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CONNECTICUT REPORTS

Vol. 334

CASES ARGUED AND DETERMINED

IN THE

SUPREME COURT

OF THE

STATE OF CONNECTICUT

LYME LAND CONSERVATION TRUST, INC. *v.* BEVERLY PLATNER ET AL.
(SC 20071)

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

Syllabus

Pursuant to statute (§ 51-183c), a judge who has tried a case without a jury in which a new trial is granted, or in which the judgment is reversed by the Supreme Court, may not again try the case.

The defendant property owner appealed from the trial court's judgment rendered following a hearing in damages that was held on remand in connection with the plaintiff conservation trust's claim that the defendant had wilfully violated a conservation easement in contravention of the statute (§ 52-560a [b]) prohibiting encroachment on such an easement. After a trial to the court, which found that the defendant had violated the easement, the court ordered the defendant to restore the property to its prior condition in accordance with a plan proposed by the plaintiff's expert at a cost of approximately $100,000. The court also awarded the plaintiff $350,000 in punitive damages pursuant to § 52-560a (d), which permits damages of up to five times the cost of restoration, and ordered further hearings to address the specific manner and timing

of implementation of the restoration plan. At a subsequent hearing, at which experts for both parties proposed differing courses of action to effectuate restoration, the trial court ordered a new restoration plan but did not take evidence as to the cost of the new restoration plan or revisit its punitive damages award. The defendant thereafter appealed, and this court concluded that, although the trial court had properly found that the defendant violated the easement and that the new restoration plan was authorized and supported by sufficient evidence, the trial court's punitive damages award under § 52-560a (d) lacked the requisite evidentiary foundation. Specifically, that award had been compliant with § 52-560a (d) at the time it was initially issued, as it was based on evidence that restoration costs would be approximately $100,000, but, when the trial court adopted the new restoration plan with no evidence of its cost, the ratio of actual damages to punitive damages could not be determined. Accordingly, this court reversed the trial court's judgment as to damages and remanded the case to the trial court with direction to take evidence as to the cost of the new plan to fashion a new damages award that was within the framework of § 52-560a (d). On remand, the defendant filed a motion to disqualify the trial judge, K, from further participation in the proceedings pursuant to § 51-183c, which K denied. K concluded that he was not disqualified because this court had not ordered a new trial but reversed only a portion of the trial court's judgment and remanded on two precise matters, affirming the judgment in all other respects. K also denied the defendant's motions to open the judgment and to allow new evidence regarding the implementation of the restoration plan, and, after the parties presented expert testimony as to the cost of the new restoration plan, K found that its cost was $242,244 and again awarded $350,000 in punitive damages. On the defendant's appeal, *held*:

1. K was required to disqualify himself from the proceedings held on remand after the first appeal, this court having determined that its decision in the first appeal reversing the trial court's judgment in part and remanding the case to the trial court with direction to take evidence and to recalculate damages fell within the ambit of § 51-183c and, therefore, required a different trial judge to preside over the case on remand: this court construed § 51-183c in a manner to advance its policy of requiring the disqualification of a judge in order to protect against a lack of impartiality or an appearance thereof and concluded that § 51-183c was applicable when a judgment is reversed in part and fewer than all of the issues must be retried, including situations, such as in the present case, in which the judgment is reversed as to damages and remanded for a new trial only on the issue of damages; accordingly, the trial court's judgment was reversed with respect to the award of damages, and the case was remanded for a recalculation of damages, before a different judge, consistent with this court's opinion in the first appeal.

2. This court declined to address the defendant's claims that K improperly denied her motions to open the judgment and to allow new evidence and improperly awarded the plaintiff $350,000 in punitive damages on the ground that the plaintiff failed to prove the cost of the new restoration plan, as those claims could not be analyzed or adjudicated independently of the disqualification issue because they emanated from rulings that resulted from the same trial judge's improper presiding over the proceedings on remand; a new judge on remand will make his or her own determinations regarding the merits of the motion to open and what evidence will or may be submitted in support of the claims and defenses raised by the parties, and the plaintiff may adopt a different litigation strategy involving different evidence on remand.

Argued May 2—officially released December 31, 2019

Procedural History

Action to enjoin the named defendant from violating certain conservation restrictions on certain of the named defendant's real property, and for other relief, brought to the Superior Court in the judicial district of New London, where the court, *Cosgrove*, *J.*, granted the plaintiff's motion to withdraw the complaint as to the defendant Joseph G. Standart III et al. and to withdraw the claim for a declaratory judgment; thereafter, the court, *Devine*, *J.*, granted the motion of the attorney general to intervene as a plaintiff; subsequently, the intervening plaintiff filed a complaint, and the named defendant filed counterclaims as to the plaintiff's second amended complaint and the intervening plaintiff's complaint; thereafter, the case was tried to the court, *Hon. Joseph Q. Koletsky*, judge trial referee, who, exercising the powers of the Superior Court, rendered judgment for the plaintiff and for the intervening plaintiff on their complaints and on the named defendant's counterclaims, from which the named defendant appealed; subsequently, the court, *Hon. Joseph Q. Koletsky*, judge trial referee, issued certain orders as to the injunctive relief granted, and the named defendant filed an amended appeal; thereafter, this court reversed in part the judgment of the trial court and remanded the case to that court with direction to recalculate the award of attorney's fees and damages; subsequently, the court,

Hon. Joseph Q. Koletsky, judge trial referee, denied the named defendant's motions to disqualify, to open the judgment, and to allow evidence; thereafter, the court, *Hon. Joseph Q. Koletsky*, judge trial referee, issued certain orders, and the named defendant appealed. *Reversed in part*; *vacated in part*; *further proceedings*.

Wesley W. Horton, with whom were *Brendon P. Levesque* and, on the brief, *Kari L. Olson* and *Janet P. Brooks*, for the appellant (named defendant).

John F. Pritchard, pro hac vice, with whom were *Tracy M. Collins* and *Timothy D. Bleasdale*, and, on the brief, *Edward B. O'Connell*, for the appellee (named plaintiff).

Opinion

McDONALD, J. General Statutes § 51-183c precludes a judge who tried a case without a jury from trying the case again after a reviewing court reverses the judgment. The dispositive issue in this appeal is whether that statute applies when this court reverses the trial court's judgment as to damages only and remands the case to the trial court to take new evidence and recalculate damages.

The defendant Beverly Platner[1] appeals from the judgment of the trial court, rendered following our reversal in part and remand in *Lyme Land Conservation Trust, Inc.* v. *Platner*, 325 Conn. 737, 159 A.3d 666 (2017), for further proceedings on the issue of damages. The defendant challenges the judgment as to both the damages awarded to the plaintiff, Lyme Land Conservation Trust,

[1] Joseph G. Standart and Clinton S. Standart were also named as defendants in the original complaint. The complaint was subsequently withdrawn as to those defendants, and all references to the defendant in this opinion are to Platner.

Inc.,[2] and injunctive relief directing the defendant to remedy a violation of a conservation restriction on her property pursuant to a restoration plan ordered by the trial court. The defendant claims that the trial judge improperly denied her motion to disqualify himself from retrying the damages issue, and, as a result, both the damages award and injunction were improper. We agree with the defendant on the issue of disqualification and reverse the trial court's judgment as to damages and remand for new proceedings before a new judge consistent with our original remand order.

Our prior decision in this case and the record of the subsequent proceedings provide the following relevant facts and procedural history for the resolution of this appeal.[3] The defendant has owned 66 Selden Road in Lyme (property) since 2007. Id., 741. The plaintiff holds a conservation restriction (easement) on the property, which, consistent with General Statutes § 47-42a (a),[4] prohibits the defendant from making certain changes to the property that would disturb its " 'natural . . . condition' . . . ." Id., 741–42. Approximately 14.3 of the property's 18.7 acres are subject to the easement. Id., 742. This protected area includes a large meadow and a smaller woodlands area. Id.

[2] The attorney general intervened as an additional plaintiff in the original trial and appeal to represent the public's interest in a conservation restriction on the defendant's property. See *Lyme Land Conservation Trust, Inc.* v. *Platner*, supra, 325 Conn. 740 n.2. The attorney general did not participate in the remand proceedings, and, because this appeal concerns only the issues on remand, the attorney general did not participate in this appeal.

[3] A detailed account of the facts is set forth in our prior decision. See *Lyme Land Conservation Trust, Inc.* v. *Platner*, supra, 325 Conn. 741–46.

[4] General Statutes § 47-42a (a) provides in relevant part: " 'Conservation restriction' means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land described therein . . . whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space use."

In 2007, the defendant began making a series of changes to the protected area, despite the plaintiff's efforts to persuade the defendant that the changes violated the easement. With respect to the meadow, those changes included: regular mowing; installing an irrigation system; adding top soil; aerating; planting seed for grass typical of a residential lawn; applying lime, fertilizers, fungicides, herbicides, and pesticides; and removing "truckloads of grass and soil" to create " 'tree rings' " where the defendant planted ornamental shrubs, plants, and flowers. Id., 743. As a result, the previously existing native grasses were eradicated. Id. In the woodlands, the defendant began mowing the understory—the plants that grow on a forest floor. Id. and n.6.

In 2009, the plaintiff filed this action, alleging in the operative complaint that the foregoing activities were actual or intentional violations of the easement and constituted a willful violation of General Statutes § 52-560a. Id., 743–44. The plaintiff sought injunctive relief to prevent further violations of the easement and to require restoration of the property to its prior condition, as well as statutory punitive damages and attorney's fees under § 52-560a. Id., 744.

The case was tried to the court, *Hon. Joseph Q. Koletsky*, judge trial referee. The court held that the defendant had not merely violated the easement but had "completely subvert[ed] and eviscerate[d] the clear purpose of the conservation restriction" by "wilful[ly] . . . caus[ing] great damage to the protected area's natural condition'' and had ''destroyed considerable [and diverse] vegetation . . . ." (Internal quotation marks omitted.) Id., 745. The court issued an injunction, requiring the defendant to restore the property to its prior condition. Id., 744–45. The court's initial restoration plan (plan one), which was developed by the plaintiff's expert witness, called for, among other things, the defendant to remove the irrigation system from the

meadow and remove the lawn by means of a sod cutter. Id., 762. The defendant would then replant the soil with a variety of native grasses and mow only infrequently. Id. As to the woodlands, the defendant was required to plant native shrubs and to stop mowing altogether, allowing the understory to reestablish itself naturally. Id. The plaintiff's expert estimated that plan one would cost approximately $100,000. Id.

The court awarded the plaintiff $350,000 in punitive damages pursuant to § 52-560a (d), which permits the court to award damages of up to five times the " 'cost of restoration' " for violations of a conservation restriction. Id., 762 and n.17. The court also ordered further hearings to address the specific manner and timing of implementing plan one. Id., 763.

At the subsequent hearing regarding implementation, experts for both parties proposed differing courses of action to effectuate the restoration. Id., 763. The court ultimately ordered a new plan (plan two), which was a hybrid of the competing approaches proposed by the parties. Id. Instead of removing the lawn with a sod cutter, the court ordered the defendant to plant plugs of native grasses that would overtake the nonnative species. Id. The court asked the parties to submit specific planting proposals to execute this new strategy, and after the parties did so, the court ordered the defendant to follow the proposal submitted by the plaintiff. Id. Although the court changed what would be required of the defendant to achieve restoration from plan one to plan two, it did not take evidence as to the cost of plan two or revisit its award of $350,000 in punitive damages, which was based on plan one. Id. The defendant appealed from the judgment of the trial court to the Appellate Court, and the appeal was transferred to this court. Id., 746 n.9.

In that appeal, the defendant claimed, among other things, that the trial court improperly (1) found that the defendant had violated the easement, and (2)

ordered relief that was either legally unauthorized or lacking in evidentiary support. Id., 741. We concluded that the trial court had properly found that the defendant violated the easement and that the restoration plan that the court ordered was authorized and supported by sufficient evidence. Id., 764–65. We agreed with the defendant, however, that the trial judge improperly awarded damages under § 52-560a (d) without the requisite evidentiary foundation. We concluded that "the trial court's damages award . . . was compliant with § 52-560a (d) at the time it initially was issued. . . . [T]he award was anchored in the evidence that restoration costs would be $100,000 or more and, accordingly, did not run afoul of the statutory maximum ratio of punitive damages to actual damages. When the court later adopted a different restoration plan, however, with no evidence of its cost, its earlier award lost its mooring and the ratio of punitive damages to actual damages became unknown. If the restoration plan ultimately ordered by the court costs less than $70,000 to implement, the court's award of $350,000 would include a punitive portion that exceeds the fivefold maximum authorized by § 52-560a (d). *Upon remand, the trial court should take evidence as to the cost of the plan that it ordered and fashion a new damages award that is within the statutory parameters.*" (Emphasis added.) Id., 764. The rescript to our opinion ordered as follows: "The judgment *is reversed as to the award of . . . damages* pursuant to § 52-560a (d), and *the case is remanded for a recalculation of . . . damages consistent with this opinion*; the judgment is affirmed in all other respects."[5] (Emphasis added.) Id., 765.

On remand, the defendant filed a motion to disqualify Judge Koletsky from further participation in the pro-

[5] We also reversed and remanded the trial court's award of attorney's fees. See *Lyme Land Conservation Trust, Inc.* v. *Platner*, supra, 325 Conn. 765. In her brief to this court, the defendant concedes that orders for "attorney's fees, a bill of costs, and postjudgment interest" entered by Judge Koletsky are not at issue in this appeal.

ceedings pursuant to § 51-183c and Practice Book § 1-22.[6] Judge Koletsky summarily denied the motion. In a subsequent articulation, he offered the following reason for denying the motion: "Because the Supreme Court did not order a new trial but rather reversed only certain portions of the judgment and remanded for [a] hearing on two precise matters, affirming the judgment in all other respects, the court concluded it was not disqualified from hearing the matter."

After her motion to disqualify was denied, the defendant moved to open the judgment and to allow evidence regarding plan two. She asserted that plan two was no longer necessary or workable because the property had restored itself naturally in the three growing seasons that had passed since the trial court's order. Judge Koletsky denied both motions.

In subsequent proceedings before Judge Koletsky on the issue of statutory punitive damages, both parties presented expert testimony as to the cost of plan two. Judge Koletsky found that the cost of plan two was $242,244 and set punitive damages at $350,000, the same amount he had awarded previously. This appeal followed.[7]

The defendant raises three issues in this appeal. First, she claims that the trial court improperly denied her disqualification motion because § 51-183c and Practice Book § 1-22 precluded Judge Koletsky from retrying the issue of damages after our reversal in part and remand in her first appeal. Second, the defendant claims that the trial court improperly denied her motion to open

[6] Practice Book § 1-22 (a) provides in relevant part: "A judicial authority shall, upon motion of either party or upon its own motion, be disqualified from acting in a matter if . . . the judicial authority previously tried the same matter and a new trial was granted therein or because the judgment was reversed on appeal. . . ."

[7] The defendant appealed from the judgment of the trial court to the Appellate Court, and the appeal was transferred to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-2.

the judgment because it was an abuse of discretion to implement, in 2017, a restoration plan that was based on the property's 2015 condition without considering how the property had changed in the intervening two years. Third, the defendant claims that the trial court improperly awarded the plaintiff $350,000 in damages because, on remand, the plaintiff failed to meet its burden of proving the "cost of restoration" as required for a damages award under § 52-560a. We agree with the defendant that Judge Koletsky was required to disqualify himself under § 51-183c. In light of this conclusion, we do not reach the other issues.

I

The defendant contends that our decision and direction to the trial court in her first appeal brings the remand proceeding within the scope of § 51-183c and therefore required a different trial judge to preside over the case on remand. We agree.

