The record supports the following undisputed facts and procedural history. The plaintiff, FuelCell Energy, Inc., constructs, operates, and manufactures molten carbonate fuel cells throughout Connecticut. Fuel cells are sources of renewable energy that supply electricity to businesses and consumers. When fuel cells generate chemical reactions to make electricity, they create waste heat. That heat can be released into the atmosphere or converted into thermal energy through a heat recovery steam generator (HRSG). The property that the defendant, the town of Groton, sought to tax is comprised of four fuel cell modules and related equipment (property). The property primarily provides electricity to the Pfizer campus. It also converts waste heat with an HRSG to heat Pfizer's buildings. The plaintiff began to install the property on Pfizer's campus in May, 2016. The property is owned by Groton Fuel Cell 1, LLC, a subsidiary of the plaintiff.[1]

In September, 2016, the plaintiff asked the Public Utilities Regulatory Authority (PURA) to classify the property as a class I renewable energy source. In December, 2016, PURA approved the plaintiff's application. Separate from the plaintiff's PURA application, the defendant had become aware of the property's installation by June, 2016.

In January, 2017, the defendant retroactively assessed the property as an 80 percent complete "construction

[1] The plaintiff filed a motion to cite in Groton Fuel Cell 1, LLC, as an additional plaintiff, which the trial court granted. For convenience, we refer to FuelCell Energy, Inc., as the plaintiff.

in progress" (CIP) and valued the property at $8,192,800 as of October 1, 2016. The defendant added a 25 percent penalty to its assessment based on the plaintiff's failure to file a declaration for the property. Following the January, 2017 assessment, the plaintiff applied to the defendant for an exemption under § 12-81 (57), which exempts class I renewable sources from taxation. The defendant denied the application, stating that the property was more properly classified as a cogeneration system under § 12-81 (63), which allows, but does not require, municipalities to exempt cogeneration systems, as it produced both heat and electricity.

The plaintiff appealed from the exemption denial and retroactive assessment to the Superior Court pursuant to General Statutes §§ 12-117a and 12-119. From 2017 to 2019, the plaintiff continued to file additional applications for tax exemptions under § 12-81 (57). The defendant denied each subsequent exemption application and added 25 percent penalties for failure to declare the property.

Both parties moved for summary judgment. The trial court granted partial summary judgment to the plaintiff, concluding that the property was exempt from taxation for years 2017 through 2019 based on § 12-81 (57). The trial court determined that "the categorical exception under § 12-81 (57) for class I renewable energy sources applies to fuel cells with an HRSG," therefore encompassing the property. The trial court denied both the plaintiff and the defendant summary judgment on whether the property was taxable for the 2016 tax year because factual questions remained as to whether the property was completely manufactured by October 1, 2016, and, if it was not, whether the property was taxable as a CIP pursuant to General Statutes § 12-53a (a).

Two years later, the trial court resolved the remaining factual issues after a full trial, ultimately finding that

the property was not completely manufactured by October 1, 2016, and, therefore, could not qualify for exemption under § 12-81 (57). It also held that the property was not taxable as a CIP because § 12-53a (a) applies to real, rather than personal, property. Further, because there was no similar statutory provision authorizing the defendant to tax personal property, the court determined that the property was exempt from taxation under § 12-81 (50) for the 2016 tax year as "goods in [the] process of manufacture . . . ." Finally, the trial court held that the defendant improperly penalized the plaintiff for failing to declare the property because the relevant statutory exemptions' plain text did not require declarations. The defendant appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

I

The defendant first claims that the trial court incorrectly construed § 12-81 (57) to include the property as an exempt class I renewable energy source for years 2017 through 2021. It argues that § 12-81 (63) instead should control based on applying the rule of strict construction for tax exemptions to the statutes' plain text. The defendant bases its argument on General Statutes § 16-1 (20), which defines class I renewable energy sources as electricity from fuel cells but does not state whether a class I renewable energy source that produces something other than electricity—like heat—remains a class I renewable energy source. The defendant argues that interpreting § 12-81 (57) to include sources that produce more than just electricity violates the rule requiring us to apply the exemption strictly against the plaintiff. The defendant also contends that, if the legislature meant for § 12-81 (57) to apply to sources that produce electricity and heat, the statute would have included language to that effect. It further

argues that, because the plaintiff concedes that a fuel cell with an HRSG is a cogeneration system, the plain text of § 12-81 (63) (a) makes the exemption of the property from taxation discretionary with the defendant.

In response, the plaintiff claims that § 12-81 (57) should control this dispute based on the principle that specific terms prevail over general terms when two statutes govern the same subject matter. The plaintiff contends that, because the property fits both § 12-81 (57) and (63) as an energy source that emits both electricity and heat, § 12-81 (57), the more specific statute, should govern. The plaintiff further contends that classifying the property under § 12-81 (57) allows for a harmonious and consistent body of law, whereas the defendant's interpretation would render legislative intent to exempt fuel cell modules pointless.

The meaning of § 12-81 (57) and (63), and § 16-1 (20), as applied to the undisputed facts in this tax appeal, presents a "question of statutory construction, over which we exercise plenary review." *Rainbow Housing Corp.* v. *Cromwell*, 340 Conn. 501, 511, 264 A.3d 532 (2021). Statutory interpretation must "in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If . . . the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence . . . shall not be considered." General Statutes § 1-2z; see also, e.g., *777 Residential, LLC* v. *Metropolitan District Commission*, 336 Conn. 819, 827–28, 251 A.3d 56 (2020). Our analysis fundamentally seeks "to ascertain and give effect to the apparent intent of the legislature." (Internal quotation marks omitted.) *Boardwalk Realty Associates, LLC* v. *M & S Gateway Associates, LLC*, 340 Conn. 115, 126, 263 A.3d 87 (2021).

We adhere to the "principle of construction that specific terms covering the given subject matter will prevail

over general language of the same or another statute which might otherwise prove controlling . . . in the absence of express contrary legislative intent"; (internal quotation marks omitted) *Housatonic Railroad Co.* v. *Commissioner of Revenue Services*, 301 Conn. 268, 302, 21 A.3d 759 (2011), quoting *Tappin* v. *Homecomings Financial Network, Inc.*, 265 Conn. 741, 760, 830 A.2d 711 (2003); and the "principle that the legislature is always presumed to have created a harmonious and consistent body of law . . . ." (Internal quotation marks omitted.) *Hartford/Windsor Healthcare Properties, LLC* v. *Hartford*, 298 Conn. 191, 198, 3 A.3d 56 (2010). We are further guided by the rule of strict construction applicable to tax exemptions: "[P]rovisions granting a tax exemption are to be construed strictly against the party claiming the exception, who bears the burden of proving entitlement to it. . . . [S]uch strict construction neither requires nor permits the contravention of the true intent and purpose of the statute . . . ." (Internal quotation marks omitted.) *Rainbow Housing Corp.* v. *Cromwell*, supra, 340 Conn. 512. Finally, only if, after reading the statute's plain language in context, "we are left with more than one reasonable interpretation," do we turn to extratextual sources. *Wind Colebrook South, LLC* v. *Colebrook*, 344 Conn. 150, 165, 278 A.3d 442 (2022).

We must look first to the statutes' plain language and relationship to other statutes. In 1981, the General Assembly added § 12-81 (63) to the list of exemptions from local taxation. See Public Acts 1981, No. 81-439, § 13. It allows, but does not require, local governments to exempt from taxation for up to fifteen years a "[c]ogeneration system . . . which is designed, operated and installed as a system which produces . . . electricity and exhaust steam, waste steam, heat or other resultant thermal energy which is used for space or water heating or cooling, industrial, commercial,

manufacturing, or other useful purposes . . . .'' General Statutes § 12-81 (63) (b). In 1998, the General Assembly amended § 12-81 (57), which was originally passed in 1977, to include fuel cells to its exemption list. See Public Acts 1998, No. 98-28, § 1. Section 12-81 (57) (D) now exempts from taxation ''any (i) Class I renewable energy source, as defined in section 16-1 . . . installed for generation or displacement of energy . . . .'' In relevant part, § 16-1 (20) defines a class I renewable energy source to include ''(A) electricity derived from . . . a fuel cell . . . .''

The parties agreed, and the trial court found, that the text of both § 12-81 (57) and (63) is plain and unambiguous. We agree that a plain reading of § 12-81 (57) and (63) reveals that § 12-81 (57) exempts fuel cells as class I renewable energy sources and that § 12-81 (63) allows, but does not require, municipalities to exempt cogeneration systems, which may include fuel cells, as well as nonrenewable energy sources.

The parties' disagreement centers on whether the property should be exempt from taxation. Each party takes a different position on what the statutes' unambiguous text means for this property since, as the trial court observed, the property ''arguably falls within [the plain text of] both statutes . . . .'' The parties both posit that principles of statutory interpretation bolster their respective claims: the defendant argues that the rule of strict construction for exemptions to taxation requires that we apply § 12-81 (63), and the plaintiff argues that both the principle that specific terms prevail over general terms governing the same subject matter and the principle of promoting a harmonious body of law require that we apply § 12-81 (57).

The trial court agreed with the plaintiff. Because the property could fit into either statute based on the plain

meaning of the text, we look to principles of statutory interpretation for clarity.[2]

The principle that specific terms prevail over general language favors the plaintiff. Section 12-81 (57) exempts class I renewable energy sources from taxation, and § 16-1 (20) (A) (iii) expressly defines those sources to include fuel cells. Section 12-81 (63) permits municipalities to exempt cogeneration systems, which can include

[2] Although we agree with the trial court's conclusion, because we resolve this question of interpretation based on unambiguous statutory text, the court should not have looked for support to extratextual evidence from the plaintiff's approved PURA application. *See Tappin* v. *Homecomings Financial Network, Inc.*, supra, 265 Conn. 754–55. A plain language reading of a statute properly includes applying canons of statutory interpretation, such as the rule of strict construction against those claiming tax exemptions, the principle that specific terms prevail over general terms covering the same subject matter, and the principle that the legislature is presumed to have created a harmonious body of law. See, e.g., *Seramonte Associates, LLC* v. *Hamden*, 345 Conn. 76, 87, 282 A.3d 1253 (2022); *Housatonic Railroad Co.* v. *Commissioner of Revenue Services*, supra, 301 Conn. 302.

We recognize that, in *Miller's Pond Co., LLC* v. *New London*, 273 Conn. 786, 811 n.25, 873 A.2d 965 (2005), the court noted that the canon of statutory construction providing that a specific statute prevails over a general statute is a form of " 'extratextual evidence' " for purposes of a § 1-2z analysis that can be considered *only* when a statute is deemed ambiguous. We have since silently departed from that admonition and have applied this canon to determine which of two unambiguous statutes applies. See General Statutes § 1-2z (requiring that intent of legislature in first instance be derived from "the text of the statute itself and *its relationship to other statutes*" (emphasis added)); see also, e.g., *Redding* v. *Georgetown Land Development Co., LLC*, 337 Conn. 75, 86 and 90 n.14, 251 A.3d 980 (2020) (specific reference to subject matter prevails over general reference to same subject matter when resolving tension between two unambiguous tax statutes); *Housatonic Railroad Co.* v. *Commissioner of Revenue Services*, supra, 301 Conn. 317 (*Eveleigh, J.*, dissenting) (relying on *Miller's Pond Co., LLC*, to admonish majority for applying canon that specific statute prevails over general statute in determining which of two unambiguous tax statutes apply); *In re Jan Carlos D.*, 297 Conn. 16, 24–25, 997 A.2d 471 (2010) (applying canon that specific terms in statute prevail over general language in same or another statute in determining which of two criminal statutes applied to arrest of juveniles), overruled in part on other grounds by *State* v. *Elson*, 311 Conn. 726, 91 A.3d 862 (2014). Consistent with our recent case law, we clarify that this canon of statutory construction does not constitute extratextual evidence of legislative intent under § 1-2z.

renewable (e.g., fuel cells) or nonrenewable (e.g., coal) energy sources, so long as those sources "[produce], in the same process, electricity and exhaust steam, waste steam, heat or other resultant thermal energy which is used for space or water heating or cooling, industrial, commercial, manufacturing or other useful purposes . . . ." General Statutes § 12-81 (63) (b). Because the plaintiff could claim an exemption for the property under either statute, we conclude that the property's taxability is governed by the more specific exemption. See, e.g., *Institute of Living* v. *Hartford*, 133 Conn. 258, 270–71, 50 A.2d 822 (1946) (hospital that could be deemed as exempt from taxation under two statutory provisions, one generally covering charitable organizations and another specifically covering hospitals with government financial support, properly was covered by more specific statute); see also *Seramonte Associates, LLC* v. *Hamden*, 345 Conn. 76, 87, 282 A.3d 1253 (2022); *Wind Colebrook South, LLC* v. *Colebrook*, supra, 344 Conn. 165; *Housatonic Railroad Co.* v. *Commissioner of Revenue Services*, supra, 301 Conn. 302–303; *Griswold Airport, Inc.* v. *Madison*, 289 Conn. 723, 729–31 and n.10, 961 A.2d 338 (2008). Not only is § 12-81 (57) the more specific of the two statutes, but it is also later in time because the legislature amended it to include fuel cells after it had adopted § 12-81 (63), further bolstering our conclusion. See, e.g., *Pizzola* v. *Planning & Zoning Commission*, 167 Conn. 202, 205–206, 355 A.2d 21 (1974) (because legislature is presumed to know all statutes and effects that its actions will have, later enacted provision governs as legislature's most recent articulation of its intent); see also *State* v. *Tyson*, 195 Conn. 326, 331, 487 A.2d 1091 (1985) (when conflict between statutes exists, latest provision governs).

The principle that courts should promote a consistent and harmonious body of law also favors the plaintiff. The defendant acknowledges that, if the plaintiff were

to let the excess heat from the property escape into the atmosphere, rather than capture and convert it to usable heat, § 12-81 (57) would apply. But it maintains that, because the property uses the excess heat created from the fuel cells and § 16-1 (20) (iii) does not include the term "heat," § 12-81 (63) should govern, giving the defendant and other municipalities the discretion to deny the exemption or to grant it for up to fifteen years. This interpretation would be inconsistent and not in harmony with legislative intent to exempt renewable energy sources, and fuel cells in particular, interposing a disincentive to fuel cell companies to maximize renewable energy production by allowing resultant waste heat to dissipate rather than productively using it, which flies in the face of the legislature's policy goal in enacting the statute.[3]

The rule of strict construction for tax exemptions does not change the calculus. Although the defendant is correct that tax exemptions should be construed strictly against the party claiming the exception, the rule of strict construction requires that we "embrace only what is strictly within their terms." (Internal quotation marks omitted.) *St. Joseph's Living Center, Inc.* v. *Windham*, 290 Conn. 695, 707, 966 A.2d 188 (2009). Here, there is no question that, even when § 12-81 (57) and (63) are strictly construed, the property qualifies for an exemption under both statutes. The question is which statute, between the two, should most appropri-

[3] There is an unavoidable tension between the plain meaning rule's mandate to primarily look to the statutory text and its relationship to other statutes, and the plain meaning rule's goal of ascertaining the "apparent intent of the legislature." (Internal quotation marks omitted.) *Boardwalk Realty Associates, LLC* v. *M & S Gateway Associates, LLC*, supra, 340 Conn. 126. That tension requires courts to look to legislative intent but not stray too far to support their conclusions. Id. Here, we stay within the confines of "apparent" legislative intent in holding that the property belongs in the purview of § 12-81 (57), as our analysis derives from the relationship between § 12-81 (57) and (63).

ately apply to the property. That inquiry goes beyond what we might glean from the rule of strict construction because, as the parties and trial court agreed, both statutes cover the property.

The plaintiff has met its burden of proving its entitlement to a tax exemption under § 12-81 (57). As the trial court determined, the plaintiff has demonstrated that the defendant's strict construction of § 12-81 (57) would undercut the legislative intent to encourage renewable energy projects by incentivizing a company's emission of waste heat into the atmosphere, rather than recycling it, so that companies can benefit from § 12-81 (57). Put another way, the defendant's interpretation would contravene "the true intent and purpose of the statute . . . ." (Internal quotation marks omitted.) *Rainbow Housing Corp.* v. *Cromwell*, supra, 340 Conn. 512.

Because both statutes are unambiguous, from a plain text analysis, we are not required to look to extratextual sources to ascertain their meaning. Cf. *Wind Colebrook South, LLC* v. *Colebrook*, supra, 344 Conn. 165 (wind turbines reasonably could be interpreted as being subject to taxation under multiple statutory subsections, based on principle of statutory construction that, when descriptive statute includes catchall phrase, courts should assume that statute includes only items consistent with those already listed). We therefore uphold the trial court's holding that the property should be exempt from taxation under § 12-81 (57) rather than § 12-81 (63).

II

The defendant next claims that the trial court incorrectly concluded that the property was exempt for the 2016 tax year based on § 12-81 (50), which exempts manufacturers' inventories, including "goods in [the] process of manufacture . . . ." The defendant argues that, despite its own earlier classification of the prop-

erty as CIP in January, 2017, the property was operational as of October 1, 2016, and therefore was not "in [the] process of manufacture" pursuant to § 12-81 (50).[4]

To support their respective positions, the parties each presented expert testimony. The experts' disagreement as to when the property became operational (and therefore was no longer "in [the] process of manufacture" phase) centered on the factual question of whether the property's conditioning process—essentially performance testing—was necessary for operation. Whether the trial court correctly determined that the property was exempt from taxation for the 2016 tax year under

[4] We do not address the defendant's secondary claim that the property would not qualify for an exemption for 2016 under § 12-81 (50) because it was not "goods" as a matter of law, a claim the defendant failed to distinctly raise before the trial court. See, e.g., *White* v. *Mazda Motor of America, Inc.*, 313 Conn. 610, 631, 99 A.3d 1079 (2014). The defendant argued at trial that § 12-81 (50) did not apply to the property because it was not in the process of manufacture phase as of October 1, 2016. To advance this claim, the defendant relied on extensive testimony by its expert, Edlund. At no point did the defendant argue that, in addition to the property no longer being "in [the] process of manufacture," the property was not "goods" as a matter of law. Accordingly, neither Judge Klau, who ruled on the parties' pretrial summary judgment motions, nor Judge Cordani addressed the issue. It was only in its appellate brief that the defendant raised the argument that the property was not "goods." There is no indication in the defendant's posttrial brief, or other records such as transcripts and pretrial management reports, that this claim had been raised. Rather, the defendant focused on expert opinion that pertained to whether the property was "in [the] process of manufacture . . . ."

The defendant *did* claim that the plaintiff's reliance on § 12-81 (50) was inappropriate because the plaintiff had failed to plead to that effect, therefore failing to provide the defendant with notice. But, here, there is no question that the defendant had notice that the plaintiff intended to argue that the property fit into § 12-81 (50) in tax year 2016. The defendant presented its own expert witness at trial who addressed that very question. The trial court agreed, concluding that the plaintiff had sufficiently pleaded its assertion of § 12-81 (50) and that the defendant was "adequately forewarned that this would be an issue at trial." Because the defendant failed to argue at trial that the property was legally a "good" and the trial court concluded that the defendant had sufficient notice of the plaintiff's argument based on § 12-81 (50), we decline to address that issue. See, e.g., *Jobe* v. *Commissioner of Correction*, 334 Conn. 636, 643, 224 A.3d 147 (2020).

§ 12-81 (50) was based on the court's factual inquiry. We address questions of fact using the clearly erroneous standard of review, under which a factual finding is clearly erroneous when "there is no evidence to support [the finding] . . . or when although there is evidence in the record to support it, the reviewing court . . . is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *St. Joseph's Living Center, Inc.* v. *Windham*, supra, 290 Conn. 707.

The plaintiff called Prabhakar Singh in support of its argument that the property should be properly classified as "goods in [the] process of manufacture" under § 12-81 (50) for tax year 2016. Singh testified that the property was operational only after October 12, 2016, based on several ongoing steps in the conditioning process completed after October 1, 2016, including those ensuring "nameplate capacity, efficiency, interconnection, grid interconnectivity and chemistry, gas chemistry . . . ." He emphasized that, until the conditioning process was complete, the property was not operational because "the uniformity of temperature is critical for the satisfactory and required operation of the cell. If there is a large imbalance in the temperature, the cell will fail."

The defendant presented the testimony of David Edlund, who opined that the property was assembled and operational by October 1, 2016, because it had produced energy in September, 2016, that Pfizer then purchased. Edlund also cited the plaintiff's own expert testimony that "the system had to be operational in order to enter into commissioning . . . ." Edlund stated that it was immaterial that the conditioning process turned up mechanical errors that the plaintiff had to fix, and did fix. In Edlund's view, that process still took place *after* the property became operational.

The trial court agreed with the plaintiff's expert, finding that the property's conditioning process was critical to the property's overall manufacture, and, because the conditioning process was not completed by October 8, 2016, "the manufacture of the property was not complete until October 8, 2016."

Based on the trial record, we cannot conclude that the trial court's finding that the property was properly exempted from taxation in 2016 as "goods in [the] process of manufacture" pursuant to § 12-81 (50) was clearly erroneous. The record provides ample evidence to support the trial court's conclusion. Over the course of two days, the trial court heard testimony from the plaintiff's financial officer and vice president of engineering, and the defendant's tax assessor, along with the parties' experts, Edlund and Singh. These witnesses testified at length about when they believed the property was completely manufactured and what facts formed the basis for their respective opinions. The defendant's expert testimony does not leave this court with "the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *St. Joseph's Living Center, Inc.* v. *Windham*, supra, 290 Conn. 707. Therefore, we uphold the trial court's determination that the property was exempt from taxation in 2016 based on § 12-81 (50).

III

Last, the defendant claims that the trial court incorrectly determined that the plaintiff was not required to file a personal property declaration of the property pursuant to §§ 12-40, 12-41 and 12-71. The defendant argues that the plaintiff waived its right to exemption from taxation under § 12-81 (57) by failing to file a personal property declaration. The defendant contends that its assessor was correct to deny the plaintiff's § 12-81 (57) exemption applications and to levy penalties.

The defendant argues that §§ 12-40, 12-41 and 12-71 require taxpayers to declare personal property that is exempt from taxation because the failure to do so undercuts a municipality's ability to balance its budget.

The plaintiff responds that only taxable property must be declared, and, because the property is exempt from taxation, §§ 12-40, 12-41 and 12-71 do not mandate a declaration of the property. The plaintiff argues that, if the defendant were correct, all exempt property listed in § 12-81 would require a yearly declaration, including such commonplace items as musical instruments and jewelry. It further argues that, because § 12-81 includes multiple exemptions where the legislature has explicitly mandated that taxpayers file personal property declarations, the lack of express language for taxpayers to do so under § 12-81 (57) indicates that there is no requirement to file a declaration. Finally, the plaintiff argues that its application for an exemption under § 12-81 (57) acts, functionally, as a declaration because it notifies the defendant of the property, therefore allowing localities to correct errors (such as a company's incorrectly claiming an exemption) and to retroactively collect overdue taxes with appropriate penalties.

We exercise plenary review in seeking to determine the meaning of §§ 12-40, 12-41 and 12-71. See *Rainbow Housing Corp.* v. *Cromwell*, supra, 340 Conn. 511. As stated in part I of this opinion, our statutory construction is guided by the plain meaning rule in § 1-2z.

We start with § 12-40. In relevant part, § 12-40 provides that "assessors in each town . . . shall . . . publish . . . a notice requiring all persons therein liable to pay taxes to bring in a declaration of the taxable personal property belonging to them . . . ." Next, § 12-41 (c) lists the types of "tangible personal property" that should be included in a taxpayer's annual declaration. Section 12-71 (a) (1) provides in relevant part that per-

sonal property subject to tax, including "goods, chattels and effects . . . shall be listed for purposes of property tax . . . ."

The trial court had earlier rejected this claim when considering both parties' motions for summary judgment, ruling that the plaintiff was not required to declare the property based on the lack of express instruction in § 12-81 (57) and the inapplicability of §§ 12-40 and 12-41. After a trial on the remaining issues, the trial court addressed the issue again, concluding that both the assessment and the penalty were improper because "[p]ersonal property declarations are only due for taxable personal property."

We agree with the trial court. A plain reading of §§ 12-40, 12-41 and 12-71 reveals that none of them applies to the property. First, § 12-40 has nothing to do with taxpayers' obligations to declare exempt personal property; rather, it requires local municipalities to provide notice to taxpayers about the need to declare taxable personal property. Second, § 12-41 includes no directive for taxpayers to make annual declarations; it details only the types of personal property that belong in such declarations. Last, § 12-71 involves personal property subject to taxation, not personal property subject to exemption from taxation.

The case law that the defendant relies on to advance its claim is unpersuasive. It is true that taxation partially is a self-regulating system and notice of taxable assets is important information for a municipality's budgetary consideration. But the cases cited by the defendant cannot fairly be understood as suggesting that declarations are required for property exempt from taxation. See *Cornwall* v. *Todd*, 38 Conn. 443, 447 (1871) (taxes are "just as essential and important as government itself"); see also *Paul Dinto Electrical Contractors, Inc.* v. *Waterbury*, 266 Conn. 706, 721, 835 A.2d 33 (2003)

("the personal property tax system is . . . a self-reporting system . . . suggest[ing] a legislative intent to create simple and direct mechanisms for self-reporting" (citation omitted)); *Xerox Corp.* v. *Board of Tax Review*, 240 Conn. 192, 205, 690 A.2d 389 (1997) (emphasizing that taxpayer bears burden of supplying information that provides "the facts upon which valuations may be based" (emphasis omitted; internal quotation marks omitted)); *Curly Construction Co.* v. *Darien*, 147 Conn. 308, 310–11, 160 A.2d 751 (1960) (taxpayer failed to sustain burden of proving nontaxability); *Hartford* v. *Pallotti*, 88 Conn. 73, 76–77, 89 A. 1119 (1914) (assessors had right to take property because there was no "notice, actual or constructive, that condemnation proceedings had been commenced").

We are therefore left with the statute's plain language. Section 12-81 (57) does not require, based on its plain text, a personal property declaration of exempt personal property. As a practical matter, although we recognize why the defendant would like to receive notice of exempt property of value, there is no question in the present case that it had adequate notice. The defendant knew about the property by June, 2016—several months before the deadline for exemption applications and personal property declarations.

Based on the foregoing, we uphold the trial court's conclusion that the plaintiff was not required to declare the property because it was exempt from taxation under § 12-81 (57) and, by extension, that the penalties levied by the defendant under § 12-81 (50) were not permitted.

The judgment is affirmed.

In this opinion the other justices concurred.

STATE OF CONNECTICUT *v.* RAIKES Y. DELACRUZ-GOMEZ (SC 20828)

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

Syllabus

The defendant appealed, on the granting of certification, from the judgment of the Appellate Court, which affirmed the judgment of conviction of assault of public safety personnel and interfering with an officer. The defendant claimed that the Appellate Court incorrectly determined that the trial court had not abused its discretion when it allowed testimony naming the felony charges in the warrant for the defendant's arrest and identifying the task force that executed that warrant as the "Violent Fugitive Task Force." *Held*:

The trial court did not abuse its discretion when it admitted the names of the felony charges listed in the arrest warrant as evidence of uncharged misconduct, as the probative value of the evidence was strong and the trial court undertook sufficient measures to mitigate any potentially undue prejudice.

Although the testimony concerning the name of the task force should not have been admitted because it had no probative value and was unfairly prejudicial, the defendant failed to satisfy his burden of demonstrating that the error was harmful.

Argued March 27—officially released July 25, 2024*

Procedural History

Substitute information charging the defendant with the crimes of assault of public safety personnel and interfering with an officer, brought to the Superior Court in the judicial district of Waterbury, where the court, *Klatt*, *J.*, overruled the defendant's objection to the admission of certain evidence and denied the defense's motion to exclude certain evidence; thereafter, the case was tried to the jury before *Klatt*, *J.*; verdict and judgment of guilty, from which the defendant appealed to the Appellate Court, *Bright*, *C. J.*, and *Moll* and *Vertefeuille*, *Js.*, which affirmed the judgment of the trial

* July 25, 2024, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

court, and the defendant, on the granting of certification, appealed to this court. *Affirmed.*

Jennifer B. Smith, assistant public defender, for the appellant (defendant).

Jonathan M. Sousa, assistant state's attorney, with whom, on the brief, were *Maureen Platt*, state's attorney, *Don E. Therkildsen, Jr.*, supervisory assistant state's attorney, and *Alexandra Arroyo*, assistant state's attorney, for the appellee (state).

Opinion

DANNEHY, J. In this appeal, we address two claims that the trial court improperly admitted unduly prejudicial evidence. The defendant, Raikes Y. Delacruz-Gomez, was convicted, following a jury trial, of assault of public safety personnel in violation of General Statutes (Supp. 2016) § 53a-167c (a) (1),[1] and interfering with an officer in violation of General Statutes (Rev. to 2015) § 53a-167a (a),[2] after injuring a police officer assigned to a joint federal and state task force that was executing a warrant for his arrest. We granted certification to appeal from the judgment of the Appellate Court, which affirmed the trial court's judgment of conviction.[3] The defendant contends that the Appellate Court incorrectly held that the trial court had not abused its discretion by admitting testimony naming the

[1] Hereinafter, all references to § 53a-167c are to the version of that statute in the 2016 supplement of the statute.

[2] Hereinafter, all references to § 53a-167a are to the 2015 revision of the statute.

[3] We granted certification to appeal, limited to the following issues: (1) "Did the Appellate Court correctly conclude that the trial court had not erred in admitting uncharged misconduct evidence about the names of outstanding felony charges from an unrelated case in the defendant's arrest warrant?" And (2) "[d]id the Appellate Court correctly conclude that the admission of evidence that the Violent Fugitive Task Force arrested the defendant was not unfairly prejudicial?" *State* v. *Delacruz-Gomez*, 346 Conn. 925, 925, 295 A.3d 419 (2023).

felony charges in the defendant's outstanding warrant (warrant charges) and identifying the task force that executed that warrant as the "Violent Fugitive Task Force." We conclude that the trial court did not abuse its discretion by admitting the evidence pertaining to the warrant charges. We further conclude that, although the evidence pertaining to the name of the task force should not have been admitted, that evidence did not substantially sway the jury's verdict. Accordingly, we affirm the judgment of the Appellate Court.

The jury reasonably could have found the following facts. On November 18, 2016, members of a multiagency law enforcement task force went to the defendant's residence in Waterbury to serve two arrest warrants, one for the defendant and one for his son, Hendimbert Delacruz. The defendant's arrest warrant included charges of assault in the first degree and criminal possession of a firearm. The personnel assigned to execute the warrants included the following: United States Marshal James Masterson; Waterbury Police Department Detectives Daniel Chalker, Edward Mills, and Jeffrey Taylor; Connecticut Probation Officer Timothy McMahon; and three Connecticut parole officers.[4] Before going to the residence, the task force held a briefing, during which the officers reviewed the suspects' names and photographs, the layout of the apartment, and the nature of the charges for which the warrants were issued.

Upon arrival, the task force established a perimeter around the defendant's apartment, which was a two-story end unit with front and rear entrances. The officers were outfitted in bulletproof tactical vests labeled "Police," "Probation," or "Parole," clearly identifying them as law enforcement personnel. Masterson, Chalker, Mills,

[4] Chalker and McMahon testified that they were not officially deputized members of the task force, but they had been assigned to work with the task force that day.

and Taylor were assigned to enter the residence and search for the defendant and his son. The entry team approached the front door, repeatedly knocked loudly and announced their presence. During this time, Masterson and Mills observed an individual, whom they recognized as the defendant, looking out of one of the upstairs windows.

After about five minutes had passed with no response, the officers decided to use force to enter the residence. Mills attempted to open the front door with a battering ram but inadvertently jammed the door shut. A woman, later identified as the defendant's wife, tried unsuccessfully to open the front door, and then let the officers in through the apartment's rear entrance. The officers showed the defendant's wife a photograph of the defendant and asked whether he was inside the residence. She nodded and pointed upstairs. When the officers called for anyone upstairs to come down, an adult male and two children did so, but neither the defendant nor his son appeared. The officers determined that they would need to clear the second floor.

While McMahon remained downstairs with the defendant's wife and the other individuals, Masterson led Chalker, Mills, and Taylor upstairs, where they began searching each room. Masterson carried a ballistic shield and the other officers had their guns drawn. After clearing the bathroom, Masterson provided cover in the hallway while Chalker, Mills, and Taylor entered the first bedroom, which was small and cluttered with a bed, a nightstand, and a dresser. There was a large pile of clothing on the floor at the foot of the bed. While Taylor stood guard, Mills opened the closet door, and Chalker climbed onto the bed and began searching the clothing pile, which was almost the same height as the bed.

As he moved aside articles of clothing, Chalker uncovered what appeared to be part of a person's body and

yelled, " 'show me your hands.' " Hearing no response, Chalker grabbed the person's hand, saw his face, and recognized the defendant. Chalker, standing on the "squishy" bed, began pulling the defendant out of the clothing pile, while instructing him that he was under arrest. Although the defendant resisted by making himself "dead weight," Chalker was able to place one handcuff on his wrist. As Chalker pulled the defendant onto the bed, however, the defendant lunged at him, causing Chalker to fall backward and land on the adjacent nightstand, which was adorned with a pointed metal prong. After Mills and Taylor finished handcuffing the defendant, removed him from the bedroom, and called for assistance for Chalker, they continued their search and found the defendant's son hiding in the same pile of clothing. Chalker was taken to the hospital, where he was diagnosed with a traumatic pneumothorax and multiple rib fractures.

The defendant was subsequently charged in a substitute information with one count of assault of public safety personnel in violation of § 53a-167c (a) (1), and one count of interfering with an officer in violation of § 53a-167a (a). The jury returned a verdict of guilty on both counts, and the trial court sentenced the defendant to a total effective sentence of eight years of incarceration, followed by two years of special parole. The defendant appealed from the judgment of conviction to the Appellate Court, claiming that the trial court improperly had admitted into evidence (1) testimony naming the warrant charges, and (2) testimony identifying the "Violent Fugitive Task Force" as the particular task force that executed that warrant. *State* v. *Delacruz-Gomez*, 218 Conn. App. 260, 262–63, 291 A.3d 609 (2023). The Appellate Court affirmed the trial court's judgment, concluding that the evidence was relevant and that its probative value outweighed its prejudice to the defendant. Id., 277, 281. This certified appeal followed. Additional

facts and procedural history will be set forth as necessary.

We begin by setting forth the following well established principles that apply to both of the defendant's evidentiary claims. "Relevant evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice or surprise, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence." Conn. Code Evid. § 4-3. This balancing inquiry is necessary "to militate against the risk that the attention of a jury may be distracted from consideration of the proof of the charges at hand, and, instead, and for improper reasons, fix the defendant's guilt on evidence of marginal evidentiary value." (Internal quotation marks omitted.) *State* v. *Raynor*, 175 Conn. App. 409, 450–51, 167 A.3d 1076 (2017), aff'd, 334 Conn. 264, 221 A.3d 401 (2019). Accordingly, this court has identified four situations in which "the potential prejudicial effect of relevant evidence would suggest its exclusion." (Internal quotation marks omitted.) *State* v. *James G.*, 268 Conn. 382, 398, 844 A.2d 810 (2004). "These are: (1) [when] the facts offered may *unduly* arouse the [jurors'] emotions, hostility or sympathy, (2) [when] the proof and answering evidence it provokes may create a side issue that will *unduly* distract the jury from the main issues, (3) [when] the evidence offered and the counterproof will consume an *undue* amount of time, and (4) [when] the defendant, having no reasonable ground to anticipate the evidence, is *unfairly* surprised and unprepared to meet it." (Emphasis in original; internal quotation marks omitted.) Id. "[T]he primary responsibility for conducting the balancing test to determine whether the evidence is more probative than prejudicial rests with the trial court, and its conclusion will be disturbed only for a manifest abuse of discretion." (Internal quotation marks omitted.) Id., 396. "On review

by this court, therefore, every reasonable presumption should be given in favor of the trial court's ruling." (Internal quotation marks omitted.) *State* v. *James K.*, 347 Conn. 648, 668, 299 A.3d 243 (2023).

I

The defendant first argues that the names of the warrant charges should not have been admitted because they had little probative value and were unduly prejudicial, portraying him as a "violent, dangerous individual" who was likely to have assaulted Chalker. We conclude that the Appellate Court correctly held that the trial court did not abuse its discretion by admitting the names of the warrant charges.

The following procedural facts are relevant to our resolution of this issue. Before the evidentiary phase of the trial began, the state filed a notice of its intent to introduce evidence of uncharged misconduct pursuant to § 4-5 (c) of the Connecticut Code of Evidence. Specifically, the state indicated that it would elicit testimony that, on the morning of the defendant's arrest, the members of the task force were "in possession of an arrest warrant charging the defendant with . . . assault in the first degree and criminal possession of a firearm."[5] The defendant filed an objection to the introduction of the evidence not on the grounds that the evidence lacked relevance or probative value but, rather, on the basis that it was inflammatory and would lead the jury to conclude that he had a propensity for violence. During oral argument on the objection, the prosecutor maintained that the names of the charges were necessary to explain the officers' conduct during their entry, including the use of the ballistic shield and holding the defendant at gunpoint. Specifically, the prosecutor contended that the names of the charges

[5] We note that the prosecutor did not attempt to introduce evidence of the other charges in the warrant.

were relevant to prove that the officers acted in the performance of their duties, to corroborate crucial prosecution testimony, and to "[complete] the story." Defense counsel argued that the names of the charges were unduly prejudicial because the charge of assault in the first degree was similar to the charge being tried, namely, assault of public safety personnel. Therefore, defense counsel argued, the evidence was potentially confusing, and there was a serious risk that the jury would treat it as propensity evidence. In the event that the court decided to admit the evidence, defense counsel asked the court to instruct the jury that it should not be concerned with the nature of the charges, whereas the prosecutor argued that an instruction that the charges could not be used to infer propensity would be sufficient.

The court ruled that the names of the warrant charges were admissible, stating: "From the argument[s] that I heard from both parties, it would appear to be relevant evidence on the charge of interference. It goes to the reasonable belief of the officers, and it does . . . help establish the prosecution testimony, as well as complete the story of why they're there. I do find, listening again to the argument[s] of both parties, that it would appear to be more probative than prejudicial, and that any prejudice could be eliminated through an appropriate jury charge." The court also notified the parties that it would give the standard jury instruction on uncharged misconduct but invited counsel to submit any proposed modifications. Four of the state's witnesses subsequently testified as to the nature of the charges in the defendant's warrant.

The Appellate Court upheld the trial court's ruling, reasoning that the warrant charges "provided an explanation for the manner in which the officers conducted themselves while they were at the apartment," for the purpose of establishing that they were acting in the

performance of their duties. *State* v. *Delacruz-Gomez*, supra, 218 Conn. App. 273–74. The court also determined that any risk of undue prejudice was mitigated by the trial court's limiting instruction and by the fact that the jury did not hear the details of the warrant charges. Id., 275–77.

"[A]s a general rule, evidence of prior misconduct is inadmissible to prove that a criminal defendant is guilty of the crime of which the defendant is accused. . . . Such evidence cannot be used to suggest that the defendant has a bad character or a propensity for criminal behavior." (Internal quotation marks omitted.) *State* v. *Collins*, 299 Conn. 567, 582, 10 A.3d 1005, cert. denied, 565 U.S. 908, 132 S. Ct. 314, 181 L. Ed. 2d 193 (2011). "We have developed a two part test to determine the admissibility of such evidence. First, the evidence must be relevant and material to at least one of the circumstances encompassed by the exceptions [set forth in § 4-5 (c) of the Connecticut Code of Evidence]." (Internal quotation marks omitted.) Id. Specifically, that provision allows evidence of other crimes, wrongs, or acts to be admitted "to prove intent, identity, malice, motive, common plan or scheme, absence of mistake or accident, knowledge, a system of criminal activity, or an element of the crime, or to corroborate crucial prosecution testimony." Conn. Code Evid. § 4-5 (c). "Second, the probative value of the evidence must outweigh its prejudicial effect." (Internal quotation marks omitted.) *State* v. *Collins*, supra, 582.

As the Appellate Court observed, the state "bore the burden of demonstrating that the officers were 'acting in the performance of [their] duties' to prove the elements of the charged offenses of assault of public safety personnel and interfer[ing] with an officer."[6] *State* v.

[6] "A person is guilty of assault of public safety, emergency medical, public transit or health care personnel when, with intent to prevent a reasonably identifiable peace officer . . . from performing his or her duties, and while such peace officer . . . is acting in the performance of his or her duties

Delacruz-Gomez, supra, 218 Conn. App. 273. In *State* v. *Davis*, 261 Conn. 553, 804 A.2d 781 (2002), this court concluded that a defendant was not entitled to raise the defense of self-defense to a charge of either interfering with or assault of a peace officer. Id., 574. Instead, "the proper defense to those charges in cases in which the defendant claims that the police officer had used unreasonable and unnecessary physical force is that the police officer was not acting in the performance of his duty." Id. In reaching that conclusion, the court noted that a police officer's use of physical force during the course of an arrest must be reasonable to fall within the scope of the officer's duties. Id., 572; see also *State* v. *Baptiste*, 133 Conn. App. 614, 627, 36 A.3d 697 (2012) (reasonable force is inherent component of whether police officers are acting in performance of their duties), appeal dismissed, 310 Conn. 790, 83 A.3d 591 (2014). This court made clear in *Davis* that a defendant who presents evidence that an officer was not acting in the performance of his duties—no matter how weak or incredible—is entitled, in lieu of an instruction on self-defense, to an instruction that the officer's use of physical force must have been reasonable under the circumstances for that officer to have been acting in the performance of his duties. *State* v. *Davis*, supra, 571–72.[7]

. . . such person causes physical injury to such peace officer . . . ." General Statutes (Supp. 2016) § 53a-167c (a).

"A person is guilty of interfering with an officer when such person obstructs, resists, hinders or endangers any peace officer . . . or firefighter in the performance of such peace officer's . . . or firefighter's duties." General Statutes (Rev. to 2015) § 53a-167a (a).

[7] Before a trial court admits evidence under § 4-5 (c) of the Connecticut Code of Evidence for the limited purpose of allowing the state to explain the reasonableness of a police officer's use of force in a prosecution for interfering with an officer or assault of public safety personnel, it should have a basis for concluding that the defendant has challenged the reasonableness of that force or intends to do so. In the present case, defense counsel promptly raised this issue by repeatedly asking Chalker, the state's second witness, if he had struck the defendant with his gun. It is not surprising, therefore, that defense counsel chose not to contest the relevance of the

In the present case, the names of the warrant charges explained why the amount of force the officers used in effectuating the defendant's arrest was reasonable. They were relevant, therefore, to the jury's determination that the members of the task force were acting in the performance of their duties. The defendant has not disputed the relevance of the charges but, rather, claims that the trial court should have allowed into evidence only the fact that the task force was at the residence to serve a warrant. Unlike the mere fact of an arrest warrant, however, the names of the charges are what explained why the officers used significant, extensive force in the form of precautionary measures—such as entering the home with a battering ram, carrying a ballistic shield, and drawing their weapons while searching for the defendant and his son—that, under different circumstances, a jury may have found to be unreasonable. Although the reasonable use of force is not itself an element of either offense, evidence establishing why the amount of force used was necessary is relevant to the state's burden of proving that the officers were acting in the performance of their duties, because, as we made clear previously in this opinion, the officers would not have been doing so if they had used unnecessary or unreasonable force while arresting the defendant.[8]

warrant charges when the prosecutor argued at the outset of trial that their admission was necessary to explain the officers' use of force.

[8] The trial court did not give a "reasonable force" instruction as to the assault of public safety personnel charge. Although the defendant does not claim on appeal that the failure to give that instruction was improper, he argues that its omission diminished the probative value of the warrant charges. Such an instruction—which the defense did not request—would have specified that the reasonableness of Chalker's use of force was relevant to whether he was acting in the performance of his duties. Although the court did not explicitly connect the reasonableness of Chalker's use of force to the performance of his duties when it instructed the jury on the assault charge, it did do so for the same element when it instructed the jury on the interference charge, which followed the assault instruction. Moreover, defense counsel conceded during his closing argument that Chalker had been acting in accordance with his official duties. We therefore agree with

Our conclusion that the evidence was relevant and had probative value does not end our inquiry. That probative value must outweigh any prejudicial effect, which, the defendant argues, included improperly suggesting that he had a propensity for violence, arousing the emotions and hostilities of the jurors, and inviting the jurors to speculate about the facts underlying the warrant charges. This court has previously stated that, "[when] the prior crime is quite similar to the offense being tried, a high degree of prejudice is created and a strong showing of probative value would be necessary to warrant admissibility." (Internal quotation marks omitted.) *State* v. *Graham*, 200 Conn. 9, 12, 509 A.2d 493 (1986). In the present case, therefore, in which the defendant has been charged with assault of public safety personnel, and the warrant charged the defendant with assault in the first degree, a "strong showing of probative value" is required. (Internal quotation marks omitted.) Id.

Under the circumstances of the present case, the probative value of this evidence was sufficiently strong. As we explained previously in this opinion, the names of the warrant charges were relevant to an inherent component of an element of both offenses with which the defendant was charged, namely, that the officers were acting in the performance of their duties.[9] Our review

the defendant's candid admission in his reply brief to the Appellate Court that, under the facts of this case, any error in omitting the reasonable force instruction as to the assault charge was harmless beyond a reasonable doubt.

[9] The defendant claims that, because defense counsel conceded in his closing argument that Chalker and the other officers were acting in the performance of their duties, the names of the warrant charges were no longer probative as to that element. We agree that any probative value is significantly diminished when the evidence in question pertains to an undisputed element of the crime. See, e.g., *State* v. *Juan J.*, 344 Conn. 1, 33, 276 A.3d 935 (2022) (trial court erred in admitting evidence of uncharged misconduct to prove irrelevant issue); see also E. Prescott, Tait's Handbook of Connecticut Evidence (6th Ed. 2019) § 4.4.2, p. 151 (observing that "an adverse party's willingness to stipulate to a fact in order to obviate the need for prejudicial evidence should . . . be given due consideration").

of the record reveals that the sole basis for the officers' use of the battering ram, ballistic shield, and drawn weapons was the nature of the charges in the warrant. Furthermore, defense counsel cross-examined multiple officers regarding their use of force against the defendant, and the defendant and his son testified that one of the members of the task force had restrained and beaten the defendant, making the officers' use of force a contested issue at trial. In light of that testimony and the relevance of the warrant charges to establishing the reasonableness of the use of force—which, in turn, was relevant to proving the "performance of duties" element of both offenses—the "strong showing of probative value" called for in *State* v. *Graham*, supra, 200 Conn. 12, has been made.

Although we recognize the heightened risk of undue prejudice, given that some form of assault was charged in both the warrant and the case being tried, the trial court mitigated the potential prejudice in several ways. The court did not allow the jury to hear any details of the alleged conduct that gave rise to the warrant charges. Accordingly, the jury was unable to compare the cases in a way that we have previously cautioned is likely to bring about undue prejudice. There was no evidence, for instance, that the conduct charged in the warrant was more egregious than the defendant's alleged assault of Chalker. See *State* v. *Campbell*, 328 Conn. 444, 522–23, 180 A.3d 882 (2018) ("prejudicial impact of uncharged misconduct evidence is assessed in light of its relative 'viciousness' in comparison with the charged conduct").

This concession, however, was not made until defense counsel's closing argument, long after the court ruled on the admissibility of the evidence. Before that time, defense counsel provided no indication that he planned to concede this element. To the contrary, defense counsel cross-examined Chalker and Mills about their use of force at the defendant's residence, advancing the allegations that one of the officers struck the defendant with his pistol, and later eliciting testimony from both the defendant and his son that one of the officers had used excessive force.

The jury, moreover, could not identify factual similarities that might suggest a common perpetrator. See *State* v. *Raynor*, 337 Conn. 527, 563–65, 254 A.3d 874 (2020) (increased risk of undue prejudice when evidence highlights shared characteristics between uncharged misconduct and offense being tried). Because the officers' testimony was limited to stating the relevant charges for the purpose of explaining their conduct during the execution of the warrant, the jury did not hear the kind of graphic details that could have prevented it from properly weighing the evidence. See, e.g., *State* v. *Morlo M.*, 206 Conn. App. 660, 693–94, 261 A.3d 68 (emphasizing that prior misconduct evidence alleged by defendant to be unduly prejudicial "did not involve gruesome details, facts or photographs" and that trial court had given appropriate limiting instruction as to its use), cert. denied, 339 Conn. 910, 261 A.3d 745 (2021).