Whether § 51-183c requires a judge to be disqualified in circumstances such as these is a matter of statutory construction over which we exercise plenary review. See, e.g., *Cambodian Buddhist Society of Connecticut, Inc.* v. *Planning & Zoning Commission*, 285 Conn. 381, 422–23, 941 A.2d 868 (2008). "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case . . . . [General Statutes] § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the

legislative history and circumstances surrounding its enactment, [including] the legislative policy it was designed to implement . . . .'' (Internal quotation marks omitted.) *Smith* v. *Rudolph*, 330 Conn. 138, 143, 191 A.3d 992 (2018).

Section 51-183c is one of several provisions in our law that dictates when a judge must be disqualified to protect against a lack of impartiality or the appearance thereof, unless the parties otherwise consent. See, e.g., General Statutes §§ 51-39, 51-183h and 54-33f (a); Code of Judicial Conduct, Canon 2.11; *State* v. *Shabazz*, 246 Conn. 746, 768–69, 719 A.2d 440 (1998), cert. denied, 525 U.S. 1179, 119 S. Ct. 1116, 143 L. Ed. 2d 111 (1999); see also *Ajadi* v. *Commissioner of Correction*, 280 Conn. 514, 527–28, 911 A.2d 712 (2006) (''the appearance and the existence of impartiality are both essential elements of a fair exercise of judicial authority'' [internal quotation marks omitted]). Section 51-183c addresses this concern in a particular context, providing in relevant part: ''No judge of any court who tried a case without a jury in which a new trial is granted, or *in which the judgment is reversed by the Supreme Court, may again try the case*. . . .'' (Emphasis added.)

Neither party expressly addresses whether § 51-183c is ambiguous.[8] Unlike the trial court's position, which rested on a categorical interpretation of the statute—that a partial reversal falls outside the statute's scope—the parties' arguments focus on whether the statute

[8] The plaintiff has cited to Appellate Court cases concluding that § 51-183c unambiguously applies exclusively to trials and not to all types of adversarial proceedings. See *Barlow* v. *Commissioner of Correction*, 166 Conn. App. 408, 423, 142 A.3d 290 (2016), appeal dismissed, 328 Conn. 610, 182 A.3d 78 (2018); *Board of Education* v. *East Haven Education Assn.*, 66 Conn. App. 202, 216, 784 A.2d 958 (2001); *Lafayette Bank & Trust Co.* v. *Szentkuti*, 27 Conn. App. 15, 19, 603 A.2d 1215 (1991), cert. denied, 222 Conn. 901, 606 A.2d 1327 (1992). Those cases have no bearing on the question before us in the present case, which, for the reasons set forth in this opinion, involves a materially different procedure on remand.

applies under the particular facts of this case. They offer competing positions on whether our decision in the first appeal resulted in a "reversal" of the judgment and whether the remand ordered a new trial (i.e., "again try the case"). The defendant argues that the first appeal "clearly was a reversal and there clearly was an order to take evidence. That is what trials are for." The plaintiff argues that the first appeal did not result in a reversal and that the remand was not for a trial because we remanded not to correct an error of the trial court but only for further fact-finding to determine whether an error had occurred. We agree with the defendant.

The first question that arises is whether § 51-183c applies when we reverse a judgment in part and remand the case to the trial court for reconsideration of fewer than all of the issues in the case. This appears to be the consideration that led the trial court to deny the motion to disqualify. Because § 51-183c refers to "the judgment" and retrial of "the case"—not reversal of "any part of the judgment" and retrial of "any issue in the case"—it could be read to apply only when this court reverses the judgment in its entirety and orders a new disposition of all of the legal claims between the parties. Such a construction, though plausible, plainly would not serve the clear purpose of the statute. There is no logical basis to distinguish disqualification concerns that might arise from a judge's retrying a case in which the judgment was reversed as to *all* of the claims and, for example, an appellate reversal requiring retrial on *all but one* of the claims, or a reversal as to all of the claims tried to the court but not those tried to the jury.[9] In the absence of legislative history supporting such a counterintuitive result, we interpret the statute

[9] See, e.g., *Steiner* v. *Bran Park Associates*, 216 Conn. 419, 420 and n.1, 582 A.2d 173 (1990) (trial court bifurcated legal claim and equitable claims, former to be tried to jury and latter to be tried to court); *Dick* v. *Dick*, 167 Conn. 210, 211–12, 355 A.2d 110 (1974) (trial court ordered bifurcated trial in which issue of authenticity of defendant's signature to agreement was tried to jury and remaining equitable issues were tried to court).

in a manner to advance the policy it is intended to effectuate. See *State* v. *Scott*, 191 Conn. App. 315, 356, 214 A.3d 871 (2019) ("the concern present in these situations [is that] '[s]ome may argue that a judge will feel the motivation to vindicate a prior conclusion when confronted with a question for the second or third time' " [internal quotation marks omitted]) (quoting *Liteky* v. *United States*, 510 U.S. 540, 562, 114 S. Ct. 1147, 127 L. Ed. 2d 474 [1994] [Kennedy, J., concurring in the judgment]), cert. denied, 333 Conn. 917, 216 A.3d 651 (2019). The Appellate Court has previously recognized as much. See *Barlow* v. *Commissioner of Correction*, 166 Conn. App. 408, 423–24, 142 A.3d 290 (rejecting argument that § 51-183c did not apply because rescript stated habeas court's judgment was " 'reversed in part' "), appeal dismissed, 328 Conn. 610, 182 A.3d 78 (2018); see also *Rosato* v. *Rosato*, 255 Conn. 412, 425 n.18, 766 A.2d 429 (2001) (applying § 51-183c in case in which this court had reversed judgment only with respect to financial orders in dissolution action and remanded for hearing to resolve questions about party's pension).

Given our conclusion that § 51-183c applies when a judgment is reversed in part and fewer than all of the issues in the case must be retried, we next consider whether reversing the judgment in part for a new proceeding only as to damages falls within that description. To try a case, or to conduct a "trial," is defined as "[a] formal judicial examination of evidence and determination of legal claims in an adversary proceeding." Black's Law Dictionary (11th Ed. 2019) p. 1812; see also 75 Am. Jur. 2d 205, Trial § 1 (2018) ("the judicial investigation and determination of the issues between the parties to an action"). The mechanism of a bifurcated trial is well established in the law; see General Statutes § 52-205; and has long been understood to include a "trial" in which one stage determines liability and the other stage

determines damages.[10] See, e.g., *Hall* v. *Burns*, 213 Conn. 446, 483, 569 A.2d 10 (1990) (involving bifurcated trial on issues of liability and damages); *Lamb* v. *Burns*, 202 Conn. 158, 159, 520 A.2d 190 (1987) (same); *O'Shea* v. *Mignone*, 50 Conn. App. 577, 582, 719 A.2d 1176 (same), cert. denied, 247 Conn. 941, 723 A.2d 319 (1998); American Law of Product Liability (3d Ed. Rev. 2019) § 51:99 (addressing separate "trial" for damages); Black's Law Dictionary, supra, p. 1812 (defining bifurcated trial as "[a] trial that is divided into two stages, such as for guilt and punishment or for liability and damages"). In some cases, the issue of liability is not in dispute, and the only issue being tried is damages. On remand for a new trial after appeal, a new trial could be ordered solely on the issue of damages. See, e.g., *Peck* v. *Jacquemin*, 196 Conn. 53, 73, 491 A.2d 1043 (1985) (ordering "new trial" limited to issue of damages); *Smith* v. *Whittlesey*, 79 Conn. 189, 193–94, 63 A. 1085 (1906) (same). A trial in damages, sometimes known in this state as a hearing in damages, has all the hallmarks of a trial, including taking evidence, examining witnesses, finding facts, and applying the law to those facts. See Practice Book §§ 17-34 through 17-40. Moreover, because a determination of damages is an integral part of a trial, there is no appealable final judgment until damages have been determined. See *Hylton* v. *Gunter*, 313 Conn. 472, 478, 97 A.3d 970 (2014) ("[i]t is well settled that a 'judgment rendered only upon the issue of liability without an award of damages is . . . not a final judgment from which an appeal lies' ").

[10] We are mindful that a criminal trial also may be bifurcated as to guilt and punishment, and we have concluded that a remand for resentencing is not part of a "trial" under § 51-183c. This court reached that conclusion, however, in reliance on a clear indication of legislative intent that is not applicable to damages. Specifically, the court looked to other provisions in the law from which it concluded that the legislature had demonstrated a clear intent that sentencing did not fall within the ambit of § 51-183c. See *State* v. *Miranda*, 260 Conn. 93, 132, 794 A.2d 506, cert. denied, 537 U.S. 902, 123 S. Ct. 224, 154 L. Ed. 2d 175 (2002). There are no corresponding provisions for civil matters that would place damages outside the scope of trial. See Practice Book §§ 15-1 through 24-33.

Having concluded that a judgment that is reversed as to damages and remanded for a new trial only on the issue of damages falls within the scope of § 51-183c, we next consider whether our reversal in part and remand to the trial court in the first appeal in this case meets these criteria. We conclude that they do.

Our rescript in the first appeal provided unequivocally: "The judgment is *reversed* as to . . . damages pursuant to § 52-560a (d), and the case is remanded for a recalculation of . . . damages consistent with this opinion; the judgment is affirmed in all other respects." (Emphasis added.) *Lyme Land Conservation Trust, Inc.* v. *Platner*, supra, 325 Conn. 765. This direction plainly constituted a reversal in part of the judgment, limited to the trial court's damages award.

Our order also plainly indicated that the remand proceeding would constitute a trial in damages. The rescript called for a remand for a recalculation of damages "consistent with this opinion"—that is, consistent with our prior statements that "the court's award of statutory damages was not compliant with § 52-560a (d) and must be recomputed based on the costs of the actual restoration plan ordered"; id.; and that, "[u]pon remand, the trial court should *take evidence* as to the cost of the plan that it ordered and *fashion a new damages award* that is within the statutory parameters." (Emphasis added.) Id., 764.

What took place at the remand proceeding before Judge Koletsky, moreover, clearly was a trial in damages. Both parties put on expert witnesses—Pennington Marchael for the plaintiff and Michael S. Klein for the defendant. The plaintiff conducted a direct examination of Marchael, in which the expert described in detail each of the restoration procedures and how much they would cost, ultimately opining that the cost of restoration would be $242,244. The defendant then cross-examined Marchael, challenging his level of expertise, bases for and methods of calculations, and conclusion. After

unsuccessfully moving to dismiss the case, the defendant presented its own evidence through its expert, Klein. The court took evidence, and the parties objected to the admission of certain testimony and documentary exhibits.

The court, acting as fact finder, credited Marchael's testimony and found that the cost of restoration was $242,244. Mindful that § 52-560a limits punitive damages to five times the cost of restoration, the court then directed counsel to determine "a multiplier that transfers $242,244 to [$350,000] . . . to the extent that the statute requires a multiplier . . . ." Having set punitive damages at $350,000, the court then opined that "everybody's got all the final judgments that they need" for any further appellate review. In short, the proceeding had all of the hallmarks of a trial in damages.

The plaintiff, however, correctly notes that one way a reviewing court "may remand a case to the original trial judge for additional proceedings without either triggering § 51-183c or a dispute over its application is by not disturbing the original judgment in any way and making clear that the remand is for the purpose of further factual findings." *Barlow* v. *Commissioner of Correction*, 328 Conn. 610, 614, 182 A.3d 78 (2018). This circumstance typically arises where "the purpose of the remand is not to correct error but to determine whether error has occurred." *State* v. *Gonzales*, 186 Conn. 426, 436 n.7, 441 A.2d 852 (1982). The plaintiff argues that the remand ordered in the defendant's first appeal reflects such a purpose because our rescript, read in the context of the broader opinion, reveals that our reversal "is more properly understood as placing the award in limbo pending collection of limited additional evidence" to determine whether the damages award needed to be adjusted to conform with § 52-560a (d). We disagree.

In our decision in the first appeal, we determined that "the court's award of statutory damages *was not compliant* with § 52-560a (d) and *must be recomputed*

based on the costs of the actual restoration plan ordered." (Emphasis added.) *Lyme Land Conservation Trust, Inc.* v. *Platner*, supra, 325 Conn. 765. We directed the trial court to "*take evidence* as to the cost of the plan that it ordered and *fashion a new damages award* that is within the statutory parameters." (Emphasis added.) Id., 764. This holding unambiguously requires a new trial in damages and plainly contemplates a new judgment that will include the recomputed restoration costs and an award of punitive damages compliant with § 52-560a (d).

The plaintiff contends, however, that we "required the trial court's original damages award to be 'refashioned' *only if* the new evidence established that the cost of the restoration plan would be less than $70,000." (Emphasis added.) It points to our statement that, "[i]f the restoration plan . . . costs less than $70,000 . . . the . . . $350,000 would . . . [exceed] the fivefold maximum authorized by § 52-560a (d)" as demonstrating our recognition of the possibility that no error would exist as long as the plan cost at least $70,000. In doing so, the plaintiff mischaracterizes our use of the word "if" and ignores our determination that there was no evidence to support the award. *Lyme Land Conservation Trust, Inc.* v. *Platner*, supra, 325 Conn. 764. If, on remand, the court were to determine that the cost of plan two exceeds $70,000—and thus the original $350,000 would have fallen within the permissible range of the statutory multiplier—it would not make it any less of an error for the trial court to have previously entered the damages award without having taken evidence to support the order. The trial court's damages award was not legally sound because there was no evidence in the record establishing the cost of plan two.

Finally, the rescript in the first appeal, which explicitly reversed the damages award, is materially different

from rescripts in which we have remanded a case to determine whether an error occurred. See, e.g., *Holland* v. *Holland*, 188 Conn. 354, 364 and n.6, 449 A.2d 1010 (1982) (§ 51-183c is not implicated by rescript "remand-[ing] [the] case for the submission of additional evidence by the parties and for a fully articulated memorandum of decision"); see also *State* v. *Gonzales*, supra, 186 Conn. 436 ("A new trial must be ordered if [two] questions are answered in the affirmative; otherwise the statement must be sealed and preserved as an exhibit to enable the defendant, if he wishes, to seek further judicial review. The case is remanded for further proceedings in accordance with this opinion.").

Our prior decision reversing the judgment in part and remanding to the trial court to take evidence and to recalculate damages falls within the ambit of § 51-183c. Accordingly, Judge Koletsky was required to disqualify himself on remand after the first appeal.

II

Although this conclusion would appear to dispose of the defendant's remaining claims because a new trial in damages must be held by a different judge, the defendant contends this is not the case. First, the defendant claims that Judge Koletsky improperly denied her motion to open the judgment because it was an abuse of discretion to implement, in 2017, a restoration plan that was based on the property's 2015 condition without considering how the property had changed in the intervening two years. Second, the defendant claims that Judge Koletsky improperly awarded $350,000 in damages on remand because the statutory multiplier under § 52-560a applies only to the cost of "restoration" but plan two includes remedial requirements that do not restore the property to its prior condition, and the plaintiff did not put on any evidence on remand as to how much of the total cost of plan two was for "restoration."

The defendant's claims in this regard cannot be analyzed or adjudicated independently of the disqualification issue because they "emanate from rulings that resulted from the same trial court improperly presiding over [the proceedings] on remand." *Gagne* v. *Vaccaro*, 133 Conn. App. 431, 433 n.2, 35 A.3d 380 (2012), rev'd on other grounds, 311 Conn. 649, 658, 90 A.3d 196 (2014). At oral argument, the defendant conceded that, if we were to conclude that Judge Koletsky should have been disqualified, "the only reason" we would reach the issue regarding the motion to open is if we "think [the defendant's case for opening the judgment] was so strong that the motion had to be granted." In other words, it would not matter that Judge Koletsky should have been disqualified because no reasonable judge could have denied the motion to open. We are not persuaded by this argument for several reasons. It would be illogical for us to decide whether to address an issue by deciding the merits of the issue. Moreover, given the wealth of reasons set forth in the plaintiff's opposition to the motion to open—procedural, substantive, and equitable—we are not prepared to conclude that none of these reasons could ever provide a reasonable basis for denying the motion.