The court also mitigated the potentially undue prejudice by intervening when defense counsel began to cross-examine Chalker about the outcome of the warrant charges. After defense counsel began this line of questioning, the court excused the jury, then cautioned defense counsel that his questioning could open the door to further exploration of the details of the warrant charges. Defense counsel responded that he intended to call into question Chalker's knowledge of the facts underlying the warrant charges, thus casting doubt on the suggestion that the defendant was a violent felon. While recognizing that defense counsel was free to conduct cross-examination as he saw fit, the court offered, as an alternative, to provide a cautionary instruction regarding the warrant charges and directed Chalker not to discuss the underlying facts relating to the warrant charges. Defense counsel withdrew the question and agreed to the court's proposal to give a limiting instruction.

The limiting instructions that the court gave as a result of this colloquy, as well as the court's final

instructions, lessened any potential undue prejudice from the admission of this evidence.[10] The first instruction emphasized that the defendant enjoyed the presumption of innocence and that the officers' testimony about the charges "reflect[s] their preparation for the service of a . . . warrant that charges a violent felony . . . nothing more." The court further advised the jury that the execution of the warrant did not mean that the defendant committed the offense and that "[t]he details involved in that warrant are not pertinent to this, not relevant, and should not be considered by you." The court's final instruction stated explicitly that the jury was not to "consider such evidence as establishing a predisposition on the part of the defendant to commit any of the crimes charged, or to demonstrate a criminal propensity." Rather, the jury could use the evidence if it "logically, rationally, and conclusively supports the issue for which it is being offered by the state, but only as it may bear on the issue of reasonableness of force as used by the peace officers." The court further clarified that "[y]ou may not consider evidence of other misconduct of the defendant for any purpose other than

[10] The defendant claims that these instructions failed to reduce the prejudicial impact of the evidence because the court did not give an instruction during the testimony of Masterson, Mills, or Taylor. He then undermines this claim, however, by arguing that the instruction given during Chalker's testimony—which he now contends should have been repeated during the testimony of Masterson, Mills, and Taylor—unnecessarily highlighted the severity of the warrant charges. We find these arguments unpersuasive. The first limiting instruction referred to the *officers*' testimony, making clear that it applied to the testimony of multiple witnesses and not only to that of Chalker. That instruction must be understood in conjunction with the limiting instruction that the court provided in its final charge to the jury, which, likewise, encompassed all instances in which the state offered evidence pertaining to the warrant charges. See, e.g., *State* v. *Blaine*, 334 Conn. 298, 308, 221 A.3d 798 (2019) ("individual instructions are not to be judged in artificial isolation from the overall charge" (internal quotation marks omitted)). The court's instructions, therefore, appropriately alerted the jury as to the limited purpose for which this evidence could be used, without unduly emphasizing that evidence.

the one I've just told you, because it may predispose your mind uncritically to believe that the defendant may be guilty of the offense here charged merely because of the alleged other misconduct . . . . [Y]ou may consider this evidence only on the issue of reasonableness of force used, and for no other purpose."

"Proper limiting instructions often mitigate the prejudicial impact of evidence of prior misconduct." *State* v. *Ryan*, 182 Conn. 335, 338 n.5, 438 A.2d 107 (1980). In the absence of an indication to the contrary, we presume that the jury followed the court's instructions and considered this evidence solely for the purpose for which it was admitted. See, e.g., *State* v. *Hughes*, 341 Conn. 387, 429, 267 A.3d 81 (2021); see also *State* v. *Pereira*, 113 Conn. App. 705, 715, 967 A.2d 121 (limiting instructions, which were presumed to have been followed, "lessen any prejudice resulting from the admission of [evidence of prior misconduct]" (internal quotation marks omitted)), cert. denied, 292 Conn. 909, 973 A.2d 106 (2009). On the basis of the foregoing record, we are satisfied that the court's handling of the evidence at issue effectively mitigated the risk of undue prejudice.[11]

In sum, because the probative value of the evidence was strong and the trial court undertook sufficient measures to mitigate any potential undue prejudice, the Appellate Court correctly concluded that, on the basis of the facts of the present case, there was no abuse of discretion in admitting the names of the charges listed in the warrant.

II

We turn next to the defendant's claim that the trial court abused its discretion in admitting testimony that

[11] We emphasize, however, that, because of the nature of the warrant charges and the limited purpose for which they were admitted, the trial court should also have considered further mitigating the prejudicial impact by limiting the number of references to those charges during testimony.

the defendant had been arrested by the "Violent Fugitive Task Force."[12] Specifically, the defendant contends that any probative value of the name of the task force was outweighed by its prejudicial effect. We conclude that the testimony regarding the name of the task force had no probative value and was unfairly prejudicial. Because the defendant has failed to satisfy his burden of showing that the error was harmful, however, we affirm the Appellate Court's judgment.

After the trial court overruled the defendant's objection to the state's motion seeking to introduce testimony naming the warrant charges, defense counsel orally moved to exclude evidence "that these police officers and this federal marshal were part of this Violent [Fugitive] Task Force . . . this special task force for violent offenders." He argued that allowing the jury to hear the name of the task force would be highly prejudicial and that it would be sufficient for the officers to testify that they reported to the defendant's home as part of a task force to execute an arrest warrant. The prosecutor objected, claiming that the name of the task force explained "why they were there" and "the manner in

[12] Given the significance of the name of the task force to this appeal, we make the following observations. Throughout trial, the parties and witnesses used inconsistent terminology to describe the task force. Defense counsel, for instance, referred to it as the "Violent Gang Task Force," whereas one of the prosecutors called it the "Violent Felony Task Force." Although the United States Marshals Service manages various task forces responsible for the apprehension of dangerous fugitives, the names of these task forces vary by jurisdiction. See U.S. Marshals Service, Fugitive Task Forces, available at https://www.usmarshals.gov/what-we-do/fugitive-investigations/fugitive-task-forces (last visited July 24, 2024); U.S. Marshals Service, District Offices, https://www.usmarshals.gov/local-districts (last visited July 24, 2024).

Three of the state's witnesses, Chalker, McMahon, and Taylor, used the phrase "Violent Fugitive Task Force." We note that two other witnesses, however, Mills and Masterson, the lone United States marshal who participated in the arrest, referred to the task force simply as the "Fugitive Task Force." The language to which the defendant has objected—"Violent Fugitive Task Force"—was the predominant usage during trial, and that is the name we use throughout this opinion.

which they serve the warrant." The court denied the motion, concluding that the name of the task force was "relevant and probative" because it was "an acronym" used to identify it, and suggesting that defense counsel could "explore it on cross-examination regarding any prejudice you think might exist because of the name of the unit. It's simply identifying themselves, and . . . the court feels that that's relevant and probative."[13] Five officers representing multiple agencies subsequently testified that they had been assigned to the task force when they executed the arrest warrants for the defendant and his son. The officers also testified as to the purpose of the task force and its role in apprehending individuals wanted for violent felonies.

The Appellate Court upheld the trial court's ruling on the ground that "the officers' brief testimony about the name and purpose of the Violent Fugitive Task Force, like the evidence regarding the charges against the defendant, was relevant to the issue of whether Chalker and the other officers were acting in the performance of their duties." *State* v. *Delacruz-Gomez*, supra, 218 Conn. App. 279. The court reasoned that the name of the task force "provided an explanation for why Chalker and the other officers were at the defendant's apartment" and "helped explain, even if only to a slight degree, why the officers executed the arrest warrants in the manner that they did, including why they had their weapons drawn when they searched the apartment." Id., 280. Moreover, the court stated that the testimony relating to the task force was "not likely to arouse the emotions of the jurors any more than the testimony about the nature of the charges in the defendant's arrest warrant . . . ." Id.

[13] We emphasize that, even when a trial court finds that the evidence in question is relevant and material, it should articulate on the record its reasons for determining that the probative value of the evidence outweighs any prejudicial impact. See, e.g., *State* v. *Sierra*, 213 Conn. 422, 434–36, 568 A.2d 448 (1990).

From the outset, we are unable to discern how the name of this task force is relevant to any material fact, particularly given the varied titles that were used to describe it during trial. See footnote 12 of this opinion. Indeed, we are hard-pressed to conceive of *any* scenario in which the name of the responding task force would be relevant to proving that its use of force was reasonable. To the extent that it was necessary to explain the presence of the task force, testimony that multiple agencies were involved in executing the warrant and that members of the task force had received specialized training would have been sufficient. The state's argument with respect to the probative value of this evidence is largely duplicative of its argument relating to the names of the warrant charges. Indeed, at oral argument before this court, the state conceded that the name of the task force did not "offer anything significantly more probative" than the warrant charges. But, although the nature of the warrant charges explained the reasonableness of the use of force under the circumstances and, thus, was probative of an element of both crimes charged in the present case—that is, whether the officers were acting in the performance of their duties—the name of the task force had no such probative value. The particular name of the task force assigned to apprehend the defendant was wholly immaterial to any issue in the case.

In addition, the name of the task force presented a significant risk of undue prejudice because it suggested that the defendant was a violent fugitive. Specifying that the "Violent Fugitive Task Force" was assigned to arrest the defendant unavoidably implied that he was actively attempting to evade law enforcement.[14] Black's

[14] We recognize that the name of the task force also included the term "violent." The implication that the defendant was "violent," however, was addressed through the admission of the warrant charges, as the court properly instructed the jury that the defendant maintained his presumption of innocence as to those charges, as well as the charges in the present case, and that it was not to infer any criminal propensity from that evidence.

Law Dictionary defines "fugitive" as "[s]omeone who flees or escapes; a refugee," or, more specifically, "[a] criminal suspect or a witness in a criminal case who flees, evades, or escapes arrest, prosecution, imprisonment, service of process, or the giving of testimony, [especially] by fleeing the jurisdiction or by hiding." Black's Law Dictionary (12th Ed. 2024) p. 809. The court made no finding, and the state did not introduce any evidence, that the defendant had fled or otherwise tried to escape arrest. Consequently, there appears to be no legal basis for the usage of this terminology, which invited the jurors to speculate on facts not in evidence and was likely to arouse their emotions in a prejudicial fashion. We are concerned by the implication that a prosecutor may arbitrarily characterize a defendant as a "fugitive" by introducing the name of a self-styled task force into evidence, then use that subjective title to justify the conduct of a law enforcement unit, and we decline to countenance that practice here.[15]

On this record, therefore, we do not share the Appellate Court's confidence that the name of the task force was no more likely to arouse the hostilities of the jurors than the names of the warrant charges. See *State* v. *Delacruz-Gomez*, supra, 218 Conn. App. 280. The name of the task force includes the same allusion to violent crime but adds the inflammatory label of "fugitive," which is not rooted in any legal ruling or factual finding in the present case, has no independent probative value,

Accordingly, we focus our discussion primarily on the prejudicial impact of the term "fugitive." See *State* v. *James G.*, supra, 268 Conn. 400 (evidence is less likely to arouse jurors' emotions when similar evidence already exists).

[15] We likewise find unpersuasive the trial court's rationale that the members of the task force were "simply identifying themselves . . . ." This reasoning risks the inclusion of inflammatory language under the pretext of identification. It is not difficult to envision a scenario in which the name of a law enforcement unit could be used as a vehicle to introduce information about gang activity, terrorism, or other misconduct that might otherwise be precluded by our rules of evidence.

and is highly prejudicial. The state contends that, because the jury had already heard the names of the warrant charges, it would not have been surprised to hear that a task force for "[v]iolent [fugitives]" was assigned to execute the warrant. The fact that the defendant had been charged with assault in the first degree and criminal possession of a firearm, however, does not suggest that he was a "fugitive." That characterization originated with, and was limited to, the name of the task force. Moreover, the trial court failed to mitigate the risk of undue prejudice by giving a limiting instruction on the name of the task force, as it did for the names of the warrant charges, or by limiting the number of references during testimony. For all these reasons, we disagree with the Appellate Court's conclusion that the trial court properly admitted testimony identifying the name of the task force. See *State* v. *Delacruz-Gomez*, supra, 280–81.

We are not persuaded, however, that the admission of this evidence was harmful. "When an improper evidentiary ruling is not constitutional in nature, the defendant bears the burden of demonstrating that the error was harmful. . . . [W]hether [an improper ruling] is harmless in a particular case depends [on] a number of factors, such as the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case. . . . [T]he proper standard for determining whether an erroneous evidentiary ruling is harmless should be whether the jury's verdict was substantially swayed by the error." (Internal quotation marks omitted.) *State* v. *Bouknight*, 323 Conn. 620, 626, 149 A.3d 975 (2016).

Given the strength of the state's case—including, but not limited to, evidence that Chalker's injuries were caused by the defendant's attempts to prevent him from performing his duties—and the defense's strategic decision to focus exclusively on whether the defendant caused Chalker's injuries, we conclude that the jury's verdict was not substantially swayed by the admission of the name of the task force. The testimony of the state's witnesses indicates that, from the moment the task force arrived at his residence, the defendant deliberately hindered the officers' efforts to carry out their duties. Multiple members of the task force testified that they knocked on the apartment door for at least five minutes with no response before the defendant's wife let them in through the rear entrance, and that, during that time, they saw the defendant looking at them from an upstairs window. Rather than surrendering when the task force entered the residence, however, the defendant admitted that he hid himself and his son under a pile of clothes in an upstairs bedroom. Chalker testified that, when he located the defendant and directed him to show his hands, there was no response. Both Chalker and Taylor also described how the defendant resisted by making himself "dead weight" as Chalker tried to pull him out of the clothing pile to effectuate the arrest. Most significant, Chalker, Mills, and Taylor all testified that the partially handcuffed defendant lunged at Chalker as the defendant was being pulled from the clothing pile, causing Chalker to fall backward and land on the nightstand.[16]

Any differences in the officers' testimony were limited to details such as the extent to which the defendant

[16] Masterson waited in the upstairs hallway while Chalker, Mills, and Taylor cleared the bedroom and, as a result, did not see whether the defendant struck Chalker. He testified, however, that the other officers told him that the defendant's resistance caused Chalker's injuries, and that his report thus reflected that Chalker was hurt when "the [defendant] jumped up," causing Chalker to "[fall] back and [strike] a nightstand."

used the wall as leverage, the manner by which he knocked Chalker off balance, and the point in time at which Chalker first climbed onto the bed. For example, Mills and Taylor both described seeing the defendant pushing off the wall as Chalker pulled him out of the clothing pile and, then, Chalker flying backward off the bed. Chalker testified that the defendant's head and shoulder struck him in the chest but that he did not know if the defendant's feet were on the floor or the wall when the defendant lunged at him, and Taylor testified simply that the defendant "pushed" Chalker. Although Chalker stated that he got onto the bed before searching through the clothing pile, Mills recalled that he did not do so until after he saw the defendant hiding there. There was no disagreement among the officers, however, that the defendant's actions while resisting arrest caused Chalker to fall off the bed and to sustain his injuries. See *State* v. *Nixon*, 32 Conn. App. 224, 238, 630 A.2d 74 (1993) (noting that "a person is guilty under § 53a-167c (a) (1) if he intends to prevent a reasonably identifiable [peace officer] from performing his duty and, in doing so, causes injury to the [peace officer]"), aff'd, 231 Conn. 545, 651 A.2d 1264 (1995).

The jury reasonably could have credited the officers' testimony, which was consistent as to the essential facts of the incident, as opposed to the contradictory narrative advanced by the defense. At trial, the defense claimed that Mills, not Chalker, entered the bedroom alone, pulled him out of the clothing pile, and began pistol-whipping him before being told by another officer to stop. The defendant denied resisting arrest and claimed that he had no idea until hours later that an officer had been hurt at the apartment. This assertion strains credulity, as all of the testifying members of the task force recalled Chalker's injury—Mills even testified that he heard Chalker scream out in pain—and hospital records confirmed that Chalker sustained fractured ribs

and a traumatic pneumothorax. The defendant's son similarly testified that he heard the defendant being beaten by a police officer but that he did not hear anyone fall off the bed.[17] During his closing argument, however, defense counsel stated that, contrary to the defendant's testimony, Chalker *had* been in the room but was injured because he lost his balance and fell off the bed, and suggested that the defendant "didn't know what was happening . . . ." In arguing that Chalker had simply slipped, defense counsel informed the jury that it was "reasonable to find [the defendant] guilty of interfering with a police officer," and that the officers were acting in the performance of their duties, asking the jury to concentrate, instead, on the causation element of the assault charge. This defense strategy ensured that causation was the only contested issue remaining before the jury, and the state presented a strong case that the defendant's actions in resisting arrest caused Chalker's injuries.[18]

On the basis of the foregoing, it is unlikely that hearing the name of the task force is what persuaded the jury of the defendant's guilt. The state presented a strong case supported by eyewitness testimony from

[17] Other than this testimony, there was no evidence that any law enforcement officer struck the defendant, and there was no evidence to suggest that any of the officers had entered the bedroom alone.

[18] Because neither Masterson's report nor the hospital report indicates that the defendant knocked Chalker off the bed, the defendant claims that his characterization as a "violent fugitive" likely led the jury to conclude that he did so. We disagree. The hospital report indicates that Chalker "was standing on a bed . . . while taking someone into custody, and as he was pulling them, he fell off the bed . . . ." Chalker testified, however, that he had, in fact, told hospital staff that he had been "knocked off the bed" but that he had no control over how the report was ultimately written. Masterson testified at length as to what he included in his report and why. As the trial court observed, defense counsel had the opportunity to cross-examine the officers and did so. The jury reasonably could have credited Masterson's explanation for his language and Chalker's testimony about what he had told the hospital staff.

several law enforcement officers, all of whom connected the defendant's uncooperative behavior and resistance to arrest with Chalker's subsequent injuries. The name of the task force did not bolster the credibility of the officers, whose testimony was critical to the state's case. Moreover, given that the defendant's testimony was so erratic that his own counsel rejected his version of events, there is no reason to believe that the jury would have found him credible but for the discussion of the task force. Although the prosecutor mentioned the name of the task force in his closing argument, he did so only twice while discussing the state's legal responsibility for executing the warrant, not as a means of characterizing the defendant. This is hardly the "frequent and repeated emphasis" on inadmissible evidence that this court has previously recognized as incompatible with harmless error. *State* v. *Culbreath*, 340 Conn. 167, 195, 263 A.3d 350 (2021). Under these circumstances, we cannot conclude that the admission of the name of the task force, although inappropriate, had any bearing on the question before the jury—whether the defendant, in fact, had caused Chalker's injuries—and we are satisfied beyond a reasonable doubt that the result would have been the same if that evidence had not been introduced. See, e.g., *State* v. *Jordan*, 314 Conn. 89, 104, 101 A.3d 179 (2014). Accordingly, we will not disturb the Appellate Court's decision.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

STATE OF CONNECTICUT *v.* JACQUES CARTER (SC 20779)

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

Syllabus

The defendant appealed from the judgment of conviction of home invasion and burglary in the first degree. The defendant claimed, inter alia, that the

trial court improperly allowed the jury to determine that the air gun he had been carrying during the home invasion constituted a deadly weapon for purposes of the offenses of which he was convicted. *Held*:

The question of whether the air gun at issue was a deadly weapon at the time of the offenses was subject to plenary review because the disputed issues in this case were not about the factual aspects of how the gun operated but, rather, concerned the meaning of the language in the statute (§ 53a-3 (6)) defining "deadly weapon," as applied to the undisputed facts.

The defendant's conviction of home invasion and first degree burglary could not stand because the air gun at issue was not one from which a shot could be readily discharged, as the gun, at the time of the home invasion, was modified such that significant effort would have been needed before it could be loaded and/or discharged.

The trial court's legal error in instructing the jury with respect to the deadly weapon element of the home invasion and first degree burglary charges precluded application of the general verdict rule as an alternative ground for affirming the judgment of conviction.

Argued March 20—officially released July 25, 2024*

Procedural History

Substitute information charging the defendant with the crimes of home invasion, burglary in the first degree, attempt to commit assault in the second degree with a firearm, and assault in the third degree, brought to the Superior Court in the judicial district of Danbury and tried to the jury before *Pavia*, *J.*; verdict and judgment of guilty of home invasion and burglary in the first degree, from which the defendant appealed to this court. *Reversed*; *new trial.*

Lisa J. Steele, assigned counsel, for the appellant (defendant).

Brett R. Aiello, assistant state's attorney, with whom were *Deborah P. Mabbett*, supervisory assistant state's attorney, and, on the brief, *David R. Applegate*, state's attorney, for the appellee (state).

* July 25, 2024, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Opinion

MULLINS, J. Following a jury trial, the defendant, Jacques Carter, was convicted of home invasion in violation of General Statutes § 53a-100aa (a) (2) and burglary in the first degree in violation of General Statutes § 53a-101 (a) (1) stemming from a break-in at a Danbury apartment in 2016. During the break-in, the defendant was armed with a Crosman Vigilante air gun that was loaded with pellets, but the gun had no carbon dioxide (CO_2) cartridge installed, and the chamber where the CO_2 cartridge would be installed was sealed off with duct tape. To obtain a conviction under either of the foregoing statutes, as charged in the information in this case, the state had to establish, among other things, that the defendant was "armed with . . . a deadly weapon or dangerous instrument." On appeal, the defendant's primary contention is that the trial court erroneously allowed the jury to determine that the air gun he carried during the break-in constituted a deadly weapon. We agree that, as a matter of law, an air gun in which a CO_2 cartridge cannot be readily installed is not a deadly weapon. Accordingly, we reverse the judgment of the trial court.

I

The following facts, which the jury reasonably could have found, and procedural history govern our disposition of this appeal. In the early morning hours of September 3, 2016, the defendant broke into the Danbury apartment where Consuela Riley lived. The defendant wore two T-shirts over his head as a makeshift mask, and he was armed with a Crosman Vigilante air gun. The weapon is designed to look like a revolver, but it is powered by a CO_2 cartridge, and it fires 4.5 millimeter BBs or similar .177 caliber ammunition.

The defendant entered the apartment through a basement window. Soon after entering, he encountered one

of Riley's sons, Christopher Latham. Latham confronted the defendant but yelled out and briefly backed off when he observed the defendant holding what appeared to be a firearm. A series of physical altercations ensued between Latham and the defendant. Latham pursued the defendant as he attempted to exit the apartment through the window of Latham's basement bedroom. At some point during the defendant's efforts to leave the apartment, the defendant tried to "gun butt" Latham two or more times by turning the air gun around and swinging the handle end at him. Ultimately, the defendant ran upstairs, past Riley, and exited through a backdoor.

Latham continued to pursue the defendant outside the apartment, where the two continued to wrestle, and Latham managed to disarm the defendant. Latham and his cousin, Dante Hodge, who was staying at the apartment, then succeeded in removing the T-shirts from the defendant's face, allowing Latham to identify the defendant, who was a former schoolmate and football teammate of Latham's, before he fled the scene.

When the police arrived on the scene, they found the air gun in the grass outside the apartment. The weapon was fitted with an ammunition cartridge that had a ten pellet capacity; at the time, eight of the weapon's slots were loaded with pointed pellets. Multiple layers of black duct tape were wrapped around the handle, which conceals the empty chamber designed to hold a CO_2 cartridge. No CO_2 cartridge was installed when the air gun was recovered, and no CO_2 cartridge was recovered from the scene.

Prior to trial, the state sent the air gun to the Connecticut Forensic Science Laboratory for testing. Laura Grestini, a forensic scientist, removed the duct tape and tested it for fingerprints. Sergeant David Cooney subsequently loaded the weapon with a CO_2 cartridge he had

in stock. Cooney testified that, to load a CO_2 cartridge, one must pop off the handle of the air gun, place the cartridge inside the handle of the gun, and use a screw inside to push the cartridge up into the air gun. Cooney further testified that the air gun could not have fired pellets without a CO_2 cartridge installed but that he was able to successfully test-fire the gun after installing a cartridge. Sergeant James Grundman concurred that, in order to operate the weapon, a CO_2 cartridge needs to be installed.