With respect to her second remand related claim, the defendant's contention essentially is that the plaintiff failed to meet its burden of proof to support any damages award above the statutory minimum of $5000. The defendant asserts that we must reach this issue because, if we were to agree with her, we would not order a new trial but, rather, would direct that judgment be rendered for the statutory minimum.

This argument ignores the fact that a new judge at a new trial will make his or her own decisions as to what evidence will or may be submitted in support of the claims and defenses raised by the parties. Nor does it take into account that the plaintiff might adopt a different litigation strategy involving different evidence.

We will not predict what will happen at a trial yet to occur.

The judgment is reversed with respect to the award of damages and the case is remanded for a recalculation of damages, before a different judge, consistent with this court's prior opinion, and the orders denying the defendant's motions to open the judgment and to allow evidence are vacated; the judgment is affirmed in all other respects.

In this opinion the other justices concurred.

STATE OF CONNECTICUT *v.* JAYEVON BLAINE (SC 20087)

Palmer, McDonald, D'Auria, Mullins, Ecker and Vertefeuille, Js.

Syllabus

Convicted of the crime of conspiracy to commit robbery in the first degree in connection with his involvement, along with that of four other coconspirators, in the shooting death of a drug dealer, the defendant appealed to the Appellate Court, claiming, inter alia, that the trial court's failure to instruct the jury on the requisite intent necessary to find him guilty of that offense constituted plain error. The trial court had instructed the jury on the elements of the substantive crime of robbery in the first degree, including the element that one or more participants in the robbery be armed with a deadly weapon, and that, to find the defendant guilty of conspiracy, it had to find that the defendant specifically intended to commit the substantive crime. On appeal, the defendant claimed that the court's instructions were plainly erroneous because they relieved the state of its burden of proving, as required by *State* v. *Pond* (138 Conn. App. 228), that he specifically intended that every element of the conspired offense be accomplished because the court did not expressly instruct the jury that, to return a guilty verdict, it must find that he had agreed and specifically intended that he or one of his coconspirators would be armed with a deadly weapon. The Appellate Court affirmed the judgment of conviction, concluding, inter alia, that the defendant implicitly had waived his unpreserved claim of instructional error and, therefore, was not entitled to relief under the plain error doctrine. Thereafter, this court granted the defendant's petition for certification to appeal and remanded the case to the Appellate Court with direction to reconsider the defendant's plain error claim in light of this court's decision in *State* v. *McClain* (324 Conn. 802), which

held that an implicit waiver does not foreclose appellate review of unpreserved claims of instructional error under the plain error doctrine. On remand, the Appellate Court again affirmed the judgment of conviction, concluding that the defendant had failed to establish that an obvious error had occurred or that a manifest injustice would result from failing to reverse his conviction. On the granting of certification, the defendant appealed to this court. *Held* that the defendant could not prevail on his claim that the trial court committed plain error by failing to instruct the jury that, to find the defendant guilty of conspiracy to commit robbery in the first degree, it had to find that he intended and specifically agreed that he or another participant in the robbery would be armed with a deadly weapon; although it is the better practice for the trial court to instruct the jury in direct terms that the defendant must have specifically intended each element of the offense, this court could not conclude that the trial court committed an error so clear or obvious as to necessitate reversal because, when read as a whole, the jury charge, which instructed the jury on the intent requirement for conspiracy to commit robbery in the first degree and set forth the elements of the substantive crime of first degree robbery, was sufficient to guide the jury to a correct verdict and logically required the jury to find that the defendant had agreed and specifically intended that he or another participant in the robbery would be armed with a deadly weapon.

Argued September 23—officially released December 31, 2019

Procedural History

Substitute information charging the defendant with the crimes of murder, felony murder, attempt to commit robbery in the first degree, and conspiracy to commit robbery in the first degree, brought to the Superior Court in the judicial district of Fairfield and tried to the jury before *Kahn*, *J.*; verdict and judgment of guilty of conspiracy to commit robbery in the first degree, from which the defendant appealed to the Appellate Court, *Beach*, *Sheldon* and *Prescott*, *Js.*, which affirmed the trial court's judgment; thereafter, this court granted the defendant's petition for certification to appeal and remanded the case to the Appellate Court for consideration of the defendant's claim of plain error; subsequently, the Appellate Court, *Sheldon*, *Prescott* and *Beach*, *Js.*, affirmed the trial court's judgment, and the defendant, on the granting of certification, appealed to this court. *Affirmed.*

Katherine C. Essington, assigned counsel, for the appellant (defendant).

Rocco A. Chiarenza, assistant state's attorney, with whom, on the brief, were *John C. Smriga*, state's attorney, and *Howard S. Stein*, senior assistant state's attorney, for the appellee (state).

Opinion

ECKER, J. The sole issue in this certified appeal is whether the defendant's conviction of conspiracy to commit robbery in the first degree in violation of General Statutes §§ 53a-48 and 53a-134 (a) (2) should be reversed under the plain error doctrine due to an alleged error in the trial court's jury instructions. The defendant, Jayevon Blaine, contends that the trial court improperly failed to instruct the jury on an essential element of the crime as required by *State* v. *Pond*, 138 Conn. App. 228, 238–39, 50 A.3d 950 (2012), aff'd, 315 Conn. 451, 108 A.3d 1083 (2015), namely, that he agreed and specifically intended that he or another participant in the robbery would be "armed with a deadly weapon . . . ." General Statutes § 53a-134 (a) (2). The Appellate Court held that there was no "obvious and undebatable error" in the trial court's jury instructions because the relevant instructions "logically required the jury to find that the defendant had agreed that a participant would be armed with a deadly weapon." *State* v. *Blaine*, 179 Conn. App. 499, 510, 180 A.3d 622 (2018). The Appellate Court also held that, even if the instructions were erroneous, there was no manifest injustice necessitating reversal of the defendant's conviction because "[e]very witness who testified that the agreement existed also testified that use of a weapon was contemplated." Id., 511. We affirm the judgment of the Appellate Court.

The jury reasonably could have found the following facts. On September 6, 2009, Jihad Clemons and Craig Waddell devised a plan to rob a drug dealer named

Robert Taylor of his money, drugs, cell phone, and car. They discussed their plan with their friends, Hank Palmer and Michael Lomax, both of whom agreed to participate. At some point, Lomax, Clemons, and Waddell went to the home of another friend, DeAndre Harper, to inquire whether he wanted to join them in the robbery. Harper declined the invitation, but the defendant, who is Harper's cousin and who was living with Harper at the time, agreed to participate.

Clemons, Waddell, Palmer, Lomax, and the defendant decided to use a nine millimeter handgun to accomplish the robbery. Clemons called Taylor and arranged a meeting near the Blackham School in Bridgeport, purportedly to purchase marijuana. At around 9 p.m., Lomax drove Waddell, Palmer, and the defendant[1] in Lomax' white Honda to wait for Taylor near the Blackham School.

Taylor arrived at the Blackham School with the victim, Kevin Soler, and the victim's girlfriend, Priscilla LaBoy. It was very dark that night, and the three waited in the car until they saw someone dressed in dark clothing and a hoodie approaching. The victim exited the car to conduct the drug transaction on Taylor's behalf. LaBoy heard the victim say that the two men knew each other from a party, and the individual in the hoodie then backed away and accused the victim of having a gun. The victim responded that he was unarmed and lifted up his shirt, at which point the individual in the hoodie pulled out his own gun and shot the victim multiple times at close range, killing him. The shooter instructed LaBoy to get out of the car, and she complied. Taylor also exited the car and began to run away. The shooter chased after Taylor, firing his gun two more times. LaBoy ran away from the scene of the shooting

[1] At trial, Clemons, Waddell, Lomax, and Palmer all testified that Clemons was not present at the robbery because he had been dropped off near his home sometime prior to his 9 p.m. curfew.

but later returned, at which point she saw a white car drive by and slow down as it passed by Taylor's car and the victim's body.

Two days later, at approximately 5:40 a.m., the police arrived at the home of Harper and the defendant to execute two arrest warrants unrelated to the events in this case. They found the defendant, Harper, and Harper's younger brother sleeping in the same bedroom. During a search of the bedroom, the police uncovered two firearms from under the mattress on which Harper and his brother had been sleeping. Later testing revealed that one of those firearms had been used in the fatal shooting of the victim.

The defendant subsequently was arrested and charged with the murder of Soler in violation of General Statutes § 53a-54a (a), felony murder in violation of General Statutes § 53a-54c, attempt to commit robbery in the first degree in violation of General Statutes §§ 53a-49 and 53a-134 (a) (2), and conspiracy to commit robbery in the first degree in violation of §§ 53a-48 and 53a-134 (a) (2). Following a jury trial, at which the defendant's coconspirators Clemons, Waddell, Lomax, and Palmer testified, the jury found the defendant not guilty of the crimes of murder, felony murder, and attempt to commit robbery in the first degree, but guilty of the crime of conspiracy to commit robbery in the first degree. The trial court rendered judgment in accordance with the jury's verdict and sentenced the defendant to a term of imprisonment of twenty years, execution suspended after fifteen years, followed by five years of probation.

The Appellate Court affirmed the defendant's judgment of conviction. *State* v. *Blaine*, 168 Conn. App. 505, 507, 147 A.3d 1044 (2016). The Appellate Court held that (1) the evidence was sufficient to support the defendant's conviction of conspiracy to commit robbery in the first degree; id., 510; (2) the trial court's denial of

the defendant's request for a jury instruction on third-party culpability was harmless; id., 517; and (3) the defendant implicitly waived his claim that the trial court had failed to instruct the jury on the essential element of intent pursuant to *State* v. *Pond*, supra, 138 Conn. App. 228, and, therefore, that the defendant was not entitled to relief under *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), the plain error doctrine, or the court's supervisory authority. See *State* v. *Blaine*, supra, 168 Conn. App. 518–19 and n.5. We granted the defendant's petition for certification to appeal, limited to his claim of plain error, and we remanded the case to the Appellate Court with direction to reconsider the defendant's plain error claim in light of *State* v. *McClain*, 324 Conn. 802, 815, 155 A.3d 209 (2017), in which we held that an implied waiver of a claim of instructional error does not preclude appellate relief under the plain error doctrine. See *State* v. *Blaine*, 325 Conn. 918, 918–19, 163 A.3d 618 (2017). On remand, the Appellate Court again affirmed the defendant's judgment of conviction, concluding that there was no obvious error or manifest injustice. *State* v. *Blaine*, supra, 179 Conn. App. 511. This certified appeal followed.[2]

The defendant contends that the trial court's jury instructions on conspiracy to commit robbery in the first degree were plainly erroneous because they omitted an essential element of the crime, namely, that the defendant agreed and specifically intended that he or another participant in the robbery would be armed with a deadly weapon. Because the omission of an essential element of the crime implicates the defendant's right to due process of law under the fourteenth amendment

[2] We granted the defendant's petition for certification to appeal from the judgment of the Appellate Court, limited to the issue of whether "the Appellate Court properly conclude[d] that the trial court's failure to instruct the jury in accordance with *State* v. *Pond*, [supra, 315 Conn. 451], did not constitute plain error." *State* v. *Blaine*, 328 Conn. 917, 181 A.3d 566 (2018).

to the United States constitution, the defendant argues that the state bears the burden to establish beyond a reasonable doubt that there was no reasonable possibility that the jury was misled by the claimed instructional error. The state cannot meet this burden, the defendant contends, in light of what he characterizes as the jury's inconsistent verdict and the conflicting evidence regarding the shooter's identity. The defendant argues that the proper remedy for the alleged error is to modify the judgment pursuant to *State* v. *Greene*, 274 Conn. 134, 160–62, 874 A.2d 750 (2005), cert. denied, 548 U.S. 926, 126 S. Ct. 2981, 165 L. Ed. 2d 988 (2006), to reflect a conviction of the lesser included offense of conspiracy to commit robbery in the third degree pursuant to General Statutes § 53a-136, which does not include the deadly weapon element.

The state responds that there was no plain error in the trial court's jury instructions because the law governing the intent necessary to commit conspiracy was unsettled at the time of the defendant's trial, pointing out that the Appellate Court's decision in *Pond* was not unanimous and review of that decision was pending in this court while the present case was being tried. See *State* v. *Pond*, supra, 138 Conn. App. 239 (*Borden*, *J.*, concurring) (identifying "an anomaly in [this court's] interpretation of the conspiracy section of the Penal Code that [this court] may wish to revisit"). The state also contends that, even if *Pond* is applicable, the Appellate Court correctly concluded that "the jury instructions in this case were not so clearly and obviously wrong that they rose to the level of 'plain error.' " In any event, the state argues that any error in the jury instructions was harmless, regardless of the standard of review applied, because every coconspirator testified that the conspiracy included an express agreement to use a deadly weapon to accomplish the robbery. Lastly, with respect to the proper remedy, the state contends that, if this court determines that there is plain error

necessitating reversal of the defendant's conviction, the appropriate remedy is not a modified judgment but a new trial before a properly instructed jury. See *State* v. *Pond*, supra, 315 Conn. 489.

Our review of the Appellate Court's decision whether to reverse a judgment under the plain error doctrine is subject to plenary review. See, e.g., *State* v. *Sanchez*, 308 Conn. 64, 80, 60 A.3d 271 (2013). "[The plain error] doctrine, codified at Practice Book § 60-5, is an extraordinary remedy used by appellate courts to rectify errors committed at trial that, although unpreserved, are of such monumental proportion that they threaten to erode our system of justice and work a serious and manifest injustice on the aggrieved party." (Internal quotation marks omitted.) Id., 76–77. "It is axiomatic that, [t]he plain error doctrine . . . is not . . . a rule of reviewability. It is a rule of reversibility. That is, it is a doctrine that this court invokes in order to rectify a trial court ruling that, although either not properly preserved or never raised at all in the trial court, nonetheless requires reversal of the trial court's judgment . . . for reasons of policy. . . . Put another way, plain error review is reserved for only the most egregious errors. When an error of such a magnitude exists, it necessitates reversal." (Citation omitted; internal quotation marks omitted.) *State* v. *McClain*, supra, 324 Conn. 813–14.

"An appellate court addressing a claim of plain error first must determine if the error is indeed plain in the sense that it is patent [or] readily discernable on the face of a factually adequate record, [and] also . . . obvious in the sense of not debatable. . . . This determination clearly requires a review of the plain error claim presented in light of the record.

"Although a complete record and an obvious error are prerequisites for plain error review, they are not, of themselves, sufficient for its application. . . .

[I]n addition to examining the patent nature of the error, the reviewing court must examine that error for the grievousness of its consequences in order to determine whether reversal under the plain error doctrine is appropriate. A party cannot prevail under plain error unless it has demonstrated that the failure to grant relief will result in manifest injustice." (Internal quotation marks omitted.) *State* v. *Sanchez*, supra, 308 Conn. 77. Thus, the plain error doctrine has two prongs, under which the defendant must establish that (1) there was "an obvious and readily discernable error," and (2) that error "was so harmful or prejudicial that it resulted in manifest injustice." *State* v. *Jamison*, 320 Conn. 589, 598–99, 134 A.3d 560 (2016); see also *State* v. *Sanchez*, supra, 78 (describing "the two-pronged nature of the plain error doctrine," which requires defendant to demonstrate "that the claimed error is *both* so clear *and* so harmful that a failure to reverse the judgment would result in manifest injustice" [emphasis in original; internal quotation marks omitted]).