Cooney testified that the pointed head pellets found in the weapon were "made for small game hunting and nuisance control," such as to kill "squirrels, chipmunks, [and] things like that." A warning label on the air gun stated in relevant part: "Not a toy. Misuse or careless use may cause serious injury or death."

The defendant was arrested and charged in a four count information with home invasion and first degree burglary, as well as attempt to commit assault in the second degree with a firearm and assault in the third degree. The home invasion and first degree burglary counts both charged the defendant, in the alternative, with having been armed with a deadly weapon or dangerous instrument while committing these crimes.

The case was tried to a jury. After the prosecutor presented the state's case, defense counsel moved for a judgment of acquittal as to all four counts of the state's information. With respect to the home invasion and first degree burglary charges, defense counsel argued that the state had not proven that the air gun was operable,[1] and, thus, the gun was not a deadly weapon within the meaning of General Statutes § 53a-3 (6); nor had the state proven that the air gun was used in a way that made it a dangerous instrument. The

[1] At times, we will use the word "operable" as shorthand for "from which a shot may be discharged" in General Statutes § 53a-3 (6).

trial court denied the motion and later instructed the jury: " 'Deadly weapon' is defined by statute as any weapon, whether loaded or unloaded, from which a shot may be discharged. If the weapon is a firearm, it may be unloaded, but it must be in such condition that a shot may be discharged from it. Thus, if the weapon is loaded but not in working order, it is not a deadly weapon. If the weapon is unloaded but in working order, it is a deadly weapon." Then, in accordance with the state's alternative theory that the defendant was armed with a dangerous instrument, the trial court instructed the jury that a " '[d]angerous instrument' means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury."

The jury returned a verdict of guilty on the home invasion and first degree burglary charges but not guilty on the assault charges. The trial court rendered judgment consistent with the verdict and sentenced the defendant to a total effective term of sixteen years of incarceration, suspended after twelve years, and five years of probation. At sentencing, the trial court addressed the defendant's motion for a new trial, which renewed his claim that an air gun without a CO_2 cartridge installed cannot qualify as a deadly weapon. The trial court again denied the motion, implying that, in the court's view, the issue was one of fact for the jury to resolve.

On appeal, the defendant contends that the trial court (1) should have concluded as a matter of law that, without a CO_2 cartridge installed or the capacity to have one readily installed, the air gun was not a deadly weapon at the time of the break-in, and the court should have permitted the jury to consider only whether he had used the air gun as a dangerous instrument when he allegedly attempted to "gun butt" Latham, (2) incor-

rectly instructed the jury on that same issue, and (3) should have instructed the jury that it had to reach a unanimous decision as to whether the defendant had used the air gun as a deadly weapon or dangerous instrument. Because we agree with the defendant's first claim, we need not address his instructional claims or the state's argument that those claims were not properly preserved.

II

A

Before we address the defendant's primary challenge to his conviction, we first must consider the state's argument that the question of whether the air gun at issue was a deadly weapon is a factual question rather than a legal question. This is critical to our analysis for two reasons: the nature of the question dictates our standard of review and whether the general verdict rule applies to this case.

First, with respect to the standard of review, if the state is correct that the jury was free to determine, as a matter of fact, that the air gun was a deadly weapon, then deference is owed to the jury's determination that it was, and we are compelled to uphold the verdict unless there was insufficient evidence in the record to support that determination. See, e.g., *State* v. *Adams*, 327 Conn. 297, 304–305, 173 A.3d 943 (2017). By contrast, if the issue is a purely legal one, as the defendant contends, then our review is plenary. See, e.g., *State* v. *Ramos*, 271 Conn. 785, 791, 860 A.2d 249 (2004).

Second, the legal status of the claim dictates in large part whether the state is correct that, regardless of the merits of the defendant's arguments, the judgment can be affirmed pursuant to the general verdict rule. See, e.g., *State* v. *Chapman*, 229 Conn. 529, 539, 643 A.2d 1213 (1994); see also, e.g., *Turner* v. *United States*, 396

U.S. 398, 420, 90 S. Ct. 642, 24 L. Ed. 2d 610 (1970). Specifically, the state contends that, even if we reject the theory that the air gun qualified as a deadly weapon, there was sufficient evidence for the jury to find the defendant guilty on the state's alternative theory that the defendant had used the air gun as a dangerous instrument when he attempted to "gun butt" Latham with it.

Under *Griffin* v. *United States*, 502 U.S. 46, 112 S. Ct. 466, 116 L. Ed. 2d 371 (1991), and its progeny, when a jury finds a criminal defendant guilty under a single count charging the commission of an offense by two different means, and there is sufficient evidence to support the conviction on one theory but not the other, the conviction may be sustained in the face of a due process challenge in accordance with the principle that jurors, who are well equipped to analyze and weigh evidence, must be presumed to have relied on the factually adequate theory. See id., 50–60. This principle does not apply, however, when the trial court sends the case to the jury on two alternative theories, one of which fails to come within the statutory definition of the crime or is otherwise based on an erroneous view of the law, because, "[w]hen . . . jurors have been left the option of relying [on] a legally inadequate theory, there is no reason to think that [the jurors'] own intelligence and expertise will save them from *that* error." (Emphasis added.) Id., 59; accord *State* v. *Chapman*, supra, 229 Conn. 539. When the error is a legal error, rather than a matter of the sufficiency of the evidence,[2] and the

[2] The United States Supreme Court explained in *Griffin* that, although a conviction based on insufficient evidence is also a *legal* error, in the sense that all errors corrected by appellate courts can be characterized as legal errors, it is not a legal error in the sense of a mistake as to what the law says or requires (which, conversely, is not a sufficiency of the evidence issue). See *Griffin* v. *United States*, supra, 502 U.S. 58–59. Notably, *Griffin*, in applying this distinction, relied heavily on *Yates* v. *United States*, 354 U.S. 298, 77 S. Ct. 1064, 1 L. Ed. 2d 1356 (1957), overruled on other grounds by *Burks* v. *United States*, 437 U.S. 1, 98 S. Ct. 2141, 57 L. Ed. 2d 1 (1978). See *Griffin* v. *United States*, supra, 58–59. In *Yates*, as in the present case,

jury has been permitted to find a criminal defendant guilty under either a legally valid or a legally invalid theory, the conviction must be reversed "unless [the reviewing court] can determine with absolute certainty that the jury based its verdict on the ground on which it was correctly instructed." (Internal quotation marks omitted.) *United States* v. *Gonzalez*, 93 F.3d 311, 322 (7th Cir. 1996); see, e.g., *State* v. *Cody M.*, 337 Conn. 92, 116, 259 A.3d 576 (2020) (permitting finding of harmless error if jury necessarily found facts to support conviction on legally valid theory). See generally, e.g., *United States* v. *Gonzalez*, supra, 318–22 (discussing how courts have handled convictions under 18 U.S.C. § 924 (c), which provides for five year term of imprisonment for anyone who "uses or carries a firearm" during, and in relation to, drug trafficking crimes, following United States Supreme Court's decision in *Bailey* v. *United States*, 516 U.S. 137, 142–50, 116 S. Ct. 501, 133 L. Ed. 2d 472 (1995), which narrowed definition of "uses" in that statute (internal quotation marks omitted)).

In the present case, both parties direct our attention to Connecticut cases that appear to support their respective positions as to the fact/law issue. In fact, both parties are, to some extent, correct; whether this particular air gun qualified as a deadly weapon at the time of the break-in is a mixed question of law and fact. See, e.g., *State* v. *DeCiccio*, 315 Conn. 79, 88–96, 101 n.12, 105 A.3d 165 (2014) (court determines as matter of law core meaning of statutory term "dirk knife," and jury decides whether weapon at issue falls within that core meaning, assuming it reasonably could).

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the case had been sent to the jury under two distinct theories, one of which the United States Supreme Court held was broader than permitted by the statutory language. See *Yates* v. *United States*, supra, 300, 303–304. Because it was unclear from the jury instructions whether the jury necessarily had predicated its guilty verdict on the other, valid theory of liability, the United States Supreme Court concluded that the general verdict theory did not apply and vacated the convictions. See id., 303, 311–12.

For purposes of both §§ 53a-100aa (a) (2) and 53a-101 (a) (1), the definition of "deadly weapon" is furnished by § 53a-3. That statute provides in relevant part: " 'Deadly weapon' means any weapon, whether loaded or unloaded, from which a shot may be discharged . . . ." General Statutes § 53a-3 (6).

The factual aspects of identifying a deadly weapon, which were properly the province of the jury, involve questions about what make and model of air gun the defendant used, how it operates, whether it was loaded with BBs or pellets and a filled[3] CO_2 cartridge was installed at the time of the break-in, whether the CO_2 chamber was sealed off with tape, whether the weapon would or could have fired a shot at that time had the defendant pulled the trigger with no CO_2 cartridge installed, whether it was in good working order, such that it fired normally when Sergeant Cooney later installed a CO_2 cartridge, and whether it was potentially lethal. Those are questions that the jury could resolve on the basis of the testimony presented and a physical examination of the air gun and other exhibits. See, e.g., *State* v. *Bradley*, 39 Conn. App. 82, 91, 663 A.2d 1100 (1995) (whether gun that was operable when recovered by police had been operable during commission of crime was question of fact for jury, to be resolved by direct and circumstantial evidence), cert. denied, 236 Conn. 901, 670 A.2d 322 (1996); *State* v. *Coauette*, 601 N.W.2d 443, 445 (Minn. App. 1999) (discussing various aspects of weapon that involve questions of fact).

In this case, all of those factual matters are undisputed. The case involves a Crosman Vigilante air gun, in good working order, that was loaded with pointed pellets but that did not have a CO_2 cartridge installed, and that had a cartridge compartment that was taped

[3] We use the term "filled" as shorthand for a cartridge that has sufficient CO_2 to discharge at least one shot.

off with multiple layers of duct tape. It is agreed that no shot would have discharged had the defendant pulled the trigger, unless he first removed the tape and installed a filled CO_2 cartridge. Only then could a shot have been discharged.

The disputed questions in this case are not about those factual aspects of *how* the gun operates but, rather, about what the language of the statute means as applied to those facts. The question is *whether*, for purposes of § 53a-3 (6), a Crosman Vigilante air gun, in the condition described, is a weapon "from which a shot may be discharged . . . ." The answer to that question hinges on the meaning of the statutory phrase "may be discharged" in § 53a-3 (6). The issue is a matter of legislative intent, subject to our de novo review. See, e.g., *State* v. *Grant*, 294 Conn. 151, 157, 982 A.2d 169 (2009) ("[w]hether a BB gun constitutes a firearm under § 53a-3 (19) presents a question of statutory interpretation"); *State* v. *Hardy*, 278 Conn. 113, 119, 896 A.2d 755 (2006) (whether air guns can qualify as deadly weapons capable of discharging shots was question of statutory interpretation); *State* v. *Guzman*, 110 Conn. App. 263, 274–76, 955 A.2d 72 (2008) (applying *Hardy* and concluding that how particular air gun operates is question of fact but whether it qualifies as operable, lethal weapon for purposes of statute is question of law), cert. denied, 290 Conn. 915, 965 A.2d 555 (2009); *State* v. *Belanger*, 55 Conn. App. 2, 7, 738 A.2d 1109 (suggesting that, as matter of law, operability implies that firearm is fully assembled), cert. denied, 251 Conn. 921, 742 A.2d 359 (1999), cert. denied, 530 U.S. 1205, 120 S. Ct. 2200, 147 L. Ed. 2d 235 (2000); *State* v. *Coauette*, supra, 601 N.W.2d 445–46 (whether paintball gun with stipulated features qualifies as firearm for purposes of statute must be treated as question of law "to avoid creating criminal offenses not contemplated by the legislature").

We therefore reject the state's argument that the judgment can be affirmed under the general verdict rule. As we explain in part II B of this opinion, there are two related but conceptually distinct defects in the defendant's convictions. First, through no fault of the trial court, the jury was not fully and accurately instructed as to the governing legal standard. Construing the relevant statutory language for the first time, we conclude that the requirement in § 53a-3 (6) that a deadly weapon be a weapon "from which a shot may be discharged" demands some degree of immediacy. Although the weapon may require loading, it otherwise must be one readily capable of firing a shot during the commission of the crime. See part II B of this opinion.

The jury was not aware of this requirement. During her closing argument, the prosecutor argued to the jury that the statute required only that the gun be "operable," "in working order," "functional," or "a functioning gun," and that this element of the crime had been established through Cooney's testimony that he was able to fire the weapon at the Danbury Police Department's crime scene investigation unit after the duct tape was removed and a CO_2 cartridge was installed. The trial court then instructed the jury as follows with respect to the deadly weapon element of the home invasion and first degree burglary charges: " 'Deadly weapon' is defined by statute as any weapon, whether loaded or unloaded, from which a shot may be discharged. If the weapon is a firearm, it may be unloaded, but it must be in such condition that a shot may be discharged from it. Thus, if the weapon is loaded but not in working order, it is not a deadly weapon. If the weapon is unloaded but *in working order*, it is a deadly weapon." (Emphasis added.) In other words, the jury was led to believe, and then instructed, that the "from which a shot may be discharged" language in § 53a-3 (6) meant only that the weapon must be in working order and not that it must

be readily capable of discharging a shot at the time of the crime. Accordingly, it is reasonably possible that one or more jurors operated under the mistaken belief that the defendant could be convicted under the deadly weapon prongs of §§ 53a-100aa (a) (2) and 53a-101 (a) (1) if the state proved nothing more than that the air gun was not broken or defective and that it could be rendered operational by taking the time to remove the duct tape, to open the chamber, and to install a fresh CO_2 cartridge. This kind of legal error precludes application of the general verdict rule. See, e.g., *Yates* v. *United States*, 354 U.S. 298, 311–12, 77 S. Ct. 1064, 1 L. Ed. 2d 1356 (1957), overruled on other grounds by *Burks* v. *United States*, 437 U.S. 1, 98 S. Ct. 2141, 57 L. Ed. 2d 1 (1978).

The second question, as we will discuss in part II B of this opinion, is whether, if the jury had been correctly instructed as to the statutory definition of a "deadly weapon," there was sufficient evidence to support a conviction. If there was, then, on retrial before a properly instructed jury, the state again could attempt to establish the defendant's guilt under both the deadly weapon and dangerous instrument theories. But, because we conclude that, on the unique facts of this case, no reasonable jury could find the defendant guilty on the deadly weapon theory *once properly instructed in the law*, a guilty verdict on that theory is not permissible, and the state will be limited on retrial to establishing that the defendant used the air gun as a dangerous instrument.

Having determined that the general verdict rule does not apply, we proceed to review de novo the question of whether the air gun at issue here was one "from which a shot may be discharged . . . ." General Statutes § 53a-3 (6).

B

Under the unique facts of the present case, it is clear that the defendant's convictions cannot stand because the gun at issue was not one "from which a shot may be discharged . . . ." General Statutes § 53a-3 (6). Specifically, we are persuaded by the defendant's argument that the fact that he would have had to remove multiple layers of duct tape before he could have installed a CO_2 cartridge means that, at the time of the break-in, the air gun was not one from which a shot could have been discharged.

Although the parties argue primarily by analogy to various types of weapons, our analysis properly begins with the language of the statute. See General Statutes § 1-2z. Because the key terms in the language at issue—"from which a shot may be discharged"—are not defined in § 53a-3 or elsewhere in the criminal code, we look to the common usage of the terms at the time the statute was enacted. The word "may," for example, was used interchangeably with "can" to denote ability or capability. See, e.g., Webster's Seventh New Collegiate Dictionary (1969) p. 523. But this is compatible with both parties' interpretation of the statute. It may be, as the defendant contends, that there is an immediacy requirement, and a weapon is a deadly one only if a shot may be readily discharged with little to no manipulation, that is to say, the perpetrator need only load ammunition (and, perhaps, take off the safety and remove any trigger lock) to be able to discharge it. Because a shot cannot be discharged from an air gun that is in the condition the defendant's weapon was in at the time of the break-in, it was not a deadly weapon based on this reading of the statute.

The state, by contrast, reads the statute to require only that the weapon not be broken or missing structural components; it may be a deadly weapon, even if

some manipulation, beyond the loading of ammunition, is necessary before a shot can be discharged. Based on this view, if the defendant's air gun was otherwise functioning properly, a shot *may* (hypothetically) be discharged simply by removing the duct tape and installing a filled CO_2 cartridge.

In other words, the legislature might have intended to impose liability (1) only when the perpetrator is armed with a weapon that needs simply to be loaded with ammunition to be ready to fire, as the defendant contends, or (2) whenever the perpetrator is armed with a properly functioning weapon that is not broken or defective, but that may require preparation of various sorts before it can be fired, as the state contends. We must determine which of these two facially plausible meanings the legislature intended. Because the statute is ambiguous on this point, we may look to the legislative history. See General Statutes § 1-2z. Before we do, it is helpful to consider further what exactly makes § 53a-3 (6) an ongoing source of confusion and controversy.

Much of the ambiguity arises from the legislature's decision to define a deadly weapon as a weapon that must be operable but need not be loaded. If a weapon, like the air gun in the present case, is unloaded and hence poses no immediate risk of firing, one would think that it should not matter whether it is theoretically operable at the time of the crime.

The legislative history of § 53a-3 (6) sheds light on this ambiguity and favors the defendant's interpretation of the statute, as it demonstrates that, from the outset, there always has been a requirement that a weapon be readily capable of discharging a shot to qualify as a deadly weapon. When the statute was originally enacted in 1969, General Statutes (Supp. 1969) § 53a-3 (6) provided in relevant part that " 'deadly weapon' means any

loaded weapon from which a shot may be discharged . . . .'' (Emphasis added.) It seems clear from the fact that a weapon had to be both loaded and capable of discharging a shot that the legislature intended to impose liability only when a perpetrator was armed with a weapon that was ready to fire, without further manipulation.

This interpretation of the original version of the statute is consistent with how New York courts have construed the statute on which § 53a-3 was modeled. See *New Canaan* v. *Connecticut State Board of Labor Relations*, 160 Conn. 285, 291, 278 A.2d 761 (1971) (when Connecticut statute has been modeled on that of another jurisdiction, ''the judicial interpretation . . . accorded [to that other jurisdiction's] act is of great assistance and persuasive force in the interpretation of our own act'' (internal quotation marks omitted)). The relevant sections of our penal code were modeled in part on the corresponding proposed provisions of the New York Penal Law. See, e.g., Report of the Commission to Revise the Criminal Statutes (1967) p. 75. The relevant New York provision provides in relevant part: '' 'Deadly weapon' means any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged . . . .'' N.Y. Penal Law § 10.00 (12) (McKinney Cum. Supp. 2024). In interpreting an earlier version of this provision, the Appellate Division of the New York Supreme Court expressly rejected ''the [state's] argument that the [l]egislature meant 'may be discharged' in the hypothetical sense, rather than in the sense of the gun's immediate capability.'' *People* v. *Wilson*, 252 App. Div. 2d 241, 246, 684 N.Y.S.2d 718 (1998). That interpretation is consistent with our own conclusion that, as § 53a-3 (6) was originally drafted, a loaded weapon must otherwise be one from which a shot may be readily discharged.

In 1971, the legislature amended § 53a-3 (6), deleting the word "loaded"; see Public Acts 1971, No. 871, § 1; and, in 1973, the legislature added the present "whether loaded or unloaded" language. See Public Acts 1973, No. 73-639, § 1. The question is why the legislature in 1971 eliminated the requirement that a weapon that is used in the furtherance of a crime be loaded but retained the requirement that it be capable of discharging a shot to qualify as a deadly weapon. There is no indication in the legislative history that the legislature made these changes in order to expand the scope of liability to weapons, such as the one at issue, that are in good working order but that have a physical barrier that prevents the loading, pressurization, and discharging of the weapon.

Rather, the parties agree that prosecutors requested the amendments for evidentiary purposes. Specifically, even if a gun was loaded during the commission of a crime, prosecutors might have difficulty establishing that fact beyond a reasonable doubt if all of the ammunition was removed or discharged before the gun was recovered. Removing the "loaded" element from the definition of "deadly weapon," and requiring that the state prove only that the weapon was otherwise capable of discharging a shot, eliminated a potentially significant barrier to prosecuting crimes that were committed with guns that could actually be fired at the time of the criminal act. See, e.g., 16 H.R. Proc., Pt. 13, 1973 Sess., pp. 6784–85, remarks of Representative James F. Bingham.

Thus, this legislative history reveals that the purpose of the amendments was merely to assist the state in overcoming the evidentiary difficulty that otherwise could occur in proving that a gun was loaded at the time a crime was committed. There is no indication that the legislature intended to further expand the meaning of the statutory language "from which a shot

may be discharged . . . .'' General Statutes § 53a-3 (6). Accordingly, our review of the language and evolution of the statute, the legislative history, and the New York courts' interpretation of the statute on which § 53a-3 (6) was modeled persuades us that § 53a-3 (6) retains an immediacy requirement. To qualify as a deadly weapon, although it may be unloaded, a weapon must otherwise be readily capable of discharging a shot at the time the crime is committed.[4]

Applying that definition to this case, we conclude that an air gun that has been modified so that significant effort must be expended before the weapon can be loaded and/or discharged is not a weapon that is readily capable of discharging a shot. In this case, the handle of the air gun was sealed off from top to bottom by five individual strips of duct tape, ranging in length from approximately ten to twenty-two inches, that is to say, enough to encase the CO_2 chamber as many as fifteen times. Peeling off that much tape would take significantly longer and pose more of an impediment than unlocking and removing a trigger lock or otherwise restoring a disabled weapon to a condition readily capable of firing a shot. Certainly, it would require far more time and effort than simply loading a bullet or clip into a conventional firearm. The legislative history of § 53a-3 (6) supports our conclusion that such a weapon is not one from which a shot may be readily discharged.

As we discussed, the jury was never instructed as to any immediacy requirement, or that a weapon must be

[4] We need not resolve the debate between the parties as to whether the weapon at issue in this case would have qualified as a deadly weapon under the statute if the cartridge chamber had not been taped off. More broadly, it is not immediately clear how the statute (especially terms such as "loaded or unloaded"), which presumably was drafted with conventional firearms in mind, applies to air guns and other weapons constructed around fundamentally different propulsion systems. Given the frequency with which crimes involving these types of weapons are prosecuted, we invite the legislature to provide additional guidance.

readily capable of discharging a shot to qualify as a deadly weapon for purposes of § 53a-3 (6). Indeed, counsel for both parties, as well as the trial court, all appeared to agree that, as charged, the jury reasonably could have concluded that the defendant's air gun qualified as a deadly weapon at the time of the break-in. Due process will not permit the state to obtain a conviction for conduct that the legislature has not chosen to criminalize, and, here, the legislature did not intend to impose a deadly weapon enhancement for a crime involving a weapon, such as the defendant's air gun, that was incapable of discharging a shot during the commission of the crime without substantial preparation. Thus, because we cannot be confident that the defendant's convictions were predicated on a theory of liability authorized by the statute, those convictions cannot stand.

The judgment is reversed and the case is remanded for a new trial.

In this opinion the other justices concurred.

STATE OF CONNECTICUT *v.* ALEXANDER A. GARRISON
(SC 20773)

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

Syllabus

The state appealed, on the granting of certification, from the judgment of the Appellate Court, which reversed the defendant's conviction of assault in the first degree. The state claimed that the Appellate Court had incorrectly determined that a new trial was required because the trial court should have granted the defendant's motion to suppress certain statements he made on the ground that he was in custody when he spoke with police officers in his hospital room without being advised of his rights pursuant to *Miranda* v. *Arizona* (384 U.S. 436). *Held*:

The Appellate Court incorrectly determined that the defendant was in custody for *Miranda* purposes when police officers questioned him at the

hospital, as a reasonable person in the defendant's position would not have felt that there was a restraint on his freedom of movement of the degree associated with a formal arrest.