The defendant contends that the trial court's jury instructions were erroneous pursuant to *State* v. *Pond*, supra, 138 Conn. App. 228,[3] in which the Appellate Court held that "the specific intent required by the conspiracy statute requires specific intent to bring about *all* of the elements of the conspired offense, even those that do not by themselves carry a specific intent with them." (Emphasis in original.) Id., 234. "[I]n order to prove the defendant guilty of conspiracy to commit robbery in the second degree in violation of [General Statutes] § 53a-135 (a) (2)," the Appellate Court reasoned, "the state needed to prove that he and his coconspirator specifically had an agreement to display a deadly weapon or dangerous instrument and that the defendant

[3] The defendant focuses primarily on the Appellate Court's decision in *Pond* because, at the time of the defendant's trial, our decision affirming the Appellate Court's judgment had not yet been issued.

had the specific intent that such a weapon or instrument would be displayed." Id. The jury instruction at issue in *Pond* informed the jury that the defendant must have had the specific intent "to commit a *larceny* when he entered into the agreement"; (emphasis added; internal quotation marks omitted) id., 237; and was constitutionally defective because it "did not tell the jury that the state was required to prove that the defendant specifically intended that, in the course of the robbery, what was represented to be a deadly weapon or dangerous instrument would be used or displayed." Id., 238–39. Therefore, the Appellate Court reversed the defendant's judgment of conviction and remanded the case for a new trial. Id., 239.

On appeal to this court, we agreed that, "to be convicted of conspiracy, a defendant must specifically intend that every element of the planned offense be accomplished, even an element that itself carries no specific intent requirement." *State* v. *Pond*, supra, 315 Conn. 453. Because the state did not challenge the Appellate Court's determination that the trial court's jury instructions failed to inform adequately the jury that "the state must prove that the defendant specifically agreed that there would be the display or threatened use of what was represented as a deadly weapon or dangerous object during the robbery or immediate flight therefrom," we affirmed the judgment of the Appellate Court reversing the defendant's conviction and remanded the case for "a new trial before a properly instructed jury." Id., 489.

As applied to the present case, *Pond* holds that, to convict the defendant of conspiracy to commit robbery in the first degree in violation of §§ 53a-48 and 53a-134 (a) (2), the state bore the burden to prove, beyond a reasonable doubt, that the defendant agreed and specifically intended that he or another participant in the robbery would be "armed with a deadly weapon" during the commission of the robbery or immediate flight

therefrom. General Statutes § 53a-134 (a) (2). To determine whether the trial court committed plain error in instructing the jury on the specific intent element of this offense, we must examine the trial court's jury instructions, mindful that, "[i]n determining whether a jury instruction is improper, the charge . . . is not to be critically dissected for the purpose of discovering possible inaccuracies of statement, but it is to be considered rather as to its probable effect [on] the jury in guiding [it] to a correct verdict in the case." (Internal quotation marks omitted.) *State* v. *Carrion*, 313 Conn. 823, 845, 100 A.3d 361 (2014). "It is well established that a defendant is entitled to have the jury correctly and adequately instructed on the pertinent principles of substantive law. . . . Moreover, [i]f justice is to be done . . . it is of paramount importance that the court's instructions be clear, accurate, complete and comprehensible, particularly with respect to the essential elements of the alleged crime. . . . Nevertheless, [t]he charge is to be read as a whole and individual instructions are not to be judged in artificial isolation from the overall charge. . . . In reviewing the charge as a whole, [the] instructions need not be perfect, as long as they are legally correct, adapted to the issues and sufficient for the jury's guidance. . . . The test to be applied to any part of a charge is whether the charge considered as a whole presents the case to the jury so that no injustice will result." (Citations omitted; internal quotation marks omitted.) *State* v. *Singleton*, 292 Conn. 734, 768–69, 974 A.2d 679 (2009).

We must consider the trial court's jury instructions as a whole, and, therefore, we begin our review with the trial court's explanation of the essential elements of the crime underlying the conspiracy—robbery in the first degree. The trial court, quoting § 53a-134 (a) (2), informed the jury that "[a] person is guilty of robbery in the first degree when, in the course of the commission

of the crime of robbery or of immediate flight therefrom, he or another participant in the crime is armed with a deadly weapon." The trial court then instructed the jury that robbery in the first degree has three essential elements: "The first element is that the defendant committed a robbery. Simple robbery is defined in [General Statutes §] 53a-133 as a larceny committed with the use of or threatened use of physical force. The gist of robbery, then, is the commission of a larceny by the use of physical force or the threat of immediate use of physical force. . . .

"Element two, use of physical force. The [second] element is that the larceny was accomplished by the use . . . or threatened use of physical force. Physical force means the external physical power over the person, which can be effected by hand or foot or another part of the defendant's body applied to the other person's body or applied by. . . an implement, projectile or weapon. . . .

"Element three, additional factor. The third element of robbery in the first degree is that, [in] the course of the commission of the robbery or immediate flight from the crime, the defendant or another participant in the crime was armed with a deadly weapon. . . .

"Immediate flight means that it occurred so close in point of . . . time to the commission of the robbery [so] as to become part of the robbery. The law does not require that the weapon be used or employed for any particular purpose or object. If any person . . . who participated in the crime was armed with a deadly weapon or threatened the use of what he represented by words or conduct to be a pistol, revolver, rifle, shotgun, machine gun or other firearm while in the immediate flight from the crime, then all participants in the robbery could be just as guilty of first degree robbery as if they had themselves actually done so."

In its instructions regarding the crime of conspiracy to commit robbery in the first degree, the trial court, quoting § 53a-48 (a), advised the jury that "[a] person is guilty of conspiracy when, with the intent that conduct constituting [a] crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them commits an overt act in pursuance of such conspiracy.

"To constitute the crime of conspiracy, the state must prove the following elements beyond a reasonable doubt: (1) there was an agreement between the defendant and one or more persons to engage in conduct constituting the crime of robbery in the first degree; (2) there was an overt act in furtherance of the subject of the agreement by any one of those persons; and (3) the defendant specifically intended to commit the crime of robbery in the first degree."

The trial court expounded on the first element of conspiracy, the existence of an agreement between the defendant and one or more other persons, by explaining that "[i]t is not necessary for the state to prove that there was a formal or express agreement between them. It is sufficient to show that the parties knowingly engaged in a mutual plan to do a criminal act. . . . Therefore, in order to convict the defendant on the charge contained in the information, the first element that the state must prove beyond a reasonable doubt is that the defendant entered into an agreement with at least one other person to engage in conduct constituting robbery in the first degree."

With respect to the third element of conspiracy, criminal intent, the court explained: "The third element is that the defendant had the intent to commit robbery in the first degree. The defendant must have had specific intent. The defendant may not be found guilty unless the state has proved beyond a reasonable doubt that he specifically intended to commit robbery in the first degree when he entered into the agreement.

"Specific intent is the intent to achieve a specific result. A person acts intentionally with respect to a result when his conscious objective is to cause such result. What the defendant intended is a question of fact for you to determine. What a person's intention was is usually a matter to be determined by inference. No person is able to testify that he looked into another's mind and saw therein a certain knowledge or a certain purpose or intention to do harm to another. Because direct evidence of . . . the defendant's state of mind is rarely available, intent is generally proved by circumstantial evidence. The only way a jury can ordinarily determine what a person's intention was at any given time is by determining what the person's conduct was and what the circumstances were surrounding that conduct and, from that, infer what his intention was. To draw such an inference is the proper function of a jury, provided, of course, that the inference drawn complies with the standards for inferences as explained in connection with my instruction on circumstantial evidence. . . .

"Conclusion. In summary, the state must prove beyond a reasonable doubt that (1) the defendant had an agreement with one or more persons to commit robbery in the first degree, (2) at least one of the coconspirators did an overt act in furtherance of the conspiracy, and (3) the defendant specifically intended to commit robbery in the first degree."

The foregoing instructions adequately informed the jury that, to find the defendant guilty of the crime of conspiracy to commit robbery in the first degree, it must find that the defendant agreed "to engage *in conduct constituting the crime of robbery in the first degree*" and "*specifically intended to commit* [*the crime of*] *robbery in the first degree*," an essential element of which is that the defendant or a participant to the crime be armed with a deadly weapon. (Emphasis added.) The trial court explained that "[s]pecific intent is the

intent to achieve a specific result," and "[t]he defendant may not be found guilty unless the state has proved beyond a reasonable doubt that he specifically intended to commit robbery in the first degree when he entered into the agreement." As the Appellate Court aptly observed, the trial court "did not expressly limit the requirement of specific intent to fewer than all the elements of the substantive crime," and, therefore, "the instruction logically required the jury to find that the defendant had agreed that a participant would be armed with a deadly weapon." *State* v. *Blaine*, supra, 179 Conn. App. 510. This is in stark contrast to the jury instruction found to be constitutionally defective in *Pond*, which permitted the jury to find the defendant guilty of conspiracy to commit robbery in the second degree if the defendant "specifically intended to commit a larceny"; *State* v. *Pond*, supra, 138 Conn. App. 237; and, thus, omitted the essential element of specific intent "that, in the course of the robbery, what was represented to be a deadly weapon or dangerous instrument would be used or displayed." Id., 238–39.

The defendant contends that the jury instructions were flawed because they "did not apply the specific intent requirement for conspiracy to the weapon element of first degree robbery anywhere in [the] charge or instruct the jury that [the defendant] had to agree that one of the participants would be armed with a deadly weapon to be convicted of conspiracy to commit first degree robbery . . . ." Although the better practice is to instruct the jury in direct terms that the defendant must specifically have intended that he or another participant in the robbery be "armed with a deadly weapon" during the commission of the robbery or immediate flight therefrom,[4] it is clear to us that the jury instructions in the present case provided the jury with adequate guidance.

[4] See Connecticut Criminal Jury Instructions 3.3-1, available at http://www.jud.ct.gov/JI/Criminal/Criminal.pdf (last visited December 23, 2019).

Because we conclude that the trial court's jury instructions, when viewed as a whole, were sufficient to guide the jury in arriving at its verdict, we can perceive no "clear, obvious and indisputable [error] as to warrant the extraordinary remedy of reversal."[5] (Internal quotation marks omitted.) *State* v. *Darryl W.*, 303 Conn. 353, 373, 33 A.3d 239 (2012); see *State* v. *Moon*, 192 Conn. App. 68, 100, 217 A.3d 668 (2019) (distinguishing *Pond* and finding no plain error in trial court's jury instruction on conspiracy to commit robbery in first degree because "the court made clear that the defendant had to intend for a participant in the crime to use a deadly weapon when it stated that the intent required for conspiracy to commit robbery in the first degree is the intent to agree to commit the underlying crime of robbery in the first degree"); *State* v. *Louis*, 163 Conn. App. 55, 73, 134 A.3d 648 (holding that "the court properly instructed the jury with respect to the conspiracy charges lodged against the defendant in conformity with *State* v. *Pond*, supra, 315 Conn. 454" because "[t]he court instructed the jury with respect to robbery in the first degree that the state had to prove that the 'coconspirators understood a deadly weapon would be carried by one of the participants' "), cert. denied, 320 Conn. 929, 133 A.3d 461 (2016).

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

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[5] Having determined that the defendant's claim fails under the first prong of the plain error doctrine, we need not reach the second prong, which examines whether the "omission was so harmful or prejudicial that it resulted in manifest injustice." *State* v. *Jamison*, supra, 320 Conn. 599.

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CONNECTICUT APPELLATE REPORTS

Vol. 195

CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

GEOVANNY ZILLO *v.* COMMISSIONER OF CORRECTION (AC 41330)

Keller, Elgo and Bishop, Js.

Syllabus

The petitioner, who had been convicted of sexual assault in the first degree and risk of injury to a child, sought a writ of habeas corpus, claiming that his trial counsel provided ineffective assistance. At the beginning of the habeas trial, the petitioner informed the court that he was withdrawing certain of his claims, including a claim that his trial counsel was ineffective in failing to present certain medical testimony. On the second day of trial, which occurred nearly two months later, the petitioner requested that the court permit him to "unwithdrawn" that claim, but the court denied the request to reinstate the claim. The habeas court rendered judgment denying the habeas petition, from which the petitioner, on the granting of certification, appealed to this court. *Held*:

1. The habeas court did not abuse its discretion when it denied the petitioner's request to reinstate the claim he had withdrawn: that court reasonably recognized that almost all witnesses already had been examined when the request was made, and although not all of those witnesses would have been needed to address the claim, it would have been unfair to recall some witnesses after their dismissal, and to resurrect the claim would have required additional preparation and time to explore the claim with the previous witnesses; moreover, the petitioner waited nearly two months after the first day of trial to bring forth his request, which he could have explored at the end of the first day of trial or shortly thereafter, it was the petitioner who originally brought the claim forward and then subsequently elected to withdraw it, and his claim that the habeas court should have treated the request as a motion to amend the pleadings was inadequately briefed and not reviewable.
2. The petitioner's claim that the habeas court should have allowed into evidence documents that related to his medical condition was unavailing; because the habeas court never ruled on the issue of the admissibility with regard to the medical records, this court was unable to reach the merits of that issue on appeal.

3. The petitioner could not prevail on his claim that his trial counsel was ineffective in failing to pursue a motion to dismiss based on the statute of limitations in (§ 54-193a); because there was no credible evidence to show the actual commencement of the statute of limitations in March, 1999, in that there was no credible evidence to show that the victim had notified the requisite authorities in 1999, it was not unreasonable for the petitioner's trial counsel to conclude that a motion to dismiss, on that basis, was not worth pursuing, as it was not applicable to the present case.
4. The petitioner's claim that trial counsel was ineffective when he failed to object to allegedly harmful, inflammatory language in the state's substitute information that was read by the court clerk to the jury was unavailing; it was plain from the record that inflammatory details of the petitioner's perverse misbehavior came into evidence several times during the trial, and, therefore, there would have been no point in objecting to the recitation of the details underlying the charges, and because that information was adduced during the trial, the silence of the petitioner's trial counsel during the introductory part of the trial caused the petitioner no harm.
5. The petitioner could not prevail on his claim that his trial counsel was ineffective when he allegedly failed to assist the petitioner in freely choosing whether to testify in his own defense; the habeas court credited trial counsel's testimony that he had advised the petitioner against testifying and also that, ultimately, it was the petitioner's decision to make, and the petitioner admitted during the canvass that he was informed of the pros and cons about testifying from his trial counsel, that he was advised by his trial counsel not to testify and that he understood it was his right to testify, which supported a determination that it was the petitioner's decision not to take the stand at his own criminal trial in conjunction with the sound legal advice of his attorney.
6. The habeas court properly determined that the petitioner's trial counsel was not deficient in failing to pursue a hearing pursuant to *Franks* v. *Delaware* (438 U.S. 154) in the pretrial stage of the criminal proceedings with regard to a warrant that authorized the arrest of the petitioner and the omission from the warrant of certain relevant exculpatory information; the habeas court found that because the police obtained the evidence before the petitioner's arrest, any defects relative to the arrest warrant had no bearing on the admissibility of the previously acquired evidence so as to taint the fairness of the petitioner's criminal trial, the petitioner adduced no credible evidence to demonstrate intentional or reckless omission of material facts by the police or prosecutor, and the petitioner's criticisms of the arrest warrant affidavit appeared trivial and inconsequential toward the finding of probable cause, as a review of the affidavit showed an abundance of incriminating evidence against the petitioner.

7. The petitioner's claim that his trial counsel provided ineffective assistance when he failed to obtain the victim's education records in order to undermine her allegations was unavailing; even if trial counsel was deficient in this regard, the petitioner was not prejudiced thereby, as he was unable to produce any records or evidence regarding the victim's school attendance to undermine her testimony that she sometimes arrived late because of the petitioner's sexual abuse, and the petitioner did not argue, nor did he demonstrate, any harm that was caused to him by the absence of the records.

8. The petitioner could not prevail on his claim that his trial counsel was ineffective in failing to file a motion to suppress evidence concerning photographs taken of the petitioner's apartment during an illegal search; this court disagreed with the notion that an attorney's decision to forgo a motion to suppress nonincriminating evidence, stemming from a not yet determined illegal search, constituted ineffective assistance of counsel under *Strickland* v. *Washington* (466 U.S. 668), nor could defense counsel be faulted for electing not to allocate time to the pursuit of eliminating evidence that, on its face, was not prejudicial to his client.

Argued September 23—officially released December 31, 2019

Procedural History

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland, where the matter was tried to the court, *Sferrazza*, *J.*; judgment denying the petition, from which the petitioner, on the granting of certification, appealed to this court; thereafter, the court, *Sferrazza*, *J.*, denied in part the petitioner's motion for an articulation; subsequently, this court granted the petitioner's motion for review but denied the relief requested therein. *Reversed in part*; *judgment directed.*

Michael W. Brown, for the appellant (petitioner).

James A. Killen, senior assistant state's attorney, with whom, on the brief, were *Maureen Platt*, state's attorney, and *Eva Lenczewski*, supervisory assistant state's attorney, for the appellee (state).

Opinion

BISHOP, J. The petitioner, Geovanny Zillo, appeals from the judgment of the habeas court denying his revised amended petition for a writ of habeas corpus.

On appeal, the petitioner claims that the court (1) abused its discretion by denying his request to "unwithdraw" a claim and present medical evidence regarding his genitals, (2) improperly concluded that he was not denied the effective assistance of trial counsel, and (3) improperly concluded that he was not denied the effective assistance of appellate counsel. We conclude that the habeas court did not have subject matter jurisdiction over the third claim and dismiss that portion of the appeal.[1] We affirm the judgment of the habeas court as to the remaining two claims.

The following facts and procedural history are relevant to our resolution of the petitioner's appeal. In 2009, following a jury trial, the petitioner was convicted of three counts of sexual assault in the first degree, one count of attempt to commit sexual assault in the first degree, and four counts of risk of injury to a child. *State* v. *Zillo*, 124 Conn. App. 690, 691, 5 A.3d 996 (2010). The petitioner received a total effective sentence of thirty years of imprisonment, execution suspended after fifteen years, with fifteen years of probation. Id., 693. This court's opinion in the petitioner's direct appeal sets forth the following facts: "The family of the eleven year

[1] In his revised amended petition, the petitioner alleges that his appellate counsel's deficient performance prevented him from filing a timely petition for certification to appeal this court's affirmance of his judgment of conviction to our Supreme Court pursuant to Practice Book § 84-4. Notwithstanding that the petition for certification would have been late, because the petitioner never attempted to file a motion for permission to file a late petition for certification, the habeas court lacked jurisdiction to decide this claim. See *Janulawicz* v. *Commissioner of Correction*, 310 Conn. 265, 271–72, 77 A.3d 113 (2013) ("[w]e conclude that, despite the petitioner's failure to comply with the time period set forth in the Practice Book § 84-4 (a), the petitioner's habeas petition is not ripe for adjudication in view of the fact that the petitioner's injury is contingent on this court's denial of a motion to file a late petition for certification, a motion that the petitioner has never filed, because he will not suffer such an injury if this court were to grant his request for permission to file an untimely petition for certification to appeal"). Therefore, we will address only the petitioner's two other claims on appeal.

old victim in this case, all of whom emigrated to the United States from China, owned a Chinese restaurant that the [petitioner] frequented during 1998 and early 1999. During this time, the [petitioner] became friendly with the victim and her family, often assisting the children with their homework and with the English language. The [petitioner] was invited to family gatherings and holiday celebrations, and he purchased several gifts for the family, including a computer for the children and a $500 translator. The victim's parents eventually became concerned about the attention that the [petitioner] was showing the victim, especially his attempts to speak with her privately, and the family told the [petitioner] that he no longer was welcome at the restaurant. Accordingly, the [petitioner] stopped going to the restaurant.

"After the [petitioner] stopped going to the restaurant, he began to follow the victim and to pick her up as she waited for the bus to take her to school. The [petitioner] would take the victim to a house where he would sexually assault her. He also took her to a wooded area to take photographs of her, and he took her to a McDonald's restaurant. The victim testified that the [petitioner], whom she called G-Bunny, repeatedly sexually assaulted her when she was eleven years old. The [petitioner] made the victim remove her clothing, kissed her breasts, performed oral sex on her, digitally penetrated her vagina and her anus, licked her anus, made her hold his erect penis in her hand, made her urinate into his mouth so that he could taste her urine to see if it was as 'sweet' as she and attempted to make her perform oral sex on him. The [petitioner] instructed the victim not to tell anyone about his behavior, and he told her that he wanted to marry her. He also gave her money.

"In 2005 or 2006, the [petitioner] established an account on the social website Myspace.com (MySpace) using the name AnnaLuckyOne, where he purported

to be an Asian female and included a photograph of an unknown Asian female on his profile. He soon contacted the victim, who also had a MySpace account, and he attempted to establish a relationship with the victim by telling her that he was a young Asian girl. The [petitioner], acting as this young Asian girl, subsequently told the victim that the [petitioner] was Anna-LuckyOne's friend and asked if she would be willing to resume a friendship with him. Suspicious that her new friend really was the [petitioner] and not another young Asian female, the victim panicked and went to see her school counselor and her dormitory parent in whom she confided that the [petitioner] previously had sexually assaulted her. Soon thereafter, the victim filed a police report, and a warrant was issued for the [petitioner]'s arrest. The [petitioner] was tried on eight counts as set forth earlier in this opinion; he elected to be tried by a jury.

"The jury found the [petitioner] guilty on all eight counts as charged. The court accepted the jury's verdict and sentenced the [petitioner] to a total effective term of thirty years imprisonment, execution suspended after fifteen years, with fifteen years of probation." (Footnotes omitted.) Id., 692–93. The petitioner appealed his conviction to this court, which affirmed the judgment of the trial court.[2] Id., 706.

[2] The petitioner brought a direct appeal from his convictions before this court in 2010. See *State* v. *Zillo*, supra, 124 Conn. App. 691. In that appeal, the petitioner pursued two claims: (1) the trial court erroneously admitted 2188 photographs into evidence and (2) he was denied his constitutional right to a fair trial on the basis of prosecutorial impropriety. Id., 691–92. Specifically, the petitioner argued that the photographs were irrelevant to the charges he faced and highly prejudicial, and that the jury "could have concluded that because the [petitioner] possessed these [photographs] in 2006, he ha[d] a proclivity to Asian women and, because of that proclivity, he committed the charged offenses . . . ." (Internal quotation marks omitted.) Id., 694. With regard to the prosecutorial impropriety claim, the petitioner argued that "[t]he prosecutor made numerous statements to the jury during the state's closing argument that amounted to prosecutorial [impropriety] because the prosecutor vouched for the credibility of one of the state's

Shortly thereafter, the petitioner, acting as a self-represented party, filed a petition for a writ of habeas corpus and, after counsel had been appointed, he subsequently filed a revised amended petition for a writ of habeas corpus (revised amended petition). During the habeas trial, the petitioner asserted twelve claims that his criminal trial defense counsel, Attorney Jerry Attanasio, had provided ineffective assistance during his underlying criminal trial, as well as an ineffective assistance claim against his appellate counsel which, as previously noted, is not properly before this court. The habeas court denied all of the petitioner's claims. The petitioner filed a petition for certification to appeal the denial of his revised amended petition, which the court granted. This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

The petitioner first claims that the habeas court abused its discretion by (1) denying his request to "unwithdraw" a claim that he raised in his habeas petition that defense counsel rendered deficient performance by failing to present evidence related to a medical condition of his genitals that would have been crucial to his defense and (2) excluding evidence related to his medical condition and making adverse findings based upon the evidence that the petitioner sought to rebut with the medical evidence. We disagree.

A

We first address the petitioner's claim that the court abused its discretion by denying his request to "unwithdraw" a claim concerning the features of his genitals.

key witnesses; his statements appealed to and inflamed the jury's emotions; and, his comments distracted the jurors from making their own independent judgment based on the evidence properly before the court." (Internal quotation marks omitted.) Id., 700–701. This court affirmed the judgment of the trial court, holding that the petitioner failed to demonstrate harmfulness with respect to the photographic evidence and that the comments made by the prosecutor were of the type previously deemed proper by our Supreme Court. Id., 700, 706.

More specifically, the petitioner argues that the court should have treated the request to "unwithdraw" the claim set forth in paragraph 28 (R) of his revised amended complaint as a request to amend the pleadings to conform to the evidence. We are not persuaded.

We first set forth the standard of review and applicable legal principles that guide our analysis. With regard to a withdrawn claim, "[t]he trial court may exercise its discretion . . . to deny the reinstatement of a claim that has been expressly withdrawn. Only where the trial court has abused that discretion will this court order a reversal. [E]very reasonable presumption in favor of the proper exercise of the trial court's discretion will be made. . . . Demonstrating that the trial court has abused its discretion is a difficult task." (Citation omitted; internal quotation marks omitted.) *McKnight* v. *Commissioner of Correction*, 35 Conn. App. 762, 767–68, 646 A.2d 305, cert. denied, 231 Conn. 936, 650 A.2d 173 (1994).

The following additional procedural history is relevant to our review of the petitioner's claim. The habeas trial lasted for three days; however, the first and second days were nearly *two months* apart. At the beginning of the habeas trial, on October 6, 2017, the petitioner informed the court that he was withdrawing several of his claims, including the claim set forth in paragraph 28 (R) of his revised amended petition alleging that his right to effective assistance of trial counsel was violated because trial counsel's performance was deficient in that "[counsel] failed to present the testimony of John Antonucci, M.D., or other evidence of unusual features of the petitioner's genitalia . . . ." On the second day of trial, November 29, 2017, the petitioner requested that the court permit him to "unwithdraw" paragraph 28 (R), averring that there was information from the first day of trial that he did not expect to be presented in evidence and, as a result, he wanted to "pursue [the]

issue at least somewhat." The court denied the request to reinstate that claim, recognizing that the habeas proceeding had "already gone through ten witnesses" and that "[i]t would be very difficult to reconstruct how those witnesses would have been questioned or not questioned." Additionally, the court added that "it would be very unfair to reopen it and after we've had the attorney, trial attorney, the appellate attorney, [and] the expert witness [testify] . . . . [The petitioner] made the choice and sought to withdraw it."

We are not persuaded that the habeas court abused its discretion when it denied the petitioner's request to "unwithdraw" paragraph 28 (R). The court reasonably recognized that almost all witnesses already had been examined and, while not all of them would have been needed to address the claim set forth in paragraph 28 (R), it would still be unfair to recall some witnesses after their dismissal. Additionally, although the habeas court did not specifically address the issue of time, we are cognizant of the fact that the trial already had spanned two months. To resurrect a claim would require additional preparation and time to explore that claim with the previous witnesses. Furthermore, the petitioner waited nearly two months after the first day of trial to bring forth his request to "unwithdraw," something he could have explored at the end of the first day of trial or shortly thereafter. Lastly, as the habeas court observed, it was the petitioner who originally brought the claim forward and then subsequently elected to withdraw it.

With regard to his argument that the habeas court should have treated his request to "unwithdraw" as a motion to amend the pleadings to conform to the evidence, the petitioner has not provided any support for this argument and, accordingly, we decline to review it as it is inadequately briefed. See *State* v. *Buhl*, 321 Conn. 688, 724, 138 A.3d 868 (2016) ("[w]e are not required to review issues that have been improperly

presented to this court through an inadequate brief" [internal quotation marks omitted]).

For the foregoing reasons, we conclude that the habeas court did not abuse its discretion when it denied the petitioner's request to "unwithdraw" paragraph 28 (R).

B

Next, the petitioner argues that the habeas court should have allowed into evidence documents that related to his medical condition.[3] The petitioner asserts that the court abused its discretion by not permitting him to introduce medical evidence related to the condition of his genitals. He argues that such evidence would have been relevant to a viable defense, which should have been presented at the petitioner's criminal trial, and that if such evidence had been introduced, it would have rebutted the testimony of trial counsel that the petitioner had refused to cooperate with the investigation into the issue. The petitioner further argues that this evidence was also relevant to several other claims he raised. Based on our review of the record, we are unable to assess this claim because it appears that the habeas court never ruled on the proffered evidence relating to the petitioner's medical condition.

"It is elementary that to appeal from the ruling of a trial court there must first be a ruling." *State* v. *Kim*, 17 Conn. App. 156, 157, 550 A.2d 896 (1988). "[We] . . . will not address issues not decided by the trial court." (Internal quotation marks omitted.) *Lee* v. *Stanziale*, 161 Conn. App. 525, 539, 128 A.3d 579 (2015), cert. denied, 320 Conn. 915, 131 A.3d 750 (2016).

During the second day of trial, the petitioner informed the habeas court that there were a few issues he wanted

[3] According to the habeas trial transcript, the petitioner had "medical records from the doctor that trial counsel said that the petitioner didn't attend appointments . . . [they] are from the time of around the criminal trial or the middle of the criminal trial."

to review before the trial continued, namely the "issue of medical records or medical condition that the petitioner has." The petitioner then moved right into a discussion of the withdrawn paragraph 28 (R). As the petitioner continued his presentation to the habeas court, his habeas counsel stated: "[M]y simple request is to unwithdraw [paragraph 28 (R)] . . . ." After hearing objections from the state's attorney, the habeas court ruled that it was "going to deny the request to reinstate [paragraph 28 (R)]." After the court's ruling, the petitioner continued, in an effort to try "to make [his] record," and primarily focused his arguments on why the claim in paragraph 28 (R) should be "unwithdrawn." At the conclusion of the petitioner's argument on this claim, the court opined, as previously noted, "you . . . sought to withdraw [the claim]."

It is apparent from the record that the habeas court never ruled, from the bench or in its memorandum of decision, as to the issue of allowing into evidence documentation on the petitioner's medical condition. The habeas court's ruling specifically addressed the petitioner's attempt to "unwithdraw" paragraph 28 (R) of his revised amended petition and nothing more. Because the habeas court did not rule on the issue of admissibility with regard to the medical records, we are unable to reach the merits of that issue on appeal.

II

We next turn to the petitioner's claim that the "habeas court erred by finding that the petitioner's right to the effective assistance of counsel was not violated at the petitioner's criminal trial." More specifically, the petitioner claims that trial counsel, Attorney Jerry Attanasio, failed to (1) pursue dismissal of the information under the applicable statute of limitations; (2) object to inflammatory information; (3) assist the petitioner in freely choosing whether to testify in his own defense;

(4) pursue a *Franks*[4] hearing; (5) obtain the education records of the victim, R;[5] and (6) file a motion to suppress evidence. We address each claim in turn.

We begin our analysis with the well established standard of review. "A petitioner's right to the effective assistance of counsel is guaranteed by the sixth and fourteenth amendments to the United States constitution, and by article first, § 8, of the Connecticut constitution. . . . In a habeas appeal, this court cannot disturb the underlying facts found by the habeas court unless they are clearly erroneous, but our review of whether the facts as found by the habeas court constituted a violation of the petitioner's constitutional right to effective assistance of counsel is plenary. . . . The habeas judge, as the trier of facts, is the sole arbiter of the credibility of witnesses and the weight to be given their testimony. . . .