(*Two justices dissenting in one opinion*)

Argued March 18—officially released July 26, 2024*

Procedural History

Information charging the defendant with the crimes of assault in the first degree and tampering with physical evidence, brought to the Superior Court in the judicial district of Tolland, where the court, *Bhatt*, *J.*, denied the defendant's motion to suppress certain evidence; thereafter, the case was tried to the court, *Seeley*, *J.*, which granted the defendant's motion for a judgment of acquittal as to the charge of tampering with physical evidence; subsequently, judgment of guilty of assault in the first degree, from which the defendant appealed to the Appellate Court, *Prescott*, *Suarez*, and *Bishop*, *Js.*, which reversed the trial court's judgment and remanded the case for a new trial, and the state, on the granting of certification, appealed to this court. *Reversed*; *judgment directed.*

Nathan J. Buchok, assistant state's attorney, with whom, on the brief, were *Matthew C. Gedansky*, state's attorney, and *Jaclyn Preville*, supervisory assistant state's attorney, for the appellant (state).

Erica A. Barber, assistant public defender, for the appellee (defendant).

Opinion

ROBINSON, C. J. The sole issue in this certified appeal is whether officers from the Vernon Police Department elicited incriminating statements from the defendant, Alexander A. Garrison, during a custodial interrogation in his hospital room without first administering *Miranda*

* July 26, 2024, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

warnings,[1] in violation of his rights under the fifth and fourteenth amendments to the United States constitution. The state appeals, upon our grant of its petition for certification,[2] from the judgment of the Appellate Court, which reversed the judgment of conviction, rendered following a court trial, of assault in the first degree in violation of General Statutes § 53a-59 (a) (1). See *State* v. *Garrison*, 213 Conn. App. 786, 789–90, 841, 278 A.3d 1085 (2022). The state claims that the Appellate Court incorrectly determined that a new trial was required because the trial court[3] should have suppressed the defendant's statements on the ground that he was in custody when he spoke with the police officers in his hospital room without having received *Miranda* warnings. We conclude that the defendant was not in custody during any of his interactions with the police officers at the hospital and, accordingly, reverse the judgment of the Appellate Court.

The record reveals the following relevant facts, either found by the trial court or undisputed,[4] and procedural

[1] See *Miranda* v. *Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966) ("[p]rior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed").

[2] We granted the state's petition for certification to appeal, limited to the following issues: (1) "Did the Appellate Court correctly conclude that the defendant was in custody when he spoke with investigating officers after admitting himself to the hospital?" And (2) "[i]f the answer to the first question is 'yes,' did the Appellate Court correctly conclude that the admission of the defendant's statements while in custody was not harmless beyond a reasonable doubt?" *State* v. *Garrison*, 345 Conn. 959, 285 A.3d 52 (2022).

[3] After the trial court, *Bhatt*, *J.*, conducted an evidentiary hearing and denied the defendant's motion to suppress, the case was tried to the court, *Seeley*, *J.*, who rendered the judgment of conviction. All references to the trial court in connection with the motion to suppress that is the subject of this certified appeal are to Judge Bhatt, and references to the trial court in connection with the underlying judgment are to Judge Seeley.

[4] See, e.g., *State* v. *Griffin*, 339 Conn. 631, 655 n.12, 262 A.3d 44 (2021) ("Appellate review of the trial court's resolution of a constitutional claim is not limited to the facts the trial court actually found in its decision on the defendant's motion to suppress. Rather, [this court] may also consider

history. In June, 2018, the defendant visited his close friend, Timothy Murphy, and Murphy's cousin, William Patten, who lived together in an apartment located in Vernon. While drinking beer and whiskey, Murphy, Patten, and the defendant watched television, talked, and played their guitars in the living room of the apartment. Eventually, they moved the gathering outside in order to build a fire in a fire pit on the lawn outside of the apartment. As the evening went on, all three continued drinking beer and whiskey. After several hours of drinking around the fire, Patten and the defendant began arguing over the merits of football and mixed martial arts. The argument led to a physical altercation during which Patten and the defendant pushed one another and fell to the ground. Upon gaining an advantage over the defendant, Patten punched the defendant in the face, injuring his nose and ending the initial fight. Patten and the defendant got off the ground and returned to sitting around the fire. After a few minutes, the defendant, who was angry that Patten had punched him, attacked Patten from behind. The defendant stabbed Patten in his back, front shoulder area, and arm with a Smith & Wesson folding knife that he had been carrying in his waistband. Patten, who did not realize that he was being stabbed, pulled the defendant over his shoulder and kicked him away, which ended the second altercation.

Patten then returned to the apartment and, realizing that he needed medical attention, walked to the nearby Rockville General Hospital (hospital). In order to obtain treatment for his injured nose, the defendant also walked to the hospital. The defendant arrived at the hospital at approximately 9:42 p.m. and was wheeled into an examining room, where a nurse evaluated him

undisputed facts established in the record, including the evidence presented at trial." (Internal quotation marks omitted.)), cert. denied, U.S. , 142 S. Ct. 873, 211 L. Ed. 2d 575 (2022).

and provided medical care. Consistent with hospital policy, the defendant changed into a hospital gown, and hospital staff placed his clothes into bags. After performing basic assessments of the defendant's condition, the nurse "determined that he was alert, awake, and oriented." Although tests confirmed that the defendant's blood alcohol content measured 0.217, he was able to communicate effectively with the nurse and to respond appropriately to her questions, and he was calm and cooperative. The attending physician who was on duty briefly interacted with the defendant and left a note for the incoming attending physician that the defendant could be discharged once he was clinically sober.

During the time that the defendant was at the hospital, he was questioned by and made statements to five different Vernon police officers. The defendant challenges the admissibility of the statement he made to Detective Charles Hicking, the written statement recorded by Officer Thomas Bugbee, the statement he made to Detective Sergeant David Hatheway, and the statement he made to Detective Michael Patrizz.[5] Those police officers collectively questioned the defendant for approximately one hour; they were not all present at once with the defendant.

The first interaction during which the defendant claims to have been in custody was with Hicking. When Hicking entered the defendant's room, a nurse was present. Hicking asked the nurse for permission to speak

[5] The defendant first spoke with Officer Ethan Roberge for approximately five minutes. During this interaction, the defendant, referring to Patten, stated: "I drew a pocketknife, and I sliced him," and "I know that I wasn't in the right for what I did, but, I mean, look what he did," gesturing to his injured nose. During a second interaction with Roberge, which lasted approximately one minute, the defendant stated: "Look what he did to me. What am I gonna do? I take shit from no one. You swing at me, I'm gonna end you." The defendant does not challenge the admissibility of the statements he made to Roberge.

with the defendant, and the nurse assented. The defendant then told Hicking his version of what had occurred that evening, and Hicking asked clarifying questions. The defendant told Hicking that he had stabbed the victim but that it was in self-defense. The interaction ended when nursing staff interrupted Hicking in order to perform their duties. Later, Hicking reentered the defendant's hospital room with another detective, but he did not interact with the defendant. Hicking was dressed in plain clothes, and his weapon was not visible to the defendant.

The defendant's longest interaction was with Bugbee, a patrol officer, who first entered the defendant's hospital room at 10:13 p.m. During the approximately thirty minute interaction, Bugbee took the defendant's sworn statement. Specifically, the defendant told Bugbee, "I don't flight, I fight," "I'm a peaceable person until you get in my face, then I'll fuck you up," and "I take shit from no one." While the defendant gave his statement, medical personnel entered and exited the hospital room freely and tended to the defendant. At one point, medical personnel asked Bugbee if they could treat the defendant during the interview; at that time, Bugbee confirmed the defendant's desire to continue the interview in the presence of the staff. As the defendant continued to speak with Bugbee, a nurse inserted an intravenous (IV) catheter into the back of the defendant's hand in order to draw blood. The defendant's IV was not attached to any machine or equipment while he spoke with Bugbee.[6] After putting the defendant

[6] The trial court did not make a finding as to how long the IV remained inserted into the back of the defendant's hand. Our review of the body camera footage; see footnote 7 of this opinion; reveals that the IV remained inserted into the back of the defendant's hand until at least 1:05 a.m., which is the last time that the defendant's hand is clearly visible on the recording. Despite the length of time that the IV was inserted, he was able to freely gesticulate and to get up from the hospital bed and walk around the room. There is nothing in the record to suggest that the IV restrained him to the point that a reasonable person would not have felt free to leave.

under oath and having him sign the statement, Bugbee left the room. At approximately 12:09 a.m., Bugbee reentered the defendant's room to speak with him again. During this brief conversation, Bugbee told the defendant that he was free to go, as far as the police were concerned, but that it was up to the hospital when he could actually leave. At 12:26 a.m., Bugbee repeated to the defendant that the police officers were done speaking with him and that he could leave as soon as the hospital released him. During all of these conversations, Bugbee was in uniform with his weapon visible and his badge displayed.

After briefly reviewing the statement that the defendant had given to Bugbee, Hatheway, a detective sergeant, entered the defendant's hospital room along with both Sergeant Christopher Pryputniewicz and Bugbee. Hatheway was wearing civilian clothes, but his badge and weapon were visible to the defendant. Hatheway interviewed the defendant about his version of events, during which the defendant described the stabbing and stated to the officers that he "take[s] shit from no one." During the interaction, the defendant gave the officers consent to seize and search his clothing, which the medical staff previously had placed into bags. After concluding the interview, Hatheway relayed his impressions to his superior officer and left the hospital.

Finally, the defendant spoke with Patrizz, who was the lead detective assigned to the case. Accompanied by Hicking, Patrizz entered the defendant's hospital room shortly after 12:30 a.m. and asked the defendant to again provide his version of the events. At that time, Patrizz was dressed in plain clothes with his weapon and badge visible to the defendant. The defendant told Patrizz that he had stabbed the victim in his stomach area and upper chest area but that it was in self-defense. After approximately five to ten minutes, the defendant expressed annoyance at having to repeat his story and indicated

a desire to stop speaking. At that point, Patrizz ended the interaction.

During each interaction with the police officers, the defendant was never physically restrained. No officer asked the medical staff to prolong the defendant's treatment. Although the defendant was intoxicated, he "was coherent, alert, oriented, and able" to understand his circumstances and to communicate effectively. Apart from his injured nose, medical examinations revealed no other medical concerns. After becoming clinically sober, the defendant was discharged from the hospital at 2:25 a.m. At no point during any of their interactions with the defendant at the hospital did the police advise the defendant of his *Miranda* rights.

The police arrested the defendant the following day. The state charged the defendant with one count of assault in the first degree in violation of § 53a-59 (a) (1) and one count of tampering with physical evidence in violation of General Statutes § 53a-155. Thereafter, the defendant moved to suppress portions of the statements that he had made to the officers while he was at the hospital. The defendant argued, among other things, that he was in custody when he was interviewed by the officers and that the questioning constituted an interrogation requiring that the officers advise him of his *Miranda* rights. The trial court conducted a three day evidentiary hearing on the defendant's motion to suppress. Following the conclusion of the hearing, the court issued a memorandum of decision, concluding that the defendant was not in custody when he made the challenged statements, and, accordingly, denied his motion to suppress. Following a bench trial, the court found the defendant guilty on the assault charge. The court sentenced the defendant to ten years of incarceration, execution suspended after seven years, and five years of probation.

The defendant appealed from the judgment of the trial court to the Appellate Court, claiming that the

statements he made to the police at the hospital were the result of a custodial interrogation and that, because he had not been advised of his *Miranda* rights before the statements were elicited, he was entitled to have the statements suppressed. See *State* v. *Garrison*, supra, 213 Conn. App. 807. The Appellate Court concluded that "a reasonable person in the defendant's position would have believed that he was not at liberty to terminate the police questioning, that his freedom of movement was restricted by the police . . . and that [he] was in police custody to the degree associated with a formal arrest . . . ." (Citation omitted; internal quotation marks omitted.) Id., 827. It further concluded that "the police officers' questioning of the defendant constituted [an] interrogation for purposes of *Miranda*" and, therefore, that evidence of the statements should have been suppressed. Id. Upon concluding that the admission of the statements obtained in violation of *Miranda* was not harmless beyond a reasonable doubt, the Appellate Court reversed the judgment of the trial court and remanded the case for a new trial. See id., 840–41. This certified appeal followed. See footnote 2 of this opinion.

On appeal, the state claims that the Appellate Court incorrectly concluded that the defendant's statements were obtained in violation of his *Miranda* rights. The state argues that an examination of the totality of the circumstances in this case demonstrates that the defendant did not establish that a reasonable person would believe that he was in custody of the degree associated with a formal arrest when the police officers spoke with him at the hospital. See, e.g., *State* v. *Jackson*, 304 Conn. 383, 417, 40 A.3d 290 (2012). In response, the defendant contends that the Appellate Court correctly concluded that he was in custody when he spoke with the officers in his hospital room. He argues that, because the officers interrogated him while he was undergoing

medical treatment and physically confined to the hospital, a reasonable person in his position would not have believed that he was free to leave or to terminate the interview. According to the defendant, the officers were therefore required to inform him of his *Miranda* rights before they questioned him. We, however, agree with the state and conclude that the Appellate Court incorrectly determined that the defendant was in custody for *Miranda* purposes when the police officers questioned him at the hospital.

We begin with the standard of review applicable to a trial court's determination of whether a person was in custody for *Miranda* purposes. " 'The trial court's determination of the historical circumstances surrounding the defendant's interrogation [entails] findings of fact . . . [that] will not be overturned unless they are clearly erroneous. . . . In order to determine the [factual] issue of custody, however, we will conduct a scrupulous examination of the record . . . to ascertain whether, in light of the totality of the circumstances, the trial court's finding is supported by substantial evidence. . . . The ultimate inquiry as to whether, in light of these factual circumstances, a reasonable person in the defendant's position would believe that he or she was in police custody of the degree associated with a formal arrest . . . calls for application of the controlling legal standard to the historical facts [and] . . . therefore, presents a . . . question of law . . . over which our review is de novo.' . . . In other words, we are bound to accept the factual findings of the trial court unless they are clearly erroneous, but we exercise plenary review over the ultimate issue of custody." (Citation omitted.) *State* v. *Mangual*, 311 Conn. 182, 197, 85 A.3d 627 (2014), quoting *State* v. *Jackson*, supra, 304 Conn. 417.

Well established principles of law frame our custody analysis. "Although [a]ny [police] interview of [an indi-

vidual] suspected of a crime . . . [has] coercive aspects to it . . . only an interrogation that occurs when a suspect is in custody heightens the risk that statements obtained therefrom are not the product of the suspect's free choice. . . . This is so because the coercion inherent in custodial interrogation blurs the line between voluntary and involuntary statements . . . . Thus, the court in *Miranda* was concerned with protecting defendants against interrogations that take place in a [police dominated] atmosphere, containing inherently compelling pressures [that] work to undermine the individual's will to resist and to compel [the individual] to speak . . . . [P]olice officers [however] are not required to administer *Miranda* warnings to everyone whom they question . . . . [R]ather, they must provide such warnings only to persons who are subject to custodial interrogation. . . . To establish entitlement to *Miranda* warnings, therefore, the defendant must satisfy two conditions, namely, that (1) [the defendant] was in custody when the statements were made, and (2) the statements were obtained in response to police questioning." (Citations omitted; footnote omitted; internal quotation marks omitted.) *State* v. *Mangual*, supra, 311 Conn. 191–92.

"As used in . . . *Miranda* [and its progeny], custody is a term of art that specifies circumstances that are thought generally to present a serious danger of coercion. . . . In determining whether a person is in custody in this sense . . . the United States Supreme Court has adopted an objective, reasonable person test . . . the initial step [of which] is to ascertain whether, in light of the objective circumstances of the interrogation . . . a reasonable person [would not] have felt . . . at liberty to terminate the interrogation and [to] leave. . . . Determining whether an individual's freedom of movement [has been] curtailed, however, is simply the first step in the analysis, not the last. Not

all restraints on freedom of movement amount to custody for purposes of *Miranda*. [Accordingly, the United States Supreme Court has] decline[d] to accord talismanic power to the [freedom of movement] inquiry . . . and [has] instead asked the additional question [of] whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." (Citations omitted; internal quotation marks omitted.) Id., 193.

"Of course, the clearest example of custody for purposes of *Miranda* occurs when a suspect has been formally arrested. As *Miranda* makes clear, however, custodial interrogation includes questioning initiated by law enforcement officers after a suspect has been arrested *or* otherwise deprived of his freedom of action *in any significant way*. . . . Thus, not all restrictions on a suspect's freedom of action rise to the level of custody for *Miranda* purposes; in other words, the [freedom of movement] test identifies only a necessary and not a sufficient condition for *Miranda* custody. . . . Rather, the ultimate inquiry is whether a reasonable person in the defendant's position would believe that there was a restraint on [that person's] freedom of movement of the degree associated with a formal arrest. . . . Any lesser restriction on a person's freedom of action is not significant enough to implicate the core fifth amendment concerns that *Miranda* sought to address." (Citations omitted; emphasis in original; footnote omitted; internal quotation marks omitted.) Id., 194–95. "No definitive list of factors governs a determination of whether a reasonable person in the defendant's position would have believed that he or she was in custody. Because, however, the [court in] *Miranda* . . . expressed concern with protecting defendants against interrogations that take place in a [police dominated] atmosphere . . . circumstances relating to those kinds of concerns are highly relevant on the cus-

tody issue." (Citation omitted; internal quotation marks omitted.) *State* v. *DesLaurier*, 230 Conn. 572, 577–78, 646 A.2d 108 (1994).

Thus, in *State* v. *Mangual*, supra, 311 Conn. 182, we identified "the following nonexclusive list of factors to be considered in determining whether a suspect was in custody for purposes of *Miranda*: (1) the nature, extent and duration of the questioning; (2) whether the suspect was handcuffed or otherwise physically restrained; (3) whether officers explained that the suspect was free to leave or not under arrest; (4) who initiated the encounter; (5) the location of the interview; (6) the length of the detention; (7) the number of officers in the immediate vicinity of the questioning; (8) whether the officers were armed; (9) whether the officers displayed their weapons or used force of any other kind before or during questioning; and (10) the degree to which the suspect was isolated from friends, family and the public." Id., 196–97.

Additionally, in *State* v. *Jackson*, supra, 304 Conn. 383, we identified various factors that courts have considered in determining whether a defendant was in custody for *Miranda* purposes when, as here, the defendant had been questioned by the police in a hospital room. Those factors include (1) "whether the police physically restrained the defendant in any way or ordered the medical attendants to restrain him physically," (2) "whether the police took advantage of an inherently coercive situation created by any physical restraint that the medical attendants may have asserted against him for purposes of his treatment," (3) "whether the defendant was able to converse with . . . other people, express annoyance or request assistance from them," (4) "the duration of the questioning," (5) "whether the police took a criminal suspect to the hospital from the scene of a crime, monitored the patient's stay, stationed themselves outside the [hospital room] door,

[or] arranged an extended treatment schedule with the doctors," (6) "the time of day," (7) "the mood and mode of the questioning," (8) "whether there were indicia of formal arrest," and (9) "the defendant's age, intelligence and mental makeup." (Internal quotation marks omitted.) Id., 417–18.

With these principles in mind, we now consider whether the defendant was in custody when he spoke with the various police officers in his hospital room. At the outset, we observe that the defendant was not handcuffed while in his hospital room or placed under arrest before or during his hospital stay. Accordingly, we must decide whether the officers otherwise restrained the defendant to the degree associated with a formal arrest. See, e.g., *State* v. *Mangual*, supra, 311 Conn. 194. We conclude, after reviewing the nonexclusive factors from *Mangual* and *Jackson*, that the defendant was not restrained to such an extent during any of his interactions with the officers.

Turning to the first *Mangual* factor, we note that our review of the footage from the body cameras the police officers were wearing[7] demonstrates that the trial court correctly determined that "the questioning was neither prolonged nor aggressive . . . ." (Citation omitted.) *State* v. *Jackson*, supra, 304 Conn. 418. The defendant was questioned by five different officers, and he responded "spontaneously, eagerly, and immediately, often launching into long narratives of the event and having to be redirected and asked to slow down." When the defendant became annoyed by the questioning and indicated a desire to stop talking, the interview was immediately terminated.

[7] Roberge, Bugbee, and Pryputniewicz were wearing body cameras, which recorded the various conversations between the defendant and the officers. See *State* v. *Garrison*, supra, 213 Conn. App. 796 n.6, 797 n.8, 798 n.9, 801 n.11. The audio and video recordings, or portions thereof, were admitted into evidence during the suppression hearing and at the subsequent criminal trial. See id.

Because there is nothing in the record to suggest that any of the officers with whom the defendant interacted were threatening or aggressive, we conclude that the tone and tenor of the questioning weigh against a conclusion that the defendant was restrained to the degree associated with formal arrest. See, e.g., *State* v. *Brandon*, 345 Conn. 702, 730–31, 287 A.3d 71 (2022), cert. denied, U.S. , 143 S. Ct. 2669, 216 L. Ed. 2d 1242 (2023). Additionally, although the defendant was at the hospital for more than four and one-half hours, his actual interactions with the police officers were spaced out and totaled only about one hour, which our cases indicate is not excessive under the circumstances. See, e.g., id., 731–32 (ninety minute duration of interrogation weighed against conclusion that defendant was in custody); *State* v. *Pinder*, 250 Conn. 385, 414, 736 A.2d 857 (1999) (two and one-half hour interview did "not necessitate the conclusion that a reasonable person would believe he could not leave").

The second *Mangual* factor also weighs against a conclusion that the defendant was restrained to the degree associated with a formal arrest. In his hospital room, the defendant was neither handcuffed nor physically restrained by the police officers or by the medical staff at the request of the officers. Although the defendant had an IV inserted into the back of his hand, there is nothing in the record to suggest that the officers "took advantage" of what could have been a "coercive situation created by [the] physical restraint" placed on the defendant for purposes of medical treatment. *State* v. *DesLaurier*, supra, 230 Conn. 579. The officers did not increase the intensity of the questioning or stand in the defendant's personal space in order to intimidate him. Indeed, the defendant was able to get up from his hospital bed and walk around the room.

The third *Mangual* factor, namely, whether the police officers explained that the defendant was either free to leave or not under arrest, presents a closer question

but nonetheless weighs against a finding of custody. On two occasions, at 12:09 and 12:26 a.m., Bugbee informed the defendant that he was free to leave for police purposes. The defendant argues that, because the officers did not tell him that he was free to leave for police purposes until 12:09 a.m., he was not free to leave before then and, therefore, was in custody. This court, however, previously has "recognized that, as long as the facts demonstrate that a reasonable person in the defendant's position would understand that his meeting with law enforcement is consensual, a defendant need not be expressly informed that he [is] free to leave in order for a court to conclude that the defendant has failed to prove that an interrogation was custodial." (Internal quotation marks omitted.) *State* v. *Brandon*, supra, 345 Conn. 736. Indeed, "[d]rawing the conclusion that an interrogation was custodial from the failure to advise . . . a defendant that he is free to leave or not under arrest misunderstands the two-pronged nature of the *Miranda* custody inquiry." Id. It is particularly noteworthy that, in the present case, the defendant was not placed under arrest at the conclusion of the police interactions.[8] See, e.g., *Howes* v. *Fields*, 565 U.S. 499, 509, 132 S. Ct. 1181, 182 L. Ed. 2d 17 (2012) (relevant factors to consider in determining "how a suspect would have gauge[d] his freedom of movement" include "the release of the interviewee at the end of the questioning" (internal quotation marks omitted)); *State* v. *Brandon*, supra, 738 (fact that "the defendant left without being placed under arrest . . . weighs against the

[8] As we recently acknowledged in *State* v. *Brandon*, supra, 345 Conn. 739 n.18, there is "tension with placing significant weight on this factor given that a suspect may not know at the outset of or during a particular interrogation whether he will be permitted to leave at the end of the interrogation. However, both the United States Supreme Court and this court have considered this factor in the totality of the circumstances that bear on a custody determination. Thus, although we do not place great weight on this factor, we nevertheless consider it in accordance with long-standing, established precedent in this area."

conclusion that the defendant was restrained to the degree associated with a formal arrest").

The fourth *Mangual* factor, namely, who initiated the interactions, weighs in favor of a conclusion that the defendant was in custody because the police officers initiated each of the interactions. "Its weight is undercut, however, by the defendant's acquiescence to" each interaction. *State* v. *Brandon*, supra, 345 Conn. 739. As the trial court found, the defendant was eager to tell his story and even thanked Bugbee for writing down his statement. Most significant, the officers stopped questioning the defendant when the defendant expressed annoyance at having to repeat his story and indicated a desire to stop.