"In *Strickland* v. *Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), the United States Supreme Court enunciated the two requirements that must be met before a petitioner is entitled to reversal of a conviction due to ineffective assistance of counsel. First, the [petitioner] must show that counsel's performance was deficient. . . . Second, the [petitioner] must show that the deficient performance prejudiced the defense. . . . Unless a [petitioner] makes both showings, it cannot be said that the conviction . . . resulted from a breakdown in the adversarial process that renders the result unreliable. . . .

"The first component, generally referred to as the performance prong, requires that the petitioner show that counsel's representation fell below an objective

[4] *Franks* v. *Delaware*, 438 U.S. 154, 155–56, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978).

[5] In accordance with our policy of protecting the privacy interests of the victims of sexual abuse and the crime of risk of injury to a child, we decline to identify the victim or others through whom the victim's identity may be ascertained. See General Statutes § 54-86e.

standard of reasonableness. . . . In *Strickland*, the United States Supreme Court held that [j]udicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a [petitioner] to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proven unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. . . . A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the [petitioner] must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. . . . [C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. . . .

"[T]he Constitution guarantees criminal defendants only a fair trial and a competent attorney. It does not insure that defense counsel will recognize and raise every conceivable constitutional claim. . . . The [petitioner] is also not guaranteed assistance of an attorney who will make no mistakes. . . . What constitutes effective assistance [of counsel] is not and cannot be fixed with yardstick precision, but varies according to the unique circumstances of each representation." (Citation omitted; internal quotation marks omitted.) *Jackson* v. *Commissioner of Correction*, 149 Conn. App. 681, 690–92, 89 A.3d 426 (2014), appeal dismissed, 321 Conn. 765, 138 A.3d 278, cert. denied sub nom. *Jackson* v. *Semple*, U.S. , 137 S. Ct. 602, 196 L. Ed. 2d 482 (2016).

"An ineffective assistance of counsel claim will succeed only if both prongs [of *Strickland*] are satisfied. . . . It is axiomatic that courts may decide against a petitioner on either prong [of the *Strickland* test], whichever is easier. . . . In its analysis, a reviewing court may look to the performance prong or the prejudice prong, and the petitioner's failure to prove either is fatal to a habeas petition." (Citation omitted; internal quotation marks omitted.) *Echeverria* v. *Commissioner of Correction*, 193 Conn. App. 1, 9–10, A.3d , cert. denied, 333 Conn. 947, A.3d (2019).

A

First, the petitioner claims that the habeas court erred by not finding that his trial counsel provided ineffective assistance during his criminal trial when Attorney Attanasio failed to pursue a motion to dismiss based on the statute of limitations set forth in General Statutes § 54-193a.[6] The petitioner asserts that Attorney Attanasio knew that there might have been a statute of limitations issue and that his testimony at the habeas trial confirmed as much when he admitted to knowing about a confrontation between the petitioner and police during a traffic stop in 1999, during which police allegedly told the petitioner to stay away from R and her family because of allegations of sexual misconduct. Attorney Attanasio confirmed that *if* he felt that he could have submitted a motion to dismiss based on the statute of limitations, he "would absolutely [have] file[d] that."

[6] General Statutes § 54-193 provides in pertinent part: "Notwithstanding the provisions of section 54-193, no person may be prosecuted for any offense, except a class A felony, involving sexual abuse, sexual exploitation or sexual assault of a minor except within thirty years from the date the victim attains the age of majority or within five years from the date the victim notifies any police officer or state's attorney acting in such police officer's or state's attorney's official capacity of the commission of the offense, whichever is earlier, provided if the prosecution is for a violation of subdivision (1) of subsection (a) of section 53a-71, the victim notified such police officer or state's attorney not later than five years after the commission of the offense."

However, according to his additional testimony, Attorney Attanasio believed that the petitioner's case no longer fell within the statute of limitations; accordingly, Attorney Attanasio did not pursue a motion to dismiss. The petitioner further asserts that he was prejudiced by Attorney Attanasio's failure to pursue dismissal because there was "a reasonable probability that a motion to dismiss would have been successful . . . ." We disagree.

The following additional facts are relevant to the petitioner's claim. The petitioner claimed he was stopped and ticketed for motor vehicle violations on March 11, 1999. According to the petitioner, during that time, he was interrogated for over two hours while he remained in his car. He identified three police officers who participated in the interrogation: Howard Northrop, Dana Lent, and Richard Binkowski. Officers Northrop and Lent testified, however, that they had no recollection of such an interrogation, while Trooper Binkowski testified that he never interacted with the petitioner on that date; nor did he possess any knowledge about R and incidents related to sexual assault.

In its opinion, the habeas court did not credit the petitioner's testimony nor did it find such an event, if it did occur, to be sufficient to implicate the running of the statute of limitations under § 54-193a. The habeas court relied, correctly, on our Supreme Court's decision in *State* v. *George J.*, 280 Conn. 551, 565–66, 910 A.2d 931 (2006), cert. denied, 549 U.S. 1326, 127 S. Ct. 1919, 167 L. Ed. 2d 573 (2007). There, the court held that the five year limitation in § 54-193a does not run unless "the *actual* victim notifies the specified authorities." (Emphasis added.) Id., 566. In the present case, there is no credible evidence that R notified the requisite authorities in 1999; on the contrary, she testified that she first spoke to law enforcement about the petitioner in 2006.

Because there was no credible evidence to show the actual commencement of the statute of limitations under § 54-193a in March, 1999, it was not unreasonable for Attorney Attanasio to conclude that a motion to dismiss, on that basis, was not worth pursuing, as it was not applicable to the present case. Therefore, under the first *Strickland* prong, we do not find that Attorney Attanasio's representation fell below an objective standard of reasonableness with regard to the petitioner's first claim.

B

Next, the petitioner claims that the habeas court erred by not finding that his trial counsel provided ineffective assistance when Attorney Attanasio failed to object to the harmful, inflammatory language in the state's substitute information read by the court clerk to the jury. Specifically, the petitioner argues that the habeas court "incorrectly concluded (1) only one part of the information was unnecessarily inflammatory, and (2) [that] later testimony about inflammatory details cured any error in their inclusion in the information." The petitioner further asserts he was prejudiced by the reading of graphic details in the information to the jury because "before any evidence was presented, without an opportunity for the defense to rebut those inflammatory details with a statement by the defense, the prosecutor started its case at an unfair advantage."

The following additional facts as found by the habeas court are relevant to the petitioner's claim. Initially, the state charged the petitioner with fifteen counts that involved risk of injury to a minor, sexual assault in the first degree, and attempted sexual assault in the first degree. The habeas court found it "appropriate and pragmatic" for the state to provide details of each crime to the jury in order to appropriately distinguish which counts pertained to which act and that the "level of

detail was especially necessary because the date of all the offenses was the same . . . .'' However, the habeas court took issue with the information of then count four, which ''averred that the petitioner disrobed the eleven or twelve year old victim . . . [and] that count unnecessarily particularized one of the removed garments as 'white Winnie-the-Pooh underwear.' '' Despite finding the reference to Winnie-the-Pooh as ''superfluous and potentially inflammatory,'' the habeas court held that it was harmless because those specific details came up several times throughout the trial in the form of (1) testimony from R ''that the petitioner had a predilection for removing the Winnie-the-Pooh underwear from the victim'' and (2) the petitioner gave R gifts related to Winnie-the-Pooh.

As previously noted, the second prong of *Strickland*, the prejudice prong, provides that in order to effectively prove ineffective assistance of counsel, a petitioner ''must show that the deficient performance prejudiced the defense.'' (Internal quotation marks omitted.) *Jackson* v. *Commissioner of Correction*, supra, 149 Conn. App. 691. Under the prejudice prong, ''counsel's deficient performance prejudice[s] the defense [if] there was a reasonable probability that the outcome of the proceedings would have been different had it not been for the deficient performance. . . . The second prong is satisfied if it is demonstrated that there exists a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'' (Citation omitted; internal quotation marks omitted.) *Crocker* v. *Commissioner of Correction*, 126 Conn. App. 110, 116, 10 A.3d 1079, cert. denied, 300 Conn. 919, 14 A.3d 333 (2011). Without showing harm, a petitioner cannot prove ineffective assistance of counsel. See id.

In the present case, the petitioner's core argument involving harm is that the inflammatory language in

the information read to the jury allowed the state to shortcut its presentation of evidence and that this early recitation to the jury gave the state an unfair advantage. The record does not support this claim. As the record makes plain, inflammatory details of the petitioner's perverse misbehavior came into evidence several times during the trial. Therefore, there would have been no point in objecting to the recitation of the details underlying the charges. Additionally, because this information was adduced during the trial, counsel's silence during the introductory part of the trial caused the petitioner no harm. Accordingly, this claim fails.

C

The petitioner's third claim of ineffective assistance of counsel is that Attorney Attanasio failed to assist him in freely choosing whether to testify in his own defense. To support this claim, he points to Attorney Attanasio's advice that the petitioner should not testify because the state produced an electronic disk, the contents of which were unknown, and the fact that Attorney Attanasio failed to put the disk in evidence or alert the court to the fact that it could not be accessed. The petitioner posits that these actions undermined his ability to make a reasoned decision about testifying at his criminal trial. He argues that his ability to testify "coherently and competently" at the habeas trial is evidence that Attorney Attanasio failed to properly protect the petitioner's decision to testify and, thus, he was prejudiced under *Strickland*. We are not persuaded.

The following additional facts are relevant to the petitioner's claim. During the habeas trial, the petitioner testified that (1) he created a fake internet identity via MySpace in order to lure R into a series of online message exchanges and (2) he did so in order to further pursue R and inquire about her allegations of sexual abuse. Additionally, Attorney Attanasio testified that

the petitioner did not want to testify about or present evidence with regard to his genitalia. Attorney Attanasio also testified that he was hesitant about the petitioner testifying because he did not think the petitioner's explanations made any sense or that a jury would find him believable. Despite preparing the petitioner until 3:30 a.m. on the morning of his intended testimony, Attorney Attanasio was not confident that taking the stand was the best decision for the petitioner. That belief was strengthened by the state's production of the inaccessible disk just before that day's proceedings were set to begin.

Several times during the habeas trial, Attorney Attanasio testified that he did, in fact, advise the petitioner against testifying but that, ultimately, it was the petitioner's decision to make. The habeas court recognized in its decision that "[t]he trial judge diligently canvassed the petitioner concerning his decision [not to testify]. The petitioner acknowledged that he understood that the choice was his to make, that he had discussed the options with Attorney Attanasio, and that defense counsel had advised him as to the risks and benefits attendant to each option."

"[T]he appropriate vehicle for claims that the defendant's right to testify was violated by defense counsel is [through] a claim of ineffective assistance of counsel [pursuant to] [*Strickland*]. . . . As is the case in any such claim, the burden [is] on the petitioner to show that he was not aware of his right to testify . . . ." (Citation omitted; internal quotation marks omitted.) *Rodriguez* v. *Commissioner of Correction*, 35 Conn. App. 527, 537, 646 A.2d 919, cert. denied, 231 Conn. 935, 650 A.2d 172 (1994). Before petitioners can claim they have been deprived of the right to testify, they "are required to take some affirmative action regarding [that] right . . . ." Id. In *Rodriguez*, this court concluded that when a petitioner never expressed his desire to testify

at trial and his counsel provided sound advice with regard to the pros and cons of the decision to testify, the petitioner could not then prevail on his claim that counsel's performance was deficient. Id., 536–37.

In the present case, the habeas court credited Attorney Attanasio's testimony that he advised the petitioner against testifying and also that, ultimately, it was the petitioner's decision to make. Additionally, during the canvass, the petitioner admitted that he was informed of the pros and cons about testifying from Attorney Attanasio, he was advised by Attorney Attanasio not to testify, and that he understood it was his right to testify. We conclude that it was the petitioner's decision not to take the stand at his own criminal trial in conjunction with the sound legal advice of his attorney. Without other evidence to show that Attorney Attanasio's advice against testifying was akin to undermining or preventing the petitioner from testifying, we are not persuaded that Attorney Attanasio's actions resulted in ineffective assistance of counsel.

D

The petitioner's fourth claim of ineffective assistance of counsel is that Attorney Attanasio failed to pursue a *Franks* hearing, in the pretrial stage of the criminal proceedings, with regard to (1) a warrant that authorized the arrest of the petitioner and (2) the omission from the arrest warrant of relevant exculpatory information from the online messages between R and the petitioner, in which R denied understanding what "AnnaLuckyOne"[7] was discussing but later claimed it was a reference to a urine fetish. According to the petitioner, the arrest warrant affidavit contained unreliable information from an unrelated incident where the petitioner was an uncharged person of interest.

[7] "AnnaLuckyOne" was the MySpace account name the petitioner used to connect with R.

The petitioner argues that the habeas court incorrectly concluded that the legitimacy of the conviction remained intact despite the warrant lacking probable cause and that the court should have focused on whether a *Franks* motion would have been successful if competently pursued by Attorney Attanasio before the trial began. He also argues that if a proper *Franks* hearing had been conducted, there was a reasonable probability he would have been able to convince the court that there was not, in fact, probable cause to arrest the petitioner. We disagree.

"In [*Franks* v. *Delaware*, 438 U.S. 154, 155–56, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978)], the United States Supreme Court held that 'where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the [f]ourth [a]mendment requires that a hearing be held at the defendant's request.' . . .

As our Supreme Court has explained, before a defendant is entitled to a *Franks* hearing, the defendant must '(1) make a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit; and (2) show that the allegedly false statement is necessary to a finding of probable cause.' " (Citation omitted.) *State* v. *Crespo*, 190 Conn. App. 639, 651, 211 A.3d 1027 (2019).

The habeas court articulated three reasons for not finding trial counsel ineffective with regard to this claim. The court stated: "First, the legitimacy of a conviction remains intact despite the fact that the arrest warrant application that initiated the criminal proceeding lacked probable cause . . . . That is, an unlawful

arrest does not require dismissal of criminal charges, unless that illegality impaired the fairness of a subsequent trial . . . . In the petitioner's case, the salient evidence seized by the police was pursuant to a search warrant which predated the issuance and execution of the arrest warrant. That evidence included the petitioner's laptop computer, an external hard drive, and photographs of the petitioner's car and home. Also, the police interviewed the petitioner in conjunction with execution of the search warrant, and the petitioner revealed certain information used against him at his trial.

"Because the police obtained this evidence before his arrest, any defects relative to the arrest warrant had no bearing on the admissibility of the previously acquired evidence so as to taint the fairness of his criminal trial.

"Secondly, in order for Attorney Attanasio to seek a *Franks* hearing, he needed to harbor a good faith belief that he could present a substantial showing that the police affiants intentionally submitted a false or misleading arrest warrant application, or did so with reckless disregard, as to material matters pertinent to a probable cause determination by the issuing authority . . . . [The petitioner] submits that relevant information was intentionally or recklessly left out in order to mislead the judge.

"The court finds that the petitioner adduced no credible evidence to demonstrate intentional or reckless omission of material facts by the police or prosecutor. . . .

"Thirdly . . . a *Franks* hearing is only required if the correction of the misleading information would deprive the affidavit of sufficient facts to establish probable cause. In other words, if the unsullied portions of the affidavit still justify a finding of probable cause, no hearing is warranted . . . .

"A review of the arrest warrant affidavit shows an abundance of incriminating evidence against the petitioner even if one considers the information that the petitioner argues was missing. The victim personally described in great detail to the police the various sexual, predatory, and injurious acts performed by the petitioner. The petitioner's own statement admitted engaging in a ruse to entice the victim to communicate with him, albeit unknowingly. The petitioner's criticisms of the affidavit appear trivial and inconsequential toward the finding of probable cause." (Citations omitted; emphasis omitted; internal quotation marks omitted.)

On the basis of our review of the record, we agree with the analyses and conclusions of the habeas court. Therefore, this claim fails.

E

The petitioner's fifth claim of ineffective assistance of counsel is that Attorney Attanasio failed to obtain R's education records. The petitioner argues that Attorney Attanasio should have subpoenaed R's education records in order to undermine her allegations that the petitioner would pick her up while she was on her way to school, for the purpose of sexually abusing her. He further argues that his trial attorney expert, who testified at the habeas trial, agreed that Attorney Attanasio was deficient in his performance for failing to obtain R's records. Lastly, he argues that if Attorney Attanasio had subpoenaed those records and they were not produced, the trial court would have been able to instruct the jury about the nonavailability of those records, pursuant to *State* v. *Morales*, 232 Conn. 707, 657 A.2d 585 (1995), which would have allowed the jury to draw inferences favorable to the petitioner, creating a reasonable probability of a different outcome of the trial. We are not persuaded.

First, we note the petitioner's misplaced reliance on our Supreme Court's decision in *Morales*. In *Morales*, our Supreme Court addressed the following two issues: "(1) what degree of protection the due process clause of our state constitution offers to criminal defendants when the police fail to preserve potentially useful evidence, and (2) what remedy should follow if the defendant has established that a failure to preserve such evidence has violated his state constitutional rights." Id., 713. *Morales* primarily concerns the failure of police to preserve potentially exculpatory evidence. See id., 728–29. In the present case, the petitioner's trial attorney elected not to obtain certain records that may or may not have been available at the time of trial or assisted the petitioner in his defense. We, therefore, find *Morales* to be inapposite to the present case.

Second, even if we were to conclude that Attorney Attanasio's failure constituted a violation of the performance prong under *Strickland*, we are unpersuaded that the petitioner was prejudiced as a result. In its decision, the habeas court concluded that the petitioner failed to establish ineffective assistance of counsel as to this claim because the petitioner was unable to produce *any* records or evidence regarding R's school attendance to undermine her testimony that she sometimes arrived late because of the petitioner's sexual abuse. Additionally, the petitioner does not argue, nor does he demonstrate, any harm that was caused to him by the absence of these records. Without R's school records, or other evidence related to those records, we are not in a position to decide whether Attorney Attanasio's decision not to obtain them was prejudicial because those records could have just as easily affirmed R's claims as they could have affirmed the claims of the petitioner. We refuse to engage in such speculation. Therefore, we disagree with the petitioner that Attorney Attanasio's failure to obtain R's school records constitutes ineffective assistance of counsel.

F

The petitioner's final claim of ineffective assistance of counsel is that Attorney Attanasio failed to file a motion to suppress evidence with regard to photographs taken of the petitioner's apartment during an illegal search. The petitioner asserts that a search warrant executed by the investigating authorities was for 267 Old Town Farm Road in Woodbury, which is the address of his father, and that the petitioner's apartment is a "fully independently contained apartment that was attached to the main structure" of his father's residence. It is the petitioner's contention that the search warrant was illegal because "[t]he investigating authority did not obtain a search warrant that specified the petitioner's apartment"; therefore, Attorney Attanasio, who was aware of this issue, should have moved to suppress evidence of the seized photographs. The petitioner posits that, notwithstanding the fact that no incriminating evidence was found in the apartment, the state's reference to the messiness of his apartment through the photographs, was prejudicial because they reflected unfavorably on him "in general." The habeas court opined that this claim should fail for the lack of persuasive evidence connecting Attorney Attanasio's failure to move to suppress with either component of the *Strickland* test. We agree.

We disagree with the notion that an attorney's decision to forgo a motion to suppress nonincriminating evidence, stemming from a not yet determined illegal search, constitutes ineffective assistance of counsel under *Strickland*. We cannot fault a defense attorney for electing not to allocate time to the pursuit of eliminating evidence that, on its face, is not prejudicial to his client.

The form of the judgment is improper, the judgment of the habeas court is reversed only with respect to the petitioner's ineffective assistance of appellate counsel

claim and the case is remanded with direction to render judgment dismissing that claim for lack of jurisdiction; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

U.S. BANK NATIONAL ASSOCIATION, TRUSTEE *v.* DALPHINE BENNETT ET AL.
(AC 42128)

Alvord, Prescott and Flynn, Js.

Syllabus

The plaintiff bank, B Co., sought to foreclose a mortgage on certain real property owned by the defendant D, who filed special defenses and counterclaims, alleging, inter alia, vexatious litigation. Specifically, D alleged that a previous foreclosure action brought against D by B Co.'s predecessor in interest, which concerned the same property, was dismissed in 2009 for failure to establish probable cause with respect to the chain of custody of the loan, and that B Co.'s present action, without evidence of loan assignment documents demonstrating probable cause to bring the present action, constituted vexatious litigation, as the same counsel who brought the prior foreclosure action also commenced B Co.'s foreclosure action. The trial court granted B Co.'s motion for summary judgment as to liability only on the complaint and on D's counterclaims and, subsequently, rendered judgment of strict foreclosure. On appeal, D claimed, inter alia, that the trial court erred in concluding that her vexatious litigation counterclaim was barred by the statute of limitations (§ 52-577). *Held:*

1. The trial court properly rendered summary judgment as to D's vexatious litigation counterclaim, as such claims may not be brought until the underlying action that is the source of the alleged misconduct has concluded in the claimant's favor; contrary to D's claim that her counterclaim was centered on a combination of the dismissal of the 2009 foreclosure action and the commencement of the present action, D's vexatious counterclaim was based on conduct occurring in the present foreclosure action, and therefore, D's counterclaim was premature, as it could not be brought in the same action as that which D claimed was vexatious.
2. The trial court properly rendered summary judgment as to D's abuse of process counterclaim: although D alleged that genuine issues of material fact existed regarding the court's dismissal of the 2009 action for failure to establish a proper chain of custody, the record revealed that the 2009 action was dismissed for dormancy, the trial court properly determined that no genuine issues of material fact existed that the primary purpose

of B Co.'s filing of the present action was to prosecute a foreclosure action and that B Co. was the owner of the note and the mortgage, and D failed to provide any evidence to demonstrate that a genuine issue of material fact existed as to whether B Co.'s primary purpose in filing the foreclosure action was to accomplish a purpose for which such an action was not designed; moreover, because abuse of process claims require that the underlying litigation has been completed and, in the present case, the counterclaim was raised in the action claimed to be an abuse of process, the trial court properly determined that D's abuse of process counterclaim was premature, as the foreclosure action was ongoing at the time the counterclaim was made.

3. D could not prevail on her claim that the trial court improperly relied on B Co.'s uncontested evidence of the debt without holding an evidentiary hearing, as the trial court was not required to hold a hearing where, as here, there was no genuine contest as to the amount of the debt owed; B Co. presented an affidavit of debt, a foreclosure worksheet and an oath of appraisers with its motion for judgment of strict foreclosure, D failed to file an objection nor referenced any evidence contesting the amount of the debt, and although D requested a hearing, the request lacked specificity in that it failed to state a basis for the objection, it was not based on an articulated legal reason or fact, and the court had already rendered summary judgment in favor of B Co. on D's special defenses and counterclaims at the time of the request for a hearing.

Argued September 16—officially released December 31, 2019

Procedural History

Action to foreclosure a mortgage on certain of real property of the named defendant et al., and for other relief, brought to the Superior Court in the judicial district of Hartford, where the defendant Money Market Mortgage, LLC, et al. were defaulted for failure to plead; thereafter, the named defendant filed counterclaims; subsequently, the court, *Dubay, J.*, granted the plaintiff's motion for summary judgment as to liability on the complaint and as to the counterclaims, and the named defendant appealed to this court; thereafter, this court granted, in part, the plaintiff's motion to dismiss the appeal; subsequently, the court, *Dubay, J.*, rendered a judgment of strict foreclosure, and the named defendant filed an amended appeal. *Affirmed.*

Maria K. Tougas, for the appellant (named defendant).

Zachary Grendi, for the appellee (plaintiff).

Opinion

FLYNN, J. The defendant Dalphine Bennett[1] appeals from the entry of a judgment of strict foreclosure in favor of the plaintiff, U.S. Bank National Association as trustee, successor in interest to Bank of America, National Association, as trustee, successor by merger to LaSalle Bank, National Association, as trustee for Bear Stearns Asset Backed Securities Trust 2005-4, Asset-Backed Certificates, Series 2005-4. The defendant claims that the court improperly (1) granted the plaintiff's motion for summary judgment as to the defendant's counterclaims alleging (a) vexatious litigation and (b) abuse of process; and (2) failed to hold an immediate hearing in damages following the entry of summary judgment as to liability only, which violated Practice Book § 17-50. We disagree and, accordingly, affirm the judgment of the trial court.

The following facts and procedural history are relevant to the defendant's claims on appeal. In January, 2016, the plaintiff commenced a foreclosure action against the defendant in which it alleged that a 2004 note was in default and that it sought to accelerate the balance due on the note, to declare the note to be due in full, and to foreclose on the mortgage securing the note. The defendant filed an answer, special defenses, and a two count counterclaim alleging vexatious litigation and abuse of process. The counterclaims centered

[1] The complaint also named as defendants, the city of Hartford; Mark S. Rosenblit, as executor of the estates of Ellen Rosenblit and Jack L. Rosenblit; Money Market Mortgage, LLC; Preferred Financial Services, LLC; Greater Hartford Police FCU also known as Greater Hartford Police Federal Credit Union; and Louise Hunter. The plaintiff filed motions for default against these defendants, which the court granted. We use the term defendant in this opinion to refer to Bennett only.

on a previous 2009 foreclosure action brought by Bank of America on the same 2004 note against the same defendant.

The plaintiff filed a motion for summary judgment as to liability only on the foreclosure complaint and on the counterclaims. The defendant filed an objection in which she argued, inter alia, that genuine issues of material fact exist as to her counterclaims. The defendant attached to her motion a JDNO notice[2] from the 2009 foreclosure action, which indicated that a show cause hearing had been scheduled for March 18, 2013. At the hearing in the 2009 action, a transcript of which was also attached to the defendant's motion, the court had inquired as to the status of the case, and the plaintiff's counsel had indicated that he was waiting on documents from Bank of America. In the 2009 action, the court then ordered the matter dismissed. By an order dated March 18, 2013, in the 2009 action the court stated: "Any motions to open the judgment must state in the first paragraph that the matter needs to be referred to the presiding judge. Motions to open will only be considered by the court when the plaintiff moves for judgment."

In the present action, on September 7, 2018, the court granted the plaintiff's motion for summary judgment and entered judgment in favor of the plaintiff as to liability on the foreclosure complaint and against the defendant on her counterclaims. On September 20, 2018, the defendant appealed from the court's decision granting the plaintiff's motion for summary judgement as to liability only. The plaintiff filed a motion to dismiss the appeal, arguing that the court's decision rendering

[2] "The designation 'JDNO' is a standard notation used to indicate that a judicial notice of a decision or order has been sent by the clerk's office to all parties of record. Such a notation raises a presumption that notice was sent and received in the absence of a finding to the contrary." (Internal quotation marks omitted.) *McTiernan* v. *McTiernan*, 164 Conn. App. 805, 808 n.2, 138 A.3d 935 (2016).

summary judgment as to liability only on the foreclosure complaint was not a final judgment and that the claims on appeal from the judgment on the counterclaim were frivolous. This court ordered the motion "granted as to the portion of the appeal challenging the granting of summary judgment as to liability only on the complaint and denied as to any portion of the appeal challenging the granting of summary judgment on the defendant's counterclaim."

On December 10, 2018, the plaintiff filed a motion for a judgment of strict foreclosure. The defendant filed a "motion for stay/objection to motion for judgment of strict foreclosure" in which she requested a discretionary stay pursuant to Practice Book § 61-11 (f) to the extent that the pending appeal did not trigger the automatic stay provisions of Practice Book § 61-1 (a). The trial court denied the defendant's motion and rendered a judgment of strict foreclosure. The defendant, thereafter, amended her appeal, in which she challenged the judgment of strict foreclosure and summary judgment as to liability only.

I

The defendant first claims that the court improperly granted the plaintiff's motion for summary judgment as to her counterclaims. We disagree.

We set forth our well established standard for reviewing a grant of summary judgment. "Practice Book [§ 17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party seeking summary judgment has the burden of showing the absence of any genuine

issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . A material fact . . . [is] a fact which will make a difference in the result of the case. . . . Finally, the scope of our review of the trial court's decision to grant the [plaintiff's] motion for summary judgment is plenary." (Internal quotation marks omitted.) *Hurley* v. *Heart Physicians, P.C.*, 278 Conn. 305, 314, 898 A.2d 777 (2006).

We now address in turn the defendant's arguments regarding the counterclaims.

A

The defendant argues that the court erred in determining that her vexatious litigation counterclaim was barred by the statute of limitations, General Statutes § 52-577.[3] We are not persuaded.

"The cause of action for vexatious litigation permits a party who has been wrongfully sued to recover damages. . . . [T]o establish a claim for vexatious litigation at common law, one must prove want of probable cause, malice and a termination of suit in the [counterclaim] plaintiff's favor." (Citations omitted; internal quotation marks omitted.) *MacDermid, Inc.* v. *Leonetti*, 158 Conn. App. 176, 183, 118 A.3d 158 (2015).

In count one of the counterclaim in the present action, alleging vexatious litigation, the defendant alleged the following. During the 2009 foreclosure action, she presented a 2013 letter to the court from Bank of America, the plaintiff's predecessor in interest, demonstrating that Bank of America never held a mortgage on the property being foreclosed. The trial court

[3] General Statutes § 52-577 provides: "No action founded upon a tort shall be brought but within three years from the date of the act or omission complained of."

in the 2009 action entered an order requesting Bank of America to "show cause" as to why it was entitled to proceed on the merits. The case was dismissed with prejudice, due to Bank of America's lack of ability to establish probable cause with respect to the chain of custody of the loan. The same counsel who had represented Bank of America in the 2009 action, brought the present foreclosure action in the name of U.S. Bank National Association, as trustee, successor in interest to Bank of America, National Association. In the present foreclosure action, the plaintiff did not attach to the operative complaint any loan assignment documents demonstrating probable cause to bring suit. The defendant alleged that the plaintiff's commencement of the present action, absent evidence of loan assignment documents demonstrating probable cause to bring the present action, constitutes vexatious litigation.

In its decision in the present action, granting the plaintiff's motion for summary judgment as to liability only, the court determined that the plaintiff had established that no genuine issues of material fact existed, that it was the owner of the note and mortgage, that the defendant had defaulted on the note, and that the conditions precedent to foreclosure had been satisfied. The court noted that "[t]he plaintiff is the holder of the note as the plaintiff is in physical possession of the note endorsed in blank. . . . The mortgage was assigned from Argent to Ameriquest, from Ameriquest to Mortgage Electronics Registration Systems, Inc. (MERS), and, prior to the commencement of the present action, from MERS to the plaintiff. . . . Upon the defendant's default for failure to make monthly payments, the plaintiff satisfied the conditions precedent to the enforcement of the mortgage and note by providing the defendant with a notice of default."

In the present action, the court agreed with the plaintiff's argument that it was entitled to summary judgment

on the defendant's vexatious litigation counterclaim because the counterclaim was either time barred to the extent it related to the 2009 action, or premature to the extent that it related to the present action. The court stated: "Inasmuch as the defendant's vexatious litigation counterclaim is based on the present action, there is no genuine issue of material fact that it is premature, as such a claim requires termination of suit in the claimant's favor. Inasmuch as the defendant bases this claim on the prior action, there is no genuine issue of material fact that it is time barred, as the prior action was dismissed on March 18, 2013, and the defendant brought the present counterclaim on December 5, 2017. Even assuming that the maintenance of the prior action served to toll the statute of limitations [§ 52-577] until its dismissal, the present counterclaim was not brought within three years of that date. Accordingly, the plaintiff is entitled to judgment as a matter of law on the defendant's vexatious litigation counterclaim."