In analyzing the fifth *Mangual* factor, which focuses on the location of the interview, we consider the factors articulated in *State* v. *Jackson*, supra, 304 Conn. 417–18, which poses additional considerations relevant to police interviews that take place in a hospital setting.[9] As we previously discussed, the police officers neither physically restrained the defendant nor asked medical personnel to do so. Although an IV was inserted into the back of the defendant's hand for purposes of his treatment, there is nothing in the record to suggest that the officers took advantage of whatever restraint was

[9] We note that, consistent with hospital policy, the defendant had changed out of his clothes and was wearing a hospital gown and underwear during each of his interactions with the police officers. With the defendant's written consent, his clothes were then seized by the officers. We recognize that, in certain situations, a reasonable person in a hospital gown whose clothes were seized by the police might feel restrained to the degree associated with a formal arrest, and we emphasize that our conclusions in the present case should not be read to mean that an individual in such a situation could never be in custody for purposes of *Miranda*. In the present case, however, the record does not support such a conclusion. The defendant took no issue with the officers' seizing his clothes and willingly signed a form consenting to the seizure. Additionally, after the seizure, the mood of the questioning did not become aggressive or accusatory, and the defendant continued to speak with police eagerly.

caused by the administration of the IV, such as by increasing the intensity of their questioning of the defendant. The record further demonstrates that the defendant was able to converse with other people, namely, the hospital's medical staff, and was able to express annoyance. Indeed, the police interactions ended as soon as the defendant expressed his annoyance to Patrizz about having to repeat his story multiple times. Although the fact that the defendant's interactions with the officers occurred between 9:40 p.m. and 2:20 a.m. could well weigh in favor of a finding of custody, the time of day, without more, is not enough to show that the defendant was in custody in this case, particularly because "the questioning was neither prolonged nor aggressive . . . ." (Citation omitted.) Id., 418. The defendant's overall interactions with the officers during that span of time totaled approximately one hour, during which the defendant appeared relaxed and even eager to provide his version of the events.

Most significant, the police had no role in causing the hospitalization of the defendant. The police did not transport the defendant to the hospital from the scene of the crime; the defendant walked to the hospital and admitted himself. See, e.g., id., 418–19; see also *United States* v. *Martin*, 781 F.2d 671, 673 (9th Cir. 1985) ("[i]f the police took a criminal suspect to the hospital from the scene of a crime . . . law enforcement restraint amounting to custody could result"). There is nothing in the record to indicate that an officer was stationed outside of the hospital room door in order to monitor the defendant's stay or that the officers arranged an extended treatment schedule with the medical staff in order to keep the defendant at the hospital. There were no indicia of formal arrest, such as handcuffing or anything resembling the booking process. Finally, although the defendant had a tenth grade education and a blood alcohol content of 0.217 when he arrived at the hospital,

he was "alert, awake, and oriented" at all relevant times. He was able to communicate effectively with medical staff and the police officers, to respond appropriately to questions, and was cooperative. Accordingly, we conclude that the fifth *Mangual* factor weighs against a conclusion that the defendant was in custody.

With respect to the sixth *Mangual* factor, the length of the encounter, the defendant was at the hospital from approximately 9:40 p.m. until approximately 2:25 a.m. and was not permitted to leave prior to 2:25 a.m. for medical reasons, namely, that he was not clinically sober. Although such a length of time could, in certain situations, weigh in favor of a conclusion that the defendant was in custody, the weight of this factor is undercut in this case by the fact that nothing in the record suggests that the police officers arranged with medical staff to increase the length of the defendant's stay or that the officers took advantage of the fact that the defendant was required to stay at the hospital until he was clinically sober. We agree with the trial court that, although "the defendant was physically confined to the hospital until medical [staff] deemed that it was medically appropriate for him to be discharged, the evidence does not demonstrate that a reasonable person in the defendant's position would [have] believe[d] that he or she was in police custody of the degree associated with a formal arrest."

The seventh, eighth, and ninth *Mangual* factors together—which consider coercive factors, such as the number of officers in the immediate vicinity of the questioning, whether they were armed, and whether they displayed their weapons or used force of any other kind before or during the questioning—present a close question but ultimately weigh against a conclusion that the defendant was in custody. Although six different police officers entered the defendant's room at various times during his hospital stay, at no point were all six in

the room at the same time. Looking at each interaction separately, we observe that the defendant interacted with both Hicking and Bugbee one-on-one,[10] he interacted with Patrizz while one other officer was present in the hospital room, and he interacted with Hatheway while two other officers were in the room. Without more, the number of officers in the defendant's hospital room at any time did not create a police dominated environment to the point that a reasonable person in the defendant's position would have believed that he was in police custody of the degree associated with a formal arrest. See, e.g., *State* v. *Brandon*, supra, 345 Conn. 732 (fact that "only two police officers" interrogated defendant supported conclusion that defendant was not in custody); *State* v. *Castillo*, 329 Conn. 311, 330–31, 186 A.3d 672 (2018) (fact that "only three officers" were present supported conclusion that defendant was not in custody (internal quotation marks omitted)); *State* v. *Kirby*, 280 Conn. 361, 394, 908 A.2d 506 (2006) ("the defendant did not carry his burden of proving that he was in custody" when he was questioned by five police officers in his home). Although the majority of the officers with whom the defendant interacted were visibly armed, none of the officers "physically threatened the defendant, used force . . . or brandished [his weapon]." *State* v. *Brandon*, supra, 732.

With respect to the tenth *Mangual* factor, there is nothing in the record to support the conclusion that the defendant was isolated from friends, family, and the public to the degree that a reasonable person would have felt a restraint on his freedom of movement akin to a formal arrest. The medical staff came in and out of the room while the police officers questioned the defendant. See *State* v. *DesLaurier*, supra, 230 Conn.

[10] We note that the defendant also interacted with Roberge one-on-one. See footnote 5 of this opinion. The defendant does not challenge the admissibility of the statements he made to Roberge.

580 ("the presence of witnesses who were not police officers," namely, medical staff, weighed against finding of custody). Specifically, Hicking asked the medical staff for permission to speak with the defendant, and Bugbee confirmed with the defendant that he was comfortable talking with the medical staff present. None of the officers asked the medical staff to stop administering treatment or to stay out of the room while they spoke with the defendant. Furthermore, although no friends or family members were present, there is nothing in the record to support a finding that the officers would have barred family or friends from entering the hospital room.

Our conclusion that the defendant was not in custody is supported by our decision in *State* v. *Jackson*, supra, 304 Conn. 383. In *Jackson*, a police officer questioned the defendant, John Jackson, who had attempted to die by suicide by jumping out of a hotel window, for approximately thirty minutes in the hospital room where he was being treated before advising Jackson of his *Miranda* rights. Id., 387–88, 414–15. Jackson had broken legs, a broken arm, and bandages on his head and on one of his hands, and he was receiving IV pain medication. Id., 388, 414. During the interaction, Jackson did not indicate that he did not want to speak to the police officer, and the police officer did not tell Jackson that he was under arrest. Id., 414. In concluding that Jackson was not in custody for purposes of *Miranda*, we noted that (1) he "was immobilized for medical treatment, not for purposes of interrogation," (2) "there was no evidence that [he] could not have asked the police to leave the hospital room or asked hospital personnel to assist him to terminate the questioning," (3) "the police did not arrange for any restraints on or extended treatment of [him] by medical personnel," (4) "the questioning was neither prolonged nor aggressive," (5) the police officer "told [him] that he was not under

arrest," and (6) there was "no evidence that his age or intelligence rendered him especially vulnerable to police intimidation and, although he may have been despondent and was receiving pain medication for his injuries, the nurse indicated that he was capable of speaking with the police, and [the police officer] testified that he was alert and coherent." Id, 418–19.

In its opinion in this case, the Appellate Court attempted to distinguish *Jackson*, insofar as it concluded that the larger police presence in the present case transformed the defendant's hospital room into a police dominated atmosphere and that the longer duration of the questioning in the present case transformed the interactions into the prolonged and aggressive questioning about which *Miranda* and our case law are concerned. See *State* v. *Garrison*, supra, 213 Conn. App. 826–27. We disagree. As we discussed previously, a significant portion of the questioning of the defendant occurred with only one police officer in the hospital room, and at no point during the questioning were more than three officers present in the room. Our cases do not suggest that the presence of one, two, or three police officers creates a police dominated atmosphere. See, e.g., *State* v. *Castillo*, supra, 329 Conn. 330–31 (fact that "only three officers" were present supported conclusion that defendant was not in custody (internal quotation marks omitted)). As to the duration of the questioning, our cases do not suggest that approximately one hour of questioning weighs in favor of a finding of custody. See, e.g., *State* v. *Brandon*, supra, 345 Conn. 731–32 (ninety minute duration of interrogation weighed against conclusion that defendant was in custody).

Our conclusion that the defendant was not in custody finds further support in decisions from other states.[11]

[11] We note that the Appellate Court relied on various decisions from other jurisdictions to support its conclusion that the defendant was in custody. See *State* v. *Garrison*, supra, 213 Conn. App. 812–13. Our review of these cases indicates that they are factually distinguishable, and the Appellate

For example, in a very recent case, *Bowman* v. *Commonwealth*, 686 S.W.3d 230, 242 (Ky. 2024), the Kentucky Supreme Court concluded that a defendant who had been questioned at a hospital was not in custody for purposes of *Miranda*. In considering the totality of the circumstances surrounding the questioning, the Kentucky Supreme Court observed that (1) the questioning "took place in a bustling emergency room treatment area while several nurses administered various means of medical treatment," (2) the police officer did not "attempt to clear the room or [to] stop treatment so that he could question [the defendant]," (3) the police officer "waited until there was a lull in treatment before he began asking questions," (4) the questions "were asked in a professional and [nonaccusatory] manner," (5) the defendant "was not handcuffed or otherwise

Court's reliance on them was misplaced. See, e.g., *Reinert* v. *Larkins*, 379 F.3d 76, 80 (3d Cir. 2004) (defendant was questioned in ambulance while IV was inserted into his arm and he was "hooked up to an electrocardiograph"), cert. denied sub nom. *Reinert* v. *Wynder*, 546 U.S. 890, 126 S. Ct. 173, 163 L. Ed. 2d 201 (2005); *United States* v. *Hallford*, 280 F. Supp. 3d 170, 173, 180 (D.D.C. 2017) (defendant was questioned in psychiatric hospital where he was involuntarily committed), aff'd, 756 Fed. Appx. 1 (D.C. Cir. 2018); *People* v. *Mangum*, 48 P.3d 568, 571–72 (Colo. 2002) (defendant was handcuffed while being questioned); *State* v. *Lowe*, 81 A.3d 360, 366 (Me. 2013) (police officer's questioning was "focused, aggressive, and insistent"); *People* v. *Turkenich*, 137 App. Div. 2d 363, 367, 529 N.Y.S.2d 385 (1988) (defendant with diminished mental capacity was questioned in psychiatric ward of hospital where he was confined pursuant to involuntary commitment order); *People* v. *Tanner*, 31 App. Div. 2d 148, 149, 295 N.Y.S.2d 709 (1968) (defendant was "undergoing intravenous feeding and was physically incapable of movement"); *Commonwealth* v. *D'Nicuola*, 448 Pa. 54, 58, 292 A.2d 333 (1972) (questioning was of "[an] accusatory nature"); *Commonwealth* v. *Whitehead*, 427 Pa. Super. 362, 369, 629 A.2d 142 (1993) (defendant "was not freely capable of leaving and was fearful of not cooperating"); *Scales* v. *State*, 64 Wis. 2d 485, 492, 219 N.W.2d 286 (1974) (defendant was questioned in hospital after police placed him under arrest). In the present case, the questioning was not aggressive, insistent, or of an accusatory nature, the defendant was never handcuffed or formally arrested at the hospital, he was not connected to machines and was able to move freely, he did not appear to be fearful of not cooperating and, indeed, was eager to speak with the police officers, and he voluntarily admitted himself to the hospital.

restrained," and (6) the defendant "was not told that he was under arrest or that he could not leave." Id. In the present case, the police officers also questioned the defendant while nurses were present and administering treatment, the interactions between the officers and the defendant were professional and nonaccusatory, the defendant was never handcuffed or otherwise restrained, and the defendant was not told by the officers that he was under arrest or that he could not leave. See id.; see also *Freeman* v. *State*, 295 Ga. 820, 823, 764 S.E.2d 390 (2014) (defendant, who was in hospital being treated for gunshot wounds, was not in custody because "he was not under arrest; he was not restrained in any way; and if he had wished, he would have been allowed to leave if his medical situation so permitted"); *State* v. *Warrior*, 294 Kan. 484, 497–98, 502–503, 277 P.3d 1111 (2012) (although defendant's injuries prevented her from leaving hospital room, she was not in custody because "the interviews occurred in [the defendant's] hospital room, a neutral location," "[t]he interviews were short in duration," "[t]he officers did not use coercive threats or employ a hostile or accusatory tone," defendant was not restrained by officers, defendant "was taken to the hospital for treatment, not by order of law enforcement," and defendant was not arrested after interviews); *State* v. *Rogers*, 848 N.W.2d 257, 265 (N.D. 2014) ("[The defendant] voluntarily spoke with the officers, he was free to move about, the atmosphere of the interview was conversational, and the interview took place in a large, [well lit] room far removed from the coercive confines traditionally associated with [station house] interviews. Furthermore, during the interview, hospital staff checked on [the defendant] periodically.").

We emphasize that our conclusions in the present case should not be read to mean that an individual can never be in custody for purposes of *Miranda* when questioned in a hospital room. Indeed, "[a] reasonable

person observing a police officer's uniform, badge, holstered gun, and command of individuals . . . in the [hospital or] emergency room could conclude that the officer has some measure of authority over medical personnel. Any doubt in such a matter must cut in favor of the defendant, who depends on undelayed, uninterrupted, and unrestricted medical care to treat pain, prevent complication, and save life." K. Berger, Note, "In Whose Custody? *Miranda*, Emergency Medical Care & Criminal Defendants," 11 U.C. Irvine L. Rev. 1197, 1208 (2021). In the present case, however, there is nothing in the record to suggest that a reasonable person in the defendant's situation would have perceived the police officers to be exercising any control or authority over the medical staff. Indeed, the record demonstrates that the officers did not assert control over the medical staff and that the questioning did not delay, interrupt, or restrict the defendant's medical care.

In sum, after evaluating the totality of the circumstances with respect to each interaction that the defendant had with the police officers in his hospital room during which he made the challenged statements, we conclude that a reasonable person in the defendant's position would not have felt that there was a restraint on his freedom of movement of the degree associated with a formal arrest. The defendant was, therefore, not in custody, and the police officers were not required to administer *Miranda* warnings. Accordingly, we conclude that the Appellate Court incorrectly determined that the defendant was in custody for purposes of *Miranda*, thus requiring it to reverse the trial court's denial of the defendant's motion to suppress.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to affirm the judgment of the trial court.

In this opinion D'AURIA, MULLINS, ALEXANDER and DANNEHY, Js., concurred.

McDONALD, J., with whom ECKER, J., joins, dissenting. This court today sets the troubling precedent that an intoxicated person admitted to a hospital for medical treatment, attached to an intravenous catheter (also called a IV), and informed that he should not leave until he has reached the point of medical sobriety, and subjected to a cumulative hour of questioning over a period of approximately four hours by five separate police officers, many of whom were in uniform or visibly carrying weapons, is nevertheless not in custody for purposes of *Miranda*.[1]

In this certified appeal, this court must consider whether the defendant, Alexander A. Garrison, was in custody when he spoke with police officers during his admission to, and treatment in, the hospital. See *State* v. *Garrison*, 345 Conn. 959, 285 A.3d 52 (2022). Further, if he was in custody, we must consider whether the trial court's admission of the statements the defendant made during that interaction with the police was harmless beyond a reasonable doubt. See id. The Appellate Court reversed the trial court's judgment and remanded the case for a new trial after determining that the defendant was in custody when he spoke with the police. See *State* v. *Garrison*, 213 Conn. App. 786, 790, 841, 278 A.3d 1085 (2022). The Appellate Court also determined that the improper admission of these statements was not harmless beyond a reasonable doubt. See id., 790, 832, 840–41. I agree with the reasoning of the Appellate Court and would affirm its judgment.

The opinion of the Appellate Court thoroughly and accurately sets forth the facts and evidence considered by the trial court. The state contends that the Appellate Court's judgment should be reversed because a "reasonable person in the defendant's position would not believe

[1] *Miranda* v. *Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

that he was in police custody," specifying, among other factors, that the defendant voluntarily sought admission at the hospital, he was never restrained or any restraint was "minor," and, although the defendant spoke with a total of five police officers, the majority of the time, he spoke with only a single officer. The state also argues that the Appellate Court erred in finding that the admission of the statements was not harmless beyond a reasonable doubt because "the state's case was very strong and supported by overwhelming evidence . . . ." The defendant contends that the Appellate Court correctly determined that he was in custody when he spoke with police officers after admitting himself to the hospital and that the state has failed to demonstrate that the improper admission of the defendant's statements was harmless beyond a reasonable doubt.

My examination of the record and briefs, and consideration of the parties' arguments, persuades me that this court should affirm the Appellate Court's judgment. Because the Appellate Court's well reasoned opinion fully addresses both of the certified issues in this appeal, it would serve no useful purpose for me to repeat the discussion contained in that opinion. I therefore adopt the Appellate Court's opinion as the proper statement of the issues and the applicable law and reasoning concerning both issues. See, e.g., *State* v. *Henderson*, 330 Conn. 793, 799, 201 A.3d 389 (2019).

Accordingly, I respectfully dissent.

FRANCES WIHBEY *v.* ZONING BOARD OF APPEALS OF THE PINE ORCHARD ASSOCIATION (SC 20839)

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

Syllabus

The defendant zoning board of appeals and the intervening defendants appealed, on the granting of certification, from the judgment of the Appellate

Court reversing in part the trial court's judgment. The trial court had reversed the zoning board's decision to uphold a zoning enforcement officer's order directing the plaintiff property owner to cease and desist from renting his property on a short-term basis. The defendants claimed, inter alia, that the Appellate Court had incorrectly determined that the zoning regulations governing the plaintiff's property were ambiguous and should be interpreted to permit short-term rentals of the plaintiff's property. *Held*:

The Appellate Court correctly determined that the language of the zoning regulations permitting the use of a property as a single-family dwelling was ambiguous and that the short-term rental of a single-family dwelling constituted a permissible use under those regulations.

(*Two justices dissenting in one opinion*)

Argued March 27—officially released July 29, 2024*

Procedural History

Appeal from the decision of the defendant zoning board of appeals upholding a cease and desist order issued to the plaintiff, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the court, *Sizemore*, *J.*, granted the motion to intervene as defendants filed by Michael B. Hopkins et al.; thereafter, the court, *Rosen*, *J.*, sustained the plaintiff's appeal and rendered judgment thereon, from which the defendants, on the granting of certification, appealed to the Appellate Court, *Bright*, *C. J.*, and *Elgo* and *Norcott*, *Js.*, which reversed in part the trial court's judgment and remanded the case for further proceedings, and the defendants, on the granting of certification, appealed to this court. *Affirmed.*

Peter A. Berdon, for the appellant (defendant).

Marc J. Kurzman, with whom were *David S. Hardy* and, on the brief, *Damian K. Gunningsmith*, for the appellants (intervening defendants).

Franklin G. Pilicy, with whom was *Daniel J. Mahaney*, for the appellee (plaintiff).

* July 29, 2024, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Opinion

ALEXANDER, J. In this certified appeal, we must decide whether a zoning regulation that permitted the use of a property as a single-family dwelling allowed the owner to rent the property on a short-term basis. The plaintiff, Frances Wihbey, was ordered to cease and desist from renting his property to guests on a short-term basis by the Pine Orchard Association zoning enforcement officer. The plaintiff appealed to the defendant, the Zoning Board of Appeals of the Pine Orchard Association (board), which upheld the cease and desist order. The plaintiff then appealed to the trial court, which reversed the board's decision. The board and the intervening defendants, Michael B. Hopkins and Jacqueline C. Wolff,[1] appealed from the trial court's judgment to the Appellate Court, which affirmed in part and reversed in part the trial court's judgment. See *Wihbey* v. *Zoning Board of Appeals*, 218 Conn. App. 356, 396, 292 A.3d 21 (2023). We then granted the defendants' petition for certification to appeal, limited to the following issue: "Did the Appellate Court correctly conclude that short-term rentals of a single-family dwelling constituted a permissible use of the subject property under the 1994 Pine Orchard Association zoning regulations?" *Wihbey* v. *Zoning Board of Appeals*, 346 Conn. 1019, 1020, 292 A.3d 1254 (2023). We affirm the judgment of the Appellate Court.

The record reveals the following facts that were found by the trial court. The Pine Orchard Association (Pine Orchard) is an incorporated borough and municipal subdivision of the town of Branford and has jurisdic-

[1] Hopkins and Wolff are owners of real property located at 6 Halstead Lane in Branford, which abuts the plaintiff's property. The trial court granted their motion to intervene as defendants in this administrative appeal. See *Wihbey* v. *Zoning Board of Appeals*, 218 Conn. App. 356, 359 n.4, 292 A.3d 21 (2023). We refer to the board, Hopkins, and Wolff collectively as the defendants.

tion to enact planning and zoning regulations. Its executive board enforces those regulations and employs a zoning enforcement officer to assist in that function.

The plaintiff purchased the residence located at 3 Crescent Bluff Avenue in Pine Orchard (property) in 2005. The property is located in a zoning district in which several uses were permitted at the time of the purchase, including use of a property as "[a] single-family dwelling." Pine Orchard Assn. Zoning Regs., § IV (4.1) (1994) (1994 regulations).[2] Since 2005, the plaintiff has rented the property through Vrbo.[3] On average, the plaintiff rented the property for more than fifty days per year for periods of three days to one week. The plaintiff does not use the property as his primary residence.

In 2018, in response to complaints from several Pine Orchard residents concerning disruptions caused by short-term vacation rentals, Pine Orchard adopted several amendments to its zoning regulations, including one prohibiting the rental of a single-family dwelling for less than thirty days.[4] In August, 2019, Pine Orchard's

[2] Although Pine Orchard refers to its zoning regulations collectively as the Pine Orchard Association Zoning Ordinance, we refer to this body of regulations as regulations in the interest of consistency.

[3] "Vrbo, formerly Vacation Rentals by Owner, is a website on which owners can advertise their houses and other properties for rent." (Internal quotation marks omitted.) *Wihbey* v. *Zoning Board of Appeals*, supra, 218 Conn. App. 358 n.1.

[4] Section 4 of the 2018 Pine Orchard Association zoning regulations (2018 regulations) provides in relevant part that, in the zoning district in which the property is located, "no building or land shall be used and no building shall be erected or altered which is arranged, intended or designed to be used respectively for other than one or more of the following uses:

"4.1 A single-family dwelling . . . A single-family dwelling may not be used or offered for use as a [s]hort-[t]erm [r]ental [p]roperty. . . ."

Section 16 of the 2018 regulations defines "[short-term] rental property" as "[a] residential dwelling unit that is used and/or advertised for rent for occupancy by guests for consideration for a period of less than thirty . . . continuous days." Pine Orchard Assn. Zoning Regs., § 16 (2018).

zoning enforcement officer issued a letter to the plaintiff alleging that he had violated that regulation and ordering him to cease and desist from using the property for short-term rentals. The plaintiff appealed from the cease and desist order to the board, claiming that his use of the property for short-term rentals was permitted under the 1994 regulations, which were in place when he purchased the property, and was a protected nonconforming use. After conducting a public hearing, the board upheld the cease and desist order.

The plaintiff then appealed to the trial court pursuant to General Statutes § 8-8 (b). The trial court concluded that the plaintiff's use of the property for short-term rentals was permitted under the 1994 regulations. It therefore sustained the plaintiff's appeal and reversed the board's decision. The defendants appealed to the Appellate Court after that court granted their petition for certification to appeal pursuant to General Statutes § 8-9. See *Wihbey* v. *Zoning Board of Appeals*, supra, 218 Conn. App. 367. The Appellate Court concluded that the trial court correctly had determined that the 1994 regulations permitted short-term rentals but that it incorrectly had determined that the plaintiff established a preexisting, nonconforming use of the property when the board had not made any findings about the nature and scope of the preexisting use.[5] Id., 394–95. Accordingly, the Appellate Court affirmed in part and reversed in part the trial court's judgment, and remanded the case to the trial court with direction to remand the case to the board for a factual determination on the issue of whether the plaintiff had established a lawful, nonconforming use. Id., 396.

This certified appeal followed. The defendants claim that the Appellate Court incorrectly determined that the language of the 1994 regulations is ambiguous and

[5] This portion of the Appellate Court's ruling is not at issue in this appeal.

should be interpreted to mean that short-term rentals of the property were permitted. The defendants also claim that the Appellate Court made a number of other errors in interpreting the 1994 regulations. We disagree and affirm the judgment of the Appellate Court.

We begin with the defendants' claim that the 1994 regulations are unambiguous and do not permit the short-term rental of residential property. We are not persuaded. This issue presents a question of law subject to plenary review in accordance with the principles set forth in General Statutes § 1-2z. See, e.g., *Heim* v. *Zoning Board of Appeals*, 289 Conn. 709, 715, 960 A.2d 1018 (2008); see also id., 716 n.7 (under § 1-2z, court is required to make threshold determination as to whether zoning regulation is ambiguous). See generally *Moon* v. *Zoning Board of Appeals*, 291 Conn. 16, 21, 966 A.2d 722 (2009) (§ 1-2z applies to zoning regulations). "Because zoning regulations are in derogation of common-law property rights, they must be strictly construed and not extended by implication." *Graff* v. *Zoning Board of Appeals*, 277 Conn. 645, 653, 894 A.2d 285 (2006); see also *Smith Bros. Woodland Management, LLC* v. *Planning & Zoning Commission*, 88 Conn. App. 79, 86, 868 A.2d 749 (2005) ("[when] more than one interpretation of language is permissible, restrictions [on] the use of lands are not to be extended by implication . . . [and] doubtful language will be construed against rather than in favor of a [restriction]" (internal quotation marks omitted)).

The 1994 regulations provide in relevant part that "no building or land shall be used and no building shall be erected or altered which is arranged, intended or designed to be used respectively for other than one or more of [certain enumerated] uses . . . ." Pine Orchard Assn. Zoning Regs., § IV (1994). Section IV (4.1) of the 1994 regulations permits the erection of a "single-family dwelling." Id., § IV (4.1). A "single-family dwelling" is

defined as "[a] building designed for and occupied exclusively as a home or residence for not more than one family." Id., § XIII. "Family" is defined as "[o]ne or more persons related by blood, marriage or adoption, and in addition, any domestic servants or gratuitous guests. A roomer, boarder or lodger, shall not be considered a member of a family." Id. The 1994 regulations permit the posting of "[a] sign not more than five square feet in area when placed in connection with the sale, *rental*, construction or improvement of the premises . . . ." (Emphasis added.) Id., § IV (4.4).

The parties agree that, because the 1994 regulations are permissive, a use that is not expressly authorized is not permitted. See, e.g., *Heim* v. *Zoning Board of Appeals*, supra, 289 Conn. 716 n.8 (when zoning regulations are permissive, "[a]ny use that is not permitted is automatically excluded" (internal quotation marks omitted)). The parties further agree that long-term rentals are permitted, which the defendants suggest includes rentals of thirty days or longer.[6] The parties disagree, however, as to whether the 1994 regulations permit short-term rentals. The plaintiff contends that, because nothing in the 1994 regulations clearly differentiates between long-term rentals, which the defendants acknowledge are permitted, and short-term rentals, both are permitted. The defendants contend that the language defining "single-family dwelling" as a dwelling

[6] Nothing in the 1994 regulations expressly permits owners to rent a single-family dwelling. Although § IV (4.4) of the 1994 regulations permits an owner to post a rental sign, that regulation does not itself permit renting but incorporates the given fact that renting is permitted. Thus, as we discuss more fully subsequently in this opinion, the defendants implicitly concede that the plaintiff's right to use the property as a single-family dwelling includes the right to rent the property. Although the defendants never expressly state what, in their view, constitutes a "long-term" rental for purposes of the 1994 regulations, the board's counsel contended at oral argument before this court that the definition of "single-family dwelling" creates a "presumption" that the 1994 regulations do not permit a rental of less than thirty days.

"occupied exclusively as a home or residence for not more than one family" unambiguously excludes the use of the property for "short-term rentals for profit . . . ."

In support of their interpretation, the defendants rely on several dictionary definitions of the terms "home" and "residence." See Cambridge Dictionary, available at https://dictionary.cambridge.org/us/dictionary/english/home (last visited July 26, 2024) (defining "home" as "the house, apartment, etc. where you live, especially with your family"); Merriam-Webster Online Dictionary, available at https://www.merriam-webster.com/dictionary/home (last visited July 26, 2024) (defining "home" in relevant part as "one's place of residence; domicile" and "the social unit formed by a family living together"); Merriam-Webster Online Dictionary, available at https://www.merriam-webster.com/dictionary/residence (last visited July 26, 2024) (defining "residence" in relevant part as "the act or fact of dwelling in a place for some time" and "the place where one actually lives as distinguished from one's domicile or a place of temporary sojourn").[7] The defendants contend that these definitions establish that a "home" or "residence" is "a place where a person lives with a degree of permanency as distinguished from temporariness . . . ."[8]

[7] The defendants cite a number of other online dictionaries for definitions of the terms "home" and "residence," but the provided website addresses or URLs are nonfunctional.

[8] The defendants also claim that the definitions place "an emphasis on familial (i.e., stable) connection between the persons residing at the place." The plaintiff does not dispute that the 1994 regulations require that a single-family dwelling be occupied by only a single family, as defined by the regulations, at any given time. The question of whether the plaintiff's short-term rentals of the property before the adoption of the 2018 regulations were in compliance with this requirement, thereby establishing a lawful, nonconforming use, is not before this court, but is to be determined on remand. We therefore focus our analysis on the defendants' claim that the definitions of "home" and "residence" establish that they are places where a family lives with "a degree of permanency . . . ."

Although we agree with the defendants that this characteristic *can* be attributed to a "home" and a "residence," we do not agree that those terms *necessarily* refer to places where an individual will live for any particular length of time. For example, as the Appellate Court noted, the terms "home" and "residence" can denote a specific type of structure, i.e., a structure that is used primarily as a house or dwelling. See *Wihbey* v. *Zoning Board of Appeals*, supra, 218 Conn. App. 374–76, citing The American Heritage Dictionary of the English Language (5th Ed. 2011) p. 840 (defining "home" as, among other things, "[t]he physical structure within which one lives, such as a house or apartment"), Webster's Third New International Dictionary (1993) p. 1082 (defining "home" as, among other things, "a private dwelling: house"), and Webster's Third New International Dictionary (1993) p. 1931 (defining "residence" as, among other things, "a building used as a home: dwelling"). Under these definitions, the language of the 1994 regulations permitting a "single-family dwelling" defined as "[a] building designed for and occupied exclusively as a home or residence for not more than one family"; Pine Orchard Assn. Zoning Regs., §§ IV (4.1) and XIII (1994); would mean that the primary structure on the property must be designed and used as a house or dwelling for occupation by only one family at a given time. In contrast, structures that are designed to be or are in fact occupied by multiple families at the same time, or by commercial enterprises other than those expressly allowed, are not permitted.[9] This defini-

[9] The 1994 regulations expressly allow a single-family dwelling to be used as the "[o]ffice of a physician, surgeon, lawyer, architect, insurance agent, accountant, engineer, land surveyor, or real estate broker, when located in the dwelling used by such person as his private residence . . . ." Pine Orchard Assn. Zoning Regs., § IV (4.2) (1994). These uses are consistent with the interpretation of the definition of "single-family dwelling" as permitting structures that are designed and used as a house or dwelling for occupation by one family.

The Appellate Court concluded that the drafters' use of both the term "home" and the term "residence" should be interpreted to mean that they

tion focuses not on the length of time that a particular family occupies the structure but on the nature and use of the structure at any given time.

The cases cited by the Appellate Court in support of its determination that "so long as one family dwells in the property, *any* amount of time . . . [is] sufficient to make the property the family's residence"; (emphasis in original) *Wihbey* v. *Zoning Board of Appeals*, supra, 218 Conn. App. 384; bolster our conclusion that this interpretation is reasonable in this context.[10] See id., 384–85. Although the defendants may be correct that "no group of college buddies (or even a family) renting the [plaintiff's] property for a long weekend would con-

"intended to attach different meanings to those terms." *Wihbey* v. *Zoning Board of Appeals*, supra, 218 Conn. App. 376; see id. (quoting *Celentano* v. *Oaks Condominium Assn.*, 265 Conn. 579, 609, 830 A.2d 164 (2003), for proposition that "[t]he use of . . . different terms . . . within the same statute suggests that the legislature acted with complete awareness of their different meanings . . . and that it intended the terms to have different meanings" (internal quotation marks omitted)). The Appellate Court also acknowledged, however, that there is significant overlap in the definitions of these terms. See *Wihbey* v. *Zoning Board of Appeals*, supra, 376. In our view, both the terms "home" and "residence" reasonably can be interpreted to refer to a structure that is used as a dwelling.

[10] See *Slaby* v. *Mountain River Estates Residential Assn., Inc.* 100 So. 3d 569, 579 (Ala. Civ. App. 2012) (property is used for " 'residential purposes' anytime it is used as a place of abode"); *Lowden* v. *Bosley*, 395 Md. 58, 68, 909 A.2d 261 (2006) (" '[r]esidential use,' without more, has been consistently interpreted as meaning that the use of the property is for living purposes, or a dwelling, or a place of abode"); *Wilson* v. *Maynard*, 961 N.W.2d 596, 602 (S.D. 2021) (" 'residential purposes' may be plainly understood to include the occupation of a home or dwelling for an indefinite length of time"); *Tarr* v. *Timberwood Park Owners Assn., Inc.*, 556 S.W.3d 274, 292 n. 14 (Tex. 2018) ("property is used for residential purposes when those occupying it do so for ordinary living purposes" (internal quotation marks omitted)); *Wilkinson* v. *Chiwawa Communities Assn.*, 180 Wn. 2d 241, 252, 327 P.3d 614 (2014) ("[i]f a vacation renter uses a home for the purposes of eating, sleeping, and other residential purposes, this use is residential, not commercial" (internal quotation marks omitted)); *Heef Realty & Investments, LLP* v. *Cedarburg Board of Appeals*, 361 Wis. 2d 185, 194, 861 N.W.2d 797 (App.) ("[W]hat makes a home a residence is its use to sleep, eat, shower, relax, things of that nature. What matters is residential use, not the duration of the use." (Internal quotation marks omitted.)), review denied, 865 N.W.2d 503 (Wis. 2015).

sider it *their* 'residence' "; (emphasis added); a reasonable person certainly would consider it *a* residence, i.e., a place used as a house or dwelling.

The fact that, as the defendants acknowledge, the 1994 regulations allow owners to rent single-family dwellings also supports this interpretation. If renting a single-family dwelling is allowed under the 1994 regulations, the right to use a property as a "home" or "residence" must encompass the right to rent the property, as nothing else in the regulations expressly permits renting, and, as the Appellate Court emphasized, nothing in the regulations restricts the length of time that a family renting a property must occupy it.[11] See *Wihbey* v. *Zoning Board of Appeals*, supra, 218 Conn. App. 382–83. Indeed, the defendants' interpretation would lead to the anomalous result that, if the plaintiff occupied the property only on alternate weekends, leaving it vacant the rest of the time, the use would be illegal because the plaintiff would not be occupying the property "with a degree of permanency . . . ." Cf. *Slaby* v. *Mountain River Estates Residential Assn., Inc.*, 100 So. 3d 569, 579–80 (Ala. Civ. App. 2012) (rejecting interpretation of "residential purposes" that would mean that owner's intermittent use of property as vacation home was in violation of restrictive covenant).

[11] The defendants repeatedly insist that "[t]his case does not involve the need to 'draw lines' between long-term rentals and short-term rentals. It involves the interpretation of the term[s] 'home' and 'residence' . . . ." Thus, they claim that those terms, in and of themselves, and without the need for any interpolative judicial line drawing, distinguish between rentals for thirty days or more (permitted in their view) and rentals for less than thirty days (not permitted). Unlike the dissent, we are not persuaded. The dissent claims that there is "overwhelming support for the plain meaning of 'residence' to require a degree of permanence . . . ." We disagree. We cannot conclude that a zoning scheme that permits the rental of single-family homes and residences, by virtue of that fact alone, provides notice to a reasonable person that a rental of thirty days would have a sufficient degree of "permanency," whereas a rental of three weeks would not.

We therefore reject the defendants' claim that the definition of "single-family dwelling" in § XIII of the 1994 regulations clearly and unambiguously means that a family must occupy the home or residence "with a degree of permanency" and that short-term rentals are not permitted. Rather, the language allowing the erection of "[a] building designed for and occupied exclusively as a home or residence for not more than one family"; Pine Orchard Assn. Zoning Regs., § XIII (1994); is ambiguous and reasonably can be interpreted as permitting the erection of houses or dwellings that are designed for occupation and used by only one family at any given time, without any temporal occupation requirement. We therefore conclude that the Appellate Court correctly determined that the 1994 regulations permit short-term rentals of the property. See, e.g., *Smith Bros. Woodland Management, LLC* v. *Planning & Zoning Commission*, supra, 88 Conn. App. 86 ("[when] more than one interpretation of language is permissible, restrictions [on] the use of lands are not to be extended by implication . . . [and] doubtful language will be construed against rather than in favor of a [restriction]" (internal quotation marks omitted)).

The defendants contend that this interpretation is inconsistent with this court's holding in *State* v. *Drupals*, 306 Conn. 149, 49 A.3d 962 (2012). In that case, we interpreted the provisions of General Statutes (Rev. to 2011) § 54-251 (a)[12] requiring a convicted sex offender to register his residence address without undue delay. See id., 161–69. We held that "residence means the act or fact of living in a given place for some time, and the term does not apply to temporary stays." Id., 163. The Appellate Court addressed the defendants' contention at some length; see *Wihbey* v. *Zoning Board of Appeals*, supra, 218 Conn. App. 378–82; and there is no need to

[12] All references in this opinion to § 54-251 are to the 2011 revision of the statute.

repeat its cogent analysis here. With respect to the defendants' claim that the Appellate Court incorrectly determined that this court's interpretation of "residence" in *Drupals* was based on the rule of lenity in the criminal context, we acknowledge that, after setting forth that rule in *Drupals*, this court never expressly stated that it applied because the term "residence," as used in § 54-251 (a), is ambiguous. See *State* v. *Drupals*, supra, 160; see also *Wihbey* v. *Zoning Board of Appeals*, supra, 381 (concluding that "[t]he rule of strict construction in *Drupals* led to a narrower definition of residence because the narrower definition benefited the accused"). Even if we were to assume that the Appellate Court gave undue weight to this distinction between *Drupals* and the present case, its reasoning that a definition of "residence" that included places where a person lives only briefly would have led to absurd results in *Drupals*, but not in the present case, remains valid. Similarly, we agree with the Appellate Court that the term "residence" may have different meanings in different contexts. See *Wihbey* v. *Zoning Board of Appeals*, supra, 382. Indeed, this court acknowledged in *Drupals* that, under certain circumstances that were not present in that case, the term "residence" as used in § 54-251 can mean "wherever [an individual] was dwelling, no matter how temporary [the] situation," including "under a bridge . . . ." (Internal quotation marks omitted.) *State* v. *Drupals*, supra, 164. Therefore, we conclude that the 1994 regulations permit the rental of the plaintiff's property without any temporal restriction.

The defendants also claim that the Appellate Court made a number of other errors in interpreting the 1994 regulations. First, they contend that the Appellate Court incorrectly treated the regulations as prohibitory—i.e., as permitting whatever was not prohibited—rather than permissive—i.e., as prohibiting whatever was not permitted—when it concluded that, "in the absence of clear

language . . . imposing some restriction on the rental of property as a permissible use, we may not impose such a restriction." *Wihbey* v. *Zoning Board of Appeals*, supra, 218 Conn. App. 372. We disagree. The Appellate Court merely observed that the ability to rent property is "one third of [an owner's] bundle of economically productive rights constituting ownership"; (internal quotation marks omitted) id.; and the intent to deprive landowners of that right cannot be assumed in the absence of clear language evincing such an intent. See id. After observing that "the defendants agreed that the 1994 regulations permitted long-term rentals of residential properties," presumably because renting a property is one of the rights constituting ownership; id.; the Appellate Court went on to conclude that, because there was no evidence that the drafters had any intent to permit *only* long-term rentals, short-term rentals were permitted. Id., 391–92.

Second, the defendants contend that the Appellate Court incorrectly determined that "interpreting 'residence' to exclude temporary stays would render it duplicative of 'home' and therefore 'essentially meaning less.' " They argue that, although the term "home" connotes a greater degree of permanence, the term "residence" implies a temporal occupation requirement of significant duration. We have concluded that, as used in the 1994 regulations, the terms "home" and "residence" both reasonably can be interpreted to mean a structure that is designed for use as a house or dwelling, regardless of the length of time that it is occupied. We cannot conclude that the Appellate Court's interpretation of "residence" is unreasonable simply because it determined that the term "home" is somewhat less susceptible of this interpretation. We therefore reject this claim.

Third, the defendants contend that the Appellate Court incorrectly determined that short-term rentals are permitted because the 1994 regulations allowed

owners to rent single-family dwellings and did not differentiate between long-term and short-term rentals. The defendants argue that the Appellate Court failed to recognize that the drafters could not have anticipated the "relatively recent practice of short-term rentals facilitated by technological innovation." (Internal quotation marks omitted.) They further argue that the Appellate Court failed to recognize that the family occupancy requirement shows that "a residence is for occupation by individuals who share a common bond of significant duration, [and] it naturally follows that a residence would be intended to include a degree of permanence . . . ." (Emphasis omitted.) Again, we disagree. It does not follow that, because the drafters failed to anticipate online rental platforms like Vrbo, they therefore intended to permit only rentals for more than thirty days. Nor does it follow from the fact that family members ordinarily share a common bond of significant duration that the drafters intended that a particular family's occupation of a single-family dwelling must have a similarly significant duration. Instead, as we explained, it is reasonable to conclude that the drafters intended that a single-family dwelling would be occupied by only a single family at any given time, not by multiple families or commercial enterprises other than those expressly permitted.

Fourth, the defendants contend that the Appellate Court incorrectly determined that the cases from other jurisdictions that support its interpretation of the 1994 regulations are persuasive and that the cases supporting the defendants' position are distinguishable. With respect to the authorities supporting the Appellate Court's interpretation, the defendants contend that the cases construing the terms "residential use" or "residential purposes" are not persuasive because those terms involve "different concepts from what is a 'residence.' " See *Lowden* v. *Bosley*, 395 Md. 58, 68, 909 A.2d 261

(2006); *Tarr* v. *Timberwood Park Owners Assn., Inc.*, 556 S.W.3d 274, 291 and n.14 (Tex. 2018); *Wilkinson* v. *Chiwawa Communities Assn.*, 180 Wn. 2d 241, 252, 327 P.3d 614 (2014). We disagree. Nothing in these cases suggests that the terms "residential use" and "residential purposes" involve "different concepts" than those pertaining to the term "residence," and the defendants have not explained why they believe that to be the case. For the reasons that we already stated, the term "residence" reasonably can be interpreted to mean a place subject to "residential use" or used for "residential purposes."[13] Indeed, the phrases "for residential purposes" or "for residential use" could be substituted for the phrase "as a home or residence" in the definition of "single-family dwelling" without changing the meaning. See Pine Orchard Assn. Zoning Regs., § XIII (1994) (defining "single-family dwelling" as "[a] building designed for and occupied exclusively as a home or residence for not more than one family"). We conclude, therefore, that the reasoning of these cases construing the terms "residential use" and "residential purposes" to mean use as a house or dwelling, without any temporal occupation requirement, is equally applicable to the term "residence."

We also reject the defendants' claim that the Appellate Court incorrectly determined that the cases that they rely on in support of their position are not persuasive. See *Wihbey* v. *Zoning Board of Appeals*, supra, 218 Conn. App. 385–86 (distinguishing *Styller* v. *Zoning Board of Appeals*, 487 Mass. 588, 169 N.E.3d 160 (2021),

[13] Of course, a place that is used for residential purposes would not necessarily qualify as a "single-family dwelling," as defined in § XIII of the 1994 regulations. See Pine Orchard Assn. Zoning Regs., § XIII (1994) (defining "single-family dwelling" as "[a] *building designed for* and *occupied exclusively* as a home or residence *for not more than one family*" (emphasis added)). That does not indicate that the term "residence" cannot reasonably be interpreted to mean a place used "for residential purposes" or subject to "residential use."

and *Slice of Life, LLC* v. *Hamilton Township Zoning Hearing Board*, 652 Pa. 224, 207 A.3d 886 (2019)). The Appellate Court distinguished these cases because, unlike in the present case, the regulations at issue in both of those cases defined "family" as a "single housekeeping unit." (Internal quotation marks omitted.) *Wihbey* v. *Zoning Board of Appeals*, supra, 385; see *Styller* v. *Zoning Board of Appeals*, supra, 600 (regulation defined "family" as "single housekeeping unit, as distinguished from a group occupying a boarding house, lodging house, or hotel" (internal quotation marks omitted)); *Slice of Life, LLC* v. *Hamilton Township Zoning Hearing Board*, supra, 233–34 (regulation defined "family" as "[o]ne or more persons, occupying a dwelling unit, related by blood, marriage, or adoption, living together as a single housekeeping unit and using cooking facilities and certain rooms in common" (internal quotation marks omitted)). As the court in *Slice of Life, LLC*, observed, however, the phrase "single housekeeping unit" has been widely construed to be " 'the plain and ordinary meaning of "family" in the zoning context.' " *Slice of Life, LLC* v. *Hamilton Township Zoning Hearing Board*, supra, 232. Because there is nothing inherent in the definition of "family" as a "single housekeeping unit" that connotes a significantly greater degree of coherence or permanence than that inherent in the term "family," as defined in the 1994 regulations; see Pine Orchard Assn. Zoning Regs., § XIII (1994); we are compelled to conclude that, contrary to the Appellate Court's determination, the variance between these definitions constitutes a distinction without a difference.

Even though we conclude that *Styller* and *Slice of Life, LLC*, are not distinguishable on this ground, we nevertheless find that they are not persuasive. In *Styller*, the Massachusetts Supreme Judicial Court concluded that a zoning regulation that permitted a "one family detached house" did not permit a short-term rental

because such a use was "inconsistent with the zoning purpose of the single-residence zoning district in which it [was] situated, i.e., to preserve the residential character of the neighborhood." *Styller* v. *Zoning Board of Appeals*, supra, 487 Mass. 599. The court further concluded that "[u]se of zoning regulation[s] to foster stability and permanence is compatible with long-term property rentals because long-term inhabitants have the opportunity to develop a sense of community and a shared commitment to the common good of that community . . . . [When] short-term rentals are at issue, however, there is an absence of stability and permanence of the individuals residing in those districts, [and] the goal is necessarily subverted . . . ." (Citation omitted; internal quotation marks omitted.) Id.

Similarly, in *Slice of Life, LLC*, the zoning regulation at issue permitted single-family detached dwellings. See *Slice of Life, LLC* v. *Hamilton Township Zoning Hearing Board*, supra, 652 Pa. 252. The Pennsylvania Supreme Court concluded that, because "short-term rentals of homes located in a single-family residential zoning district undoubtedly affect the essential character of a neighborhood and the stability of a community"; (internal quotation marks omitted) id., 246; short-term rentals were not permitted. Id., 252.

As we explained previously, zoning regulations "must be strictly construed and not extended by implication"; *Graff* v. *Zoning Board of Appeals*, supra, 277 Conn. 653; and a zoning regulation that is susceptible to multiple, reasonable interpretations will be construed in favor of the landowner. See, e.g., *Smith Bros. Woodland Management, LLC v. Planning & Zoning Commission*, supra, 88 Conn. App. 86. The definition of "single-family dwelling" in the 1994 regulations does not clearly and unambiguously mean that only long-term rentals of such dwellings are permitted but reasonably can be interpreted to mean that only structures designed and used as

houses or dwellings for occupation by a single family at a given time are permitted. Again, the defendants concede that renting a single-family dwelling is a permitted use, and nothing in the 1994 regulations differentiates between long-term rentals and short-term rentals. Although zoning authorities are free to adopt regulations that permit only long-term rentals in an effort to promote stability and a sense of community within a single-family residential zone—as the Pine Orchard zoning authority did in 2018—we do not agree with the courts in *Styller* and *Slice of Life, LLC*, that a regulation that permits single-family dwellings ipso facto prohibits the rental of a dwelling for less than a particular period of time. Rather, there must be specific evidence of such an intent. We therefore conclude that these cases are not persuasive.

For the foregoing reasons, we conclude that the Appellate Court correctly determined that the short-term rental of a single-family dwelling constitutes a permissible use of the property under the 1994 regulations.

The judgment of the Appellate Court is affirmed.

In this opinion ROBINSON, C. J., and D'AURIA, MULLINS and DANNEHY, Js., concurred.

McDONALD, J., with whom ECKER, J., joins, dissenting. This appeal centers on whether the zoning regulations governing a residential neighborhood designated for "single-family" homes permit the short-term occupancy of those structures by transient travelers.[1] This court has recognized that "[t]he purpose of zoning is to serve the interests of *the community as a whole*

[1] The Vrbo terms and conditions expressly refer to the party paying for use of the property as a "traveler." Vrbo, Terms and Conditions (last updated July 6, 2023), available at https://www.vrbo.com/lp/b/terms-of-service?msockid=1592f2630ba46bf63156e0c10a5a6a5e (last visited July 26, 2024).

. . . ." (Emphasis added.) *Malafronte* v. *Planning & Zoning Board*, 155 Conn. 205, 212, 230 A.2d 606 (1967). Today, the majority of this court discounts both the importance of zoning regulations to the interests of the community as a whole and the plain meaning of the terms included in the applicable residential zoning regulations and holds that the short-term occupancy of a single-family home by transient travelers, which undermines the very purpose of the applicable zoning regulations, nevertheless is permitted by those regulations.

The plaintiff, Frances Wihbey, was ordered by the zoning enforcement officer (zoning officer) of the Pine Orchard Association (POA), an incorporated borough and municipal subdivision of the town of Branford, to cease and desist from engaging in the short-term rental of a single-family property the plaintiff owned in the POA. The plaintiff appealed to the defendant, the Zoning Board of Appeals of the Pine Orchard Association (board), which upheld the cease and desist order. The plaintiff then appealed from the board's decision to the trial court, which reversed that decision. The board and the intervening defendants, Michael B. Hopkins and Jacqueline C. Wolff,[2] appealed, on the granting of certification, from the trial court's judgment to the Appellate Court, which affirmed in part and reversed in part the trial court's judgment. *Wihbey* v. *Zoning Board of Appeals*, 218 Conn. App. 356, 359, 396, 292 A.3d 21 (2023). This court granted certification to determine whether short-term occupancy of a single-family dwelling by transient travelers constitutes a permissible use of the subject property under the 1994 POA zoning regulations (1994 regulations).[3] See *Wihbey* v. *Zoning Board of Appeals*,

[2] The intervening defendants are owners of real property that abuts the plaintiff's property. For convenience, I hereafter refer to the board and the intervening defendants collectively as the defendants.

[3] Although the POA refers to the 1994 regulations collectively as the 1994 Pine Orchard Association Zoning Ordinance, I refer to this body of regulations as regulations in the interest of simplicity.

346 Conn. 1019, 1019–20, 292 A.3d 1254 (2023). Because I conclude that the short-term occupancy of the plaintiff's property by transient travelers was impermissible under the 1994 regulations, I would reverse in part the judgment of the Appellate Court. Accordingly, I respectfully dissent.

In 2005, the plaintiff purchased property in the POA. The property consists of a single-family home subject to the POA's zoning regulations. Since purchasing the property, the plaintiff has consistently allowed travelers to book the property on a short-term basis, typically for periods of three days to one week, on the Vrbo[4] website. Importantly, in the last ten years, these transient travelers have never stayed at the property for more than thirty days at a time.[5]

Relevant to this appeal, the 1994 regulations state that the purpose of the regulations is to "provid[e] a comprehensive plan which will promote the health, safety, and general welfare of the community" and that the regulations "shall be made with reasonable consideration as to the character of the community . . . ."

[4] Vrbo is a web-based platform that allows property owners to connect with potential short-term travelers. Vrbo, Terms and Conditions (last updated July 6, 2023), available at https://www.vrbo.com/lp/b/terms-of-service?msockid=1592f2630ba46bf63156e0c10a5a6a5e (last visited July 26, 2024) (stating that "[t]he [s]ite is a [v]enue and [w]e are [n]ot a [p]arty to any [r]ental [a]greement or other [t]ransaction [b]etween [u]sers of the [s]ite"). Vrbo does not provide "rental agreements," but property owners are permitted to separately enter into these agreements with renters. See Vrbo, Upload Your Rental Agreement, available at https://help.vrbo.com/articles/How-to-upload-my-rental-agreement (last visited July 26, 2024) ("[r]ental agreements are optional documents you can add to your listing to expand on your house rules and set expectations with guests").

[5] A period of less than thirty days is widely considered transient and insufficient to establish an individual's dwelling. See, e.g., General Statutes § 47a-2 (c) (1) ("[o]ccupancy in a hotel, motel or similar lodging for less than thirty days is transient"); Americans with Disabilities Act Accessibility Guidelines, 28 C.F.R. pt. 36, app. A (2023) (local laws and common real estate practices "treat stays of [thirty] days or less as transient rather than residential use").

Pine Orchard Assn. Zoning Regs., § I (1994). Section IV (4.1) of the 1994 regulations, which lists the permitted uses of properties, provides one permitted use to be as "[a] single-family dwelling"; id., § IV (4.1); which is defined in § XIII as "[a] building designed for and occupied exclusively as a home or residence for not more than one family." Id., § XIII. Section XIII of the 1994 regulations further defines "family" as "[o]ne or more persons related by blood, marriage or adoption, and in addition, any domestic servants or gratuitous guests. A roomer, boarder or lodger, shall not be considered a member of a family."[6] Id. The 1994 regulations do not expressly permit the renting of single-family homes but do provide that "[a] sign not more than five square feet in area when placed in connection with the sale, *rental*, construction or improvement of the premises and for no other purpose" is permitted. (Emphasis added.) Id., § IV (4.4).

In 2018, the POA adopted recommended amendments to its 1994 regulations, which included a specific provision prohibiting the short-term rental of properties subject to the regulations. Specifically, § 4 (4.1) of the 2018 zoning regulations (2018 regulations) states that "[a] single-family dwelling may not be used or offered for use as a [s]hort-[t]erm [r]ental [p]roperty." Pine Orchard Assn. Zoning Regs., § 4 (4.1) (2018). The 2018 regulations define "short-term rental property" as "[a] residential dwelling unit that is used and/or advertised for rent for occupancy by guests for consideration for a period of less than thirty . . . continuous days." Id., § 16.

[6] It is not clear that the property was always rented to a family within the meaning of the 1994 regulations. The record reflects that the property was sometimes used to accommodate groups of "thirty or forty people going late into the night . . . ." It is probable that some of the plaintiff's uses were not permitted under the regulations, but it is also likely that, on at least one occasion, he did rent to a "family" for purposes of the regulations. Nonetheless, I recognize that the issue has been remanded to the trial court for factual findings.

In 2019, the POA, acting through its zoning officer, issued a cease and desist order to the plaintiff for violations of the short-term rental ordinance and stated that the plaintiff's use of his property violated § 13 (13.3.2) of the 2018 regulations prohibiting short-term rentals. The plaintiff appealed from this order to the board, and, after public hearings on the matter, the appeal was denied. The plaintiff then appealed to the trial court, which concluded that, because the plaintiff's use of the property was permitted under the 1994 regulations, the plaintiff could not be prohibited from using his property for short-term rentals under the 2018 regulations. Accordingly, the trial court reversed the board's decision. The defendants thereafter appealed, and the Appellate Court affirmed in part the trial court's judgment, concluding that the short-term rental of a single-family dwelling was permissible under the 1994 regulations. *Wihbey* v. *Zoning Board of Appeals*, supra, 218 Conn. App. 359, 391–92, 396. The Appellate Court, however, also reversed in part the trial court's judgment, concluding that the trial court incorrectly determined that the plaintiff had established a preexisting, nonconforming use of the property.[7] Id., 359, 392–96. This certified appeal followed.

On appeal, the defendants argue that the Appellate Court erred in concluding that short-term rentals of a single-family dwelling constitute a permissible use under the 1994 regulations. In support of this contention, the defendants point to the language of the 1994 regulations that provides that the only relevant permissible use of the property was as "[a] single-family dwelling"; Pine Orchard Assn. Zoning Regs., § IV (4.1) (1994); which is defined as a property "occupied exclusively as a home or residence for not more than one family." Id., § XIII.

[7] Whether the Appellate Court correctly concluded that the trial court incorrectly determined that the plaintiff had established a preexisting, nonconforming use of the property is not before this court.

The defendants contend that the Appellate Court's interpretation of the word "residence" in the 1994 regulations was incorrect because "residence" cannot refer to temporary stays of only a few days to one week. For his part, the plaintiff argues that the Appellate Court correctly concluded that short-term rentals of a single-family dwelling are permitted under the 1994 regulations. Because I agree with the defendants' interpretation of "residence," I conclude that the majority's interpretation of the applicable zoning regulations is flawed. Despite clear support to the contrary, the majority concludes that the "definition of 'single-family dwelling' in the 1994 regulations does not clearly and unambiguously mean that only long-term rentals of such dwellings are permitted but reasonably can be interpreted to mean that only structures designed and used as houses or dwellings for occupation by a single family at a given time are permitted."

The interpretation of the applicable zoning regulations presents a question of law over which this court's review is plenary. See, e.g., *Heim* v. *Zoning Board of Appeals*, 289 Conn. 709, 715, 960 A.2d 1018 (2008). "[Z]oning regulations are local legislative enactments . . . and, therefore, their interpretation is governed by the same principles that apply to the construction of statutes." (Citation omitted; internal quotation marks omitted.) *Enfield* v. *Enfield Shade Tobacco, LLC*, 265 Conn. 376, 380, 828 A.2d 596 (2003). Our interpretation of the 1994 regulations is therefore guided by the principles set forth in General Statutes § 1-2z. I am mindful that, "[b]ecause zoning regulations are in derogation of common-law property rights, they must be strictly construed and not extended by implication. . . . Whenever possible, the language of zoning regulations will be construed so that no clause is deemed superfluous, void or insignificant. . . . The regulations must be interpreted so as to reconcile their provisions and

make them operative so far as possible. . . . When more than one construction is possible, [this court] adopt[s] the one that renders the enactment effective and workable and reject[s] any that might lead to unreasonable or bizarre results." (Internal quotation marks omitted.) *Kraiza* v. *Planning & Zoning Commission*, 304 Conn. 447, 453–54, 41 A.3d 258 (2012).

The parties agree that the 1994 regulations are the governing regulations in this case. The parties also agree that the 1994 regulations are permissive, and, thus, "[a]ny use that is not permitted is automatically excluded." (Internal quotation marks omitted.) *Heim* v. *Zoning Board of Appeals*, supra, 289 Conn. 716 n.8. I begin with the text of the 1994 regulations. See General Statutes § 1-2z. The 1994 regulations provide that no building or land shall be used for anything other than eight specified uses, including, as relevant to this case, "[a] single-family dwelling." Pine Orchard Assn. Zoning Regs., § IV (4.1) (1994). That term is defined as "[a] building designed for and occupied exclusively as a home or residence for not more than one family." Id., § XIII. A "family," in turn, is defined as "[o]ne or more persons related by blood, marriage or adoption, and in addition, any domestic servants or gratuitous guests. A roomer, boarder or lodger, shall not be considered a member of a family." Id.

Whether the short-term use of the plaintiff's property by transient travelers is permitted by the 1994 regulations turns on the meaning of the terms "home" and "residence." These terms are not defined in the regulations. It is well settled that, "[i]f a . . . regulation does not sufficiently define a term, it is appropriate to look to the common understanding of the term as expressed in a dictionary." (Internal quotation marks omitted.) *Heim* v. *Zoning Board of Appeals*, supra, 289 Conn. 717. "Home" is consistently defined as a place that is fixed. See, e.g., Ballentine's Law Dictionary (3d Ed.

1969) pp. 563–64 (Describing "home" as "[a] word so suggestive of love, affection, and security as to be one of the most pleasantly sounding words in the English language. A place where a [couple] may live in the enjoyment of each other's society and rear their offspring. . . . The place where a family lives in the close relation of people who enjoy the company of each other and the comfort and security of abiding together . . . ." (Citations omitted.)); 7 Oxford English Dictionary (2d Ed. 1998) p. 322 (defining "home" as "[a dwelling place], house, abode; the *fixed* residence of a family or household; the *seat* of domestic life and interests; one's own house; the dwelling in which one *habitually lives*, or which one regards as one's proper abode" (emphasis added)); The American Heritage College Dictionary (4th Ed. 2007) p. 662 (Defining "home" as "[a] place where one lives; a residence. . . . A dwelling place together with the social unit that occupies it; a household.").

The definitions of "residence" similarly connote a degree of permanency that does not apply to the nature of transient, short-term occupancy. See, e.g., Black's Law Dictionary (2d Ed. 1910) p. 1026 (Defining "residence" as "[l]iving or dwelling in a certain place permanently or for a considerable length of time. The place where a man makes his home, or where he dwells permanently or for an extended period of time."); 13 Oxford English Dictionary, supra, p. 707 (defining "residence" as "hav[ing] one's usual [dwelling place] or abode; to reside . . . to take up one's residence, to establish oneself; to settle," and "[t]he circumstance . . . of having one's permanent or usual abode in or at a certain place" (emphasis omitted)); The American Heritage College Dictionary, supra, p. 1183 (defining "residence" as "[t]he place in which one lives; a dwelling").

These dictionary definitions lead me to conclude that the plain meanings of both "home" and "residence" imply a degree of permanence and connection to com-

munity that could hardly be used, accurately or with a measure of precision, to refer to a short-term occupancy by a transient traveler for a few days.[8] At the same time, "[i]t is a fundamental tenet of statutory construction that [t]he use of . . . different terms . . . within the same statute suggests that the legislature acted with complete awareness of their different meanings . . . and that it intended the terms to have different meanings . . . ." (Internal quotation marks omitted.) *Celentano* v. *Oaks Condominium Assn.*, 265 Conn. 579, 609, 830 A.2d 164 (2003); see also, e.g., *Enfield* v. *Enfield Shade Tobacco, LLC*, supra, 265 Conn. 380 (interpretation of zoning regulations is governed by same principles that apply to construction of statutes). However, simply because the terms "home" and "residence" necessarily have different meanings within the 1994 regulations does not mean that the terms must lie on totally different ends of the spectrum regarding their respective meanings related to housing. It is entirely possible, and indeed the only appropriate interpretation in my view, that the two terms, when read in the context of the regulations, were intended to encompass two types

[8] The Appellate Court agreed that the term "home" signals a level of permanence. See *Wihbey* v. *Zoning Board of Appeals*, supra, 218 Conn. App. 376 ("the essence of the definitions of 'home' indicate that a home is a 'domicile,' i.e., 'a person's fixed, permanent, and principal home for legal purposes' "). However, despite the overwhelming support for the plain meaning of "residence" to require a degree of permanence, the Appellate Court concluded that "it can also mean a place where someone lives for some period of time without the same sense of permanence associated with a home." Id. The Appellate Court found support for this conclusion in the word "or" separating "home" and "residence . . . ." (Internal quotation marks omitted.) Id. The Appellate Court correctly concluded that the use of this conjunction suggests that the drafters of the regulations intended to attach different meanings to the two terms. See id. The Appellate Court then concluded that, because "home" necessarily implies some sense of permanence, to interpret "residence" as also referring to a dwelling with a sense of permanence, as opposed to "a place of temporary sojourn," would render the term duplicative of "home" and, thus, "essentially meaningless." (Internal quotation marks omitted.) Id.

of acceptable uses of the property that imply some degree of permanence. For example, a "residence" could refer to a Vermont vacation property used by the property owners and their family on winter weekends to ski or to celebrate certain holidays. Similarly, it is not at all uncommon in Connecticut for a family to have its "home" in Florida for six months and one day for tax purposes but simultaneously maintain a "residence" in Connecticut where the family spends five months and twenty-nine days in the spring and summer months. See, e.g., *9 Pettipaug, LLC* v. *Planning & Zoning Commission*, 349 Conn. 268, 273, 316 A.3d 318 (2024) (borough of Fenwick has fourteen year-round households and "an additional sixty-seven homes that serve as summer residences"). Often these second "residences" are summer retreats along the coastline, handed down from generation to generation, speaking to their permanence for the family's benefit. Such a use is very different from the transient nature of a short-term traveler, who may use a property once for a few days and never return again. It is hard to imagine a person claiming with a straight face that he or she made a reservation at a local hotel when visiting a family member for a weekend and properly characterizing it as his or her "residence" for the thirty-six hours that the person was in town. A seasonal vacation property, on the other hand, is still utilized with a sense of permanence, as the owner typically has an intention to come and go over time, and, usually, it would bear the hallmarks of permanence, appointed with the owner's furnishings and closets filled with his or her clothes.[9] Thus, although a vacation property may not be an individual's "home," it may well

[9] This is not to suggest that a person's second "residence" is always a vacation or seasonal home. In today's economy, it is not unusual for individuals to work for a company based in Connecticut while, for example, maintaining a home in Atlanta, Chicago or Dallas, and occupying another residence near the company's headquarters in Connecticut, where they live for part of the week and fly home to their family on weekends.

be characterized as a "residence." The majority claims that "the defendants' interpretation would lead to the anomalous result that, if the plaintiff occupied the property only on alternate weekends, leaving it vacant the rest of the time, the use would be illegal because the plaintiff would not be occupying the property 'with a degree of permanency . . . .' " This claim ignores the spectrum of possibilities that comes with property ownership and erroneously equates the use of one's vacation property throughout the year with that of inconsistent and detached short-term renters. I do not see the 1994 regulations in such binary terms.

The majority concludes that *both* "residence" and "home" can refer to transient uses of property. See text accompanying footnote 9 of the majority opinion ("Under these definitions, the language of the 1994 regulations permitting a 'single-family dwelling' defined as '[a] building designed for and occupied exclusively as a home or residence for not more than one family' . . . would mean that the primary structure on the property must be designed and used as a house or dwelling for occupation by only one family at a given time. . . . This definition focuses not on the length of time that a particular family occupies the structure but on the nature and use of the structure at any given time." (Citation omitted; footnote omitted.)); see also footnote 9 of the majority opinion ("[i]n our view, both the terms 'home' and 'residence' reasonably can be interpreted to refer to a structure that is used as a dwelling"). This interpretation of the word "home" extends far beyond the common meaning and finds no support in the regulations at issue here. Indeed, an interpretation of both "home" and "residence" that implies a sense of permanency is in keeping with the purpose of the 1994 regulations when read in their entirety. See General Statutes § 1-2z (plain meaning of statute is ascertained from text itself and its relationship to other statutes). At the

outset, the 1994 regulations provide that they are "made for the purpose of providing a comprehensive plan which will promote the health, safety, and general welfare of the community . . . ." Pine Orchard Assn. Zoning Regs., § I (1994). The interpretation advanced by the majority fails to consider, much less promote, the "general welfare of the community . . . ." Id. At a hearing conducted before the board, residents described the plaintiff's property as a "Motel 6," a "revolving weekend party house," an "absolute horror," a "frat [house]," "very destructive," and "very loud . . . ." One resident spoke about the numerous emails and texts he sent to the plaintiff to complain about the trespassing that had occurred on his property and stated his intention to sell his own property if the activities on the plaintiff's property continued. Another resident urged the board to consider the "negative impact that [the plaintiff's short-term rentals have] on our neighborhood and our residential communities' character . . . ."

Other courts, when faced with the question of whether short-term occupancies by transient travelers are permitted by the applicable zoning regulations, have looked at the impact that such rentals have had on the community as a whole. See, e.g., *Ewing* v. *Carmel-By-The-Sea*, 234 Cal. App. 3d 1579, 1591, 286 Cal. Rptr. 382 (1991) (finding that short-term rentals of homes in single-family residential zoning districts "undoubtedly affect the essential character of a neighborhood and the stability of a community"), review denied, California Supreme Court, Docket No. S023822 (January 8, 1992), cert. denied, 504 U.S. 914, 112 S. Ct. 1950, 118 L. Ed. 2d 554 (1992). Short-term occupancies of single-family homes by transient travelers directly upend the purpose of the 1994 regulations because they do not serve the "general welfare of the community . . . ." Pine Orchard Assn. Zoning Regs., § I (1994). This is because "[s]hort-term tenants have little interest in public agencies or

in the welfare of the citizenry. They do not participate in local government, coach [L]ittle [L]eague, or join the hospital guild. They do not lead a scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Literally, they are here today and gone tomorrow—without engaging in the sort of activities that weld and strengthen a community." *Ewing* v. *Carmel-By-The-Sea*, supra, 1591. Interpreting the 1994 regulations as prohibiting short-term occupancies, on the other hand, directly serves the general welfare of the community and, therefore, is in keeping with both the common dictionary definitions of the terms "home" and "residence" and the express purpose of the 1994 regulations. "The permanence and stability of people living in single-family residential zoning districts [create] a sense of community, [cultivate] and [foster] relationships, and [provide] an overall quality of a place where people are invested and engaged in their neighborhood and care about each other." *Slice of Life, LLC* v. *Hamilton Township Zoning Hearing Board*, 652 Pa. 224, 246, 207 A.3d 886 (2019).

Furthermore, the 1994 regulations specifically exclude "roomer[s], boarder[s] or lodger[s]" from the definition of "family" and, therefore, from being appropriate users of the single-family homes in the district. Pine Orchard Assn. Zoning Regs., § XIII (1994). The parties agree that, in this case, the travelers do not qualify as "roomer[s], boarder[s] or lodger[s] . . . ." Id. "The ordinary meaning of all three terms is someone who pays to live either in a [single] room of another's property or with a family in that property and who may receive regular meals while staying with the family. See [Merriam-Webster's Collegiate Dictionary (11th Ed. 2003)] p. 1082 (defining 'roomer' as 'one who occupies a rented room in another's house'); id., p. 137 ('boarder' is 'one that boards; [especially]: one that is provided with regular meals or regular meals and lodging'); id., p. 731 ('lodger' is

defined as 'roomer'); [Black's Law Dictionary (11th Ed. 2019)] p. 214 (defining 'boarder' as '[s]omeone who lives in another's house and receives food and lodging in return either for regular payments or for services provided'); [Black's Law Dictionary (11th Ed. 2019)] p. 1128 ('lodger' is '[s]omeone who rents and occupies a room in another's house'). If a family rents the entire property from a landowner and is not living with the landowner, the family members are, by definition, not roomers, boarders or lodgers." *Wihbey* v. *Zoning Board of Appeals*, supra, 218 Conn. App. 390. This specific exclusion, however, provides additional support for the conclusion that the 1994 regulations did not intend to allow for short-term, transient uses of the properties subject to the regulations. There would be no purpose in excluding the short-term use of one *room* in a home but allowing for the short-term use of the home itself. A more sensible reading of the 1994 regulations, then, is that they prohibit both types of transient uses in favor of uses that have a degree of permanence and stability that is in keeping with the whole community or district.

When the terms "home" and "residence" are read in the context of the POA's entire zoning regulatory scheme, it is clear that, as used in the 1994 regulations, both terms unambiguously mandate that the property be used with some degree of permanence. Such a conclusion does not render either word meaningless because, as I explained, those words lie at different points on the spectrum of permissible uses. This interpretation is in keeping with the common understanding of the terms "home" and "residence" and, importantly, with the overall purpose of the zoning regulations. I would therefore reverse in part the Appellate Court's judgment and hold that the 1994 regulations do not permit short-term transient uses of single-family dwellings.

Accordingly, I respectfully dissent.