On appeal, the defendant essentially argues that her vexatious litigation counterclaim is centered on a combination of the dismissal of the 2009 action and the commencement of the present action and, therefore, is neither premature nor time barred. She contends that the court misinterpreted the nature of her counterclaim, as reflected by "conflicting statements" in the court's decision in which it concluded that the vexatious litigation counterclaim is time barred to the extent that it was based on the prior 2009 action, and premature to the extent that it was based on the present action. She states that the counterclaim was based on the dismissal of the 2009 action followed by the "recommencement" of the present action. She argues that the dismissal of the 2009 action satisfies the "favorable termination" element of her vexatious litigation counterclaim. She further argues that the statute of limitations should not begin to run from the date of the favorable termination

of the 2009 action because under those circumstances, the vexatious litigation claim would be ripe only after the commencement of the second case in spite of that termination. She contends that the trigger date for the statute of limitations should instead be the date of commencement of the second foreclosure action against the same defendant after the favorable termination of the first foreclosure action.

The defendant alleged in her counterclaim in the present action that counsel for the plaintiff "knew or should have known that it lacked the necessary evidence to establish probable cause in the 2009 case and its commencement of the [present] case despite this knowledge, constitutes vexatious litigation." Thus, it is clear that the defendant alleged that conduct occurring in the commencement of the present action is vexatious. The defendant's interpretation of the orders in the 2009 action provide a basis for her allegations concerning the vexatious nature of the present action. Because the defendant alleged that the filing of the present action constituted part of the plaintiff's vexatious conduct, her counterclaim cannot be brought within the present action. "Vexatious litigation claims may not be brought until the underlying action that is the source of the alleged misconduct has concluded. [U]nder Connecticut law, a counterclaim alleging vexatious litigation may not be brought in the same action as that which the defendant claims is vexatious. . . . In suits for vexatious litigation, it is recognized to be sound policy to require the plaintiff to allege that prior litigation terminated in his favor. This requirement serves to discourage unfounded litigation without impairing the presentation of honest but uncertain causes of action to the courts. . . . This favorable termination requirement is an essential element of a vexatious litigation claim." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *MacDermid, Inc.* v. *Leonetti*,

supra, 158 Conn. App. 183–84. The defendant's vexatious litigation counterclaim, therefore, is premature. As such, we need not discuss her statute of limitations argument and conclude that the court properly rendered summary judgment as to the vexatious litigation counterclaim.

B

The defendant next argues that the court improperly entered summary judgment on her abuse of process counterclaim. We disagree.

"An action for abuse of process lies against any person using a legal process against another in an improper manner or to accomplish a purpose for which it was not designed. . . . Because the tort arises out of the accomplishment of a result that could not be achieved by the proper and successful use of process, the Restatement Second (1977) of Torts, § 682, emphasizes that the gravamen of the action for abuse of process is the use of a legal process . . . against another primarily to accomplish a purpose for which it is not designed . . . ." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *Mozzochi* v. *Beck*, 204 Conn. 490, 494, 529 A.2d 171 (1987).

In her abuse of process counterclaim, the defendant alleged that the continued prosecution of the present action by the same law firm that brought the 2009 action constituted an abuse of process because the present plaintiff and its counsel knew or should have known, based on the dismissal of the 2009 action, that it could not prevail on the merits of the present action, which was based on a subsequent assignment of the loan. In its memorandum of decision, the court concluded that "the plaintiff's exhibits demonstrate that there is no genuine issue of material fact that it has filed this action with the primary purpose of prosecuting a foreclosure action. The exhibits submitted by the defendant in

opposition to the plaintiff's motion for summary judgment fail to raise a genuine issue of material fact as to the plaintiff's primary purpose in prosecuting such action. Accordingly, the plaintiff is entitled to judgment as a matter of law on the defendant's abuse of process counterclaim."

The defendant argues that genuine issues of material fact exist regarding whether the court's dismissal of the 2009 action was for failure to establish a proper chain of custody; whether the assignment of the note and mortgage to the plaintiff following the dismissal of the 2009 action was done in an attempt to circumnavigate the court's order in the 2009 action that required the court's permission to proceed; and whether the plaintiff knew that the 2009 action was dismissed because Bank of America could not establish the chain of custody of the loan documents. We are not persuaded.

Contrary to the defendant's assertion that the 2009 action was dismissed on the merits, the record reveals that the 2009 action was dismissed for dormancy. The JDNO notice, which was attached as an exhibit to the defendant's memorandum of law in opposition to the plaintiff's motion for summary judgment, states that the 2009 action was dismissed at the March 18, 2013 hearing. The transcript of that hearing, which also was attached as an exhibit, reveals that the court in the 2009 action asked Bank of America's counsel: "The file reflects that there's been no pleading or action since July, 2011, counsel. Do you know why that is?" The plaintiff's counsel responded, "we are waiting on documents from our client." The court then dismissed the 2009 action.

Moreover, the court in the present action determined that no genuine issues of material fact existed that the primary purpose of the plaintiff's filing of the present

action was to prosecute a foreclosure action, and that the plaintiff was the owner of the note and mortgage. The defendant submitted no evidence to the trial court that raised a genuine issue of material fact that the plaintiff's primary purpose in filing the foreclosure action was to accomplish a purpose for which such an action is not designed. The defendant's allegations in her counterclaim and her speculative arguments made on appeal do not suffice to show that the plaintiff used the present foreclosure action for a purpose for which such an action is not designed. "A party may not rely on mere speculation or conjecture as to the true nature of the facts to overcome a motion for summary judgment. . . . [T]he existence of the genuine issue of material fact must be demonstrated by counteraffidavits and concrete evidence. . . . If the affidavits and the other supporting documents are inadequate, then the court is justified in granting the summary judgment, assuming that the movant has met his burden of proof. . . . When a party files a motion for summary judgment and there [are] no contradictory affidavits, the court properly [decides] the motion by looking only to the sufficiency of the [movant's] affidavits and other proof." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *Little* v. *Yale University*, 92 Conn. App. 232, 234–35, 884 A.2d 427 (2005), cert. denied, 276 Conn. 936, 891 A.2d 1 (2006).

The court properly rendered summary judgment on the abuse of process counterclaim for the additional reason that the counterclaim is premature. "Although abuse of process claims do not include favorable termination as an essential element, the cause of action is still considered premature until the underlying litigation has been completed. . . . In *Larobina* [v. *McDonald*, 274 Conn. 394, 407–408, 876 A.2d 522 (2005)] . . . our Supreme Court concluded that an abuse of process claim was properly dismissed as premature when the

underlying action was still pending. . . . In reaching this conclusion, the court stated: Although we do not suggest that success in the first action would be a prerequisite for an abuse of process claim . . . it is apparent that the eventual outcome of that action and the evidence presented by the parties therein would be relevant in litigating an abuse of process claim. . . . Moreover, allowing the [abuse of process] claim could . . . effectively chill the vigorous representation of clients by their attorneys." (Citation omitted; internal quotation marks omitted.) *MacDermid* v. *Leonetti*, supra, 158 Conn. App. 184–85. In the present case, the counterclaim was raised in the action claimed to be an abuse of process and, thus, the action was ongoing at the time the counterclaim was made. Therefore, as explained by *Larobina* v. *McDonald*, supra, 407–408, and *MacDermid* v. *Leonetti*, supra, 184–85, the abuse of process counterclaim is premature.

For the foregoing reason we conclude that the court properly rendered summary judgment on the defendant's abuse of process counterclaim.

II

The defendant last claims that the court's entry of a judgment of strict foreclosure was improper because the court did not hold an immediate hearing in damages pursuant to Practice Book § 17-50, following the entry of summary judgment as to liability only. We disagree.

Following the court's entry of summary judgment as to liability, the plaintiff filed a motion for judgment of strict foreclosure. The defendant did not file an objection to the plaintiff's calculation of the debt, nor did she file any counter affidavits or other evidence as to the amount of the debt. Instead, the defendant filed a "motion for stay/objection to motion for judgment of strict foreclosure." At the January 2, 2019 hearing on the motion for stay and the motion for judgment of strict foreclosure, the defendant's counsel stated, "we

would like to contest the debt and have a hearing on same." The court inquired, "[a]nd did you file any kind of objection," to which question the defendant's counsel answered, "[y]es. Well, I filed . . . for today an objection and a motion for stay, which I was under the impression would be granted." The plaintiff's counsel suggested that the defendant was using delay tactics. The court noted that the case had been pending for three years and denied the defendant's request for a hearing on the amount of the debt.

"The standard of review of a judgment of foreclosure by sale or by strict foreclosure is whether the trial court abused its discretion. . . . In determining whether the trial court has abused its discretion, we must make every reasonable presumption in favor of the correctness of its action. . . . Our review of a trial court's exercise of the legal discretion vested in it is limited to the questions of whether the trial court correctly applied the law and could reasonably have reached the conclusion that it did." (Internal quotation marks omitted.) *GMAC Mortgage, LLC* v. *Ford*, 144 Conn. App. 165, 186, 73 A.3d 742 (2015). "The interpretive construction of the rules of practice is to be governed by the same principles as those regulating statutory interpretation. . . . The interpretation and application of a statute, and thus a Practice Book provision, involves a question of law over which our review is plenary." (Citations omitted; internal quotation marks omitted.) *Wiseman* v. *Armstrong*, 295 Conn. 94, 99, 989 A.2d 1027 (2010).

The defendant argues that the court erred in failing to hold an immediate hearing in damages, as required by Practice Book § 17-50, following the court's denial of the defendant's motion for a discretionary stay following the entry of summary judgment as to liability only. The defendant contends that the court was required to hold a hearing in damages even though the

defendant had not filed additional documents contesting damages.[4]

Practice Book § 17-50 provides in relevant part: "A summary judgment, interlocutory in character, may be rendered on the issue of liability alone, although there is a genuine issue as to damages. In such case the judicial authority shall order an immediate hearing before a judge trial referee, before the court, or before a jury, whichever may be proper, to determine the amount of the damages." In relating the hearing requirement of Practice Book § 17-50 to the present case, we note a basic tenet of statutory construction that we are required to read Practice Book rules "together when they relate to the same subject matter. . . . Accordingly . . . we look not only [to] the provision at issue, but also to the broader . . . scheme to ensure the coherency of our construction." (Internal quotation marks omitted.) *In re Jusstice W.*, 308 Conn. 652, 663, 65 A.3d 487 (2012).

Case law explains the relevant procedural framework as follows: "Where a foreclosure defendant's liability has been established by summary judgment, all that remains for the court to determine at the judgment hearing is the amount of the debt and the terms of the judgment." *GMAC Mortgage, LLC* v. *Ford*, supra, 144 Conn. App. 186. Practice Book § 23-18 (a) provides that in mortgage foreclosure cases "where no defense as to the amount of the mortgage debt is interposed, such

[4] The defendant also argues that the trial court abused its discretion by not staying the entry of the award of damages and costs in this case until the outcome of this appeal. We decline to review this claim because the proper avenue through which to challenge the trial court's denial of her request for a stay is not on direct appeal, but rather by way of a motion for review. Practice Book § 61-14 provides in relevant part: "The sole remedy of any party desiring the court to review an order concerning a stay of execution shall be by motion for review." "Issues regarding a stay of execution cannot be raised on direct appeal." (Internal quotation marks omitted.) *Housing Authority* v. *Morales*, 67 Conn. App. 139, 140, 786 A.2d 1134 (2001).

debt may be proved by presenting to the judicial authority the original note and mortgage, together with the affidavit of the plaintiff or other person familiar with the indebtedness, stating what amount, including interest to the date of the hearing, is due, and that there is no setoff or counterclaim thereto." "A defense is that which is offered and alleged by a party proceeded against in an action or suit, as a reason in law or fact why the plaintiff should not recover or establish what he seeks. . . . In a mortgage foreclosure action, a defense to the amount of the debt must be based on some articulated legal reason or fact. . . . The case law is clear that a defense challenging the amount of the debt must be actively made in order to prevent the application of § 23-18 (a). [A] mere claim of insufficient knowledge as to the correctness of the amount stated in the affidavit of debt is not a defense for purposes of [§ 23-18 (a)]. . . . It is axiomatic that such a defense may be raised by pleading a special defense attacking the amount of the debt claimed, but it may also be raised by objection, supported with evidence and arguments challenging the amount of the debt, upon the attempted introduction of the affidavit in court." (Citations omitted; internal quotation marks omitted.) *Bank of America, N.A.* v. *Chainani*, 174 Conn. App. 476, 486, 166 A.3d 670 (2017).

In the present case, the amount of the debt submitted by the plaintiff was uncontested. The plaintiff filed a motion for judgment of strict foreclosure, an affidavit of debt, a foreclosure worksheet, and an oath of appraisers. The defendant did not raise a defense or counterclaim regarding the amount of the mortgage debt. A defense or a counterclaim does not affect the applicability of Practice Book § 23-18 (a) unless it "actually challenges in some manner the amount of the debt alleged by the plaintiff." (Internal quotation marks omitted.) Id., 478. Additionally, at the time of the hearing on the

motion for a judgment of strict foreclosure, the court had granted summary judgment in favor of the plaintiff as to the defendant's special defenses and counterclaims.

The defendant did not file an objection to the evidence of the debt that was submitted by the plaintiff in connection with its motion for a judgment of strict foreclosure. The defendant neither submitted nor referenced any evidence contesting the amount of the debt in advance of or at the January 2, 2019 hearing on the motion for a judgment of strict foreclosure. Although the defendant made a request for a hearing as to the debt, the request lacked specificity. The request did not indicate the basis for the objection to the debt, namely, whether the objection was squarely focused on the amount of the debt or focused on matters ancillary to the amount of the debt, such as whether the plaintiff is the holder of the note and mortgage, which is a matter of liability. Because the request for a hearing was not based on some articulated legal reason or fact, Practice Book § 23-18 (a) applies. See id., 486. Accordingly, the court was not required to hold a hearing as to damages, pursuant to Practice Book § 17-50, when no genuine contest as to the amount of the debt existed. "Where a defendant fails to raise a defense as to the amount of the debt, the plaintiff may prove the debt by way of an affidavit pursuant to Practice Book § 23-18." (Footnote omitted.) *Bank of America, FSB* v. *Franco*, 57 Conn. App. 688, 694, 751 A.2d 394 (2000). In *GMAC Mortgage, LLC* v. *Ford*, supra, 144 Conn. App. 186–87, the trial court granted the mortgagee's motion for a judgment of strict foreclosure following its granting of the plaintiff's motion for summary judgment as to liability only. We held in *GMAC Mortgage* that the trial court did not abuse its discretion in declining to hold an evidentiary hearing as to the amount of debt when the mortgagor did not raise a challenge to the amount of the debt. Id. We conclude that the court's decision not to hold an

evidentiary hearing as to the debt and, instead, to calculate the debt on the basis of the plaintiff's uncontested evidence of debt was not improper.

The judgment is affirmed and the case is remanded for the purpose of setting new law days.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* MAURICE FRANCIS (AC 42443)

Prescott, Bright and Sheldon, Js.

Syllabus

Convicted, after a jury trial, of the crime of murder in connection with the death of the victim, the defendant appealed. The defendant's conviction stemmed from an incident in which he caused the victim's death, dragged her body out of their shared apartment, drove to a used car shop where the body was left in the defendant's vehicle all day until the defendant drove back to the apartment and put the body in a bathtub, after which he made a 911 phone call claiming that he found the victim in the bathtub. At trial, the court denied the defendant's motion for a judgment of acquittal, which was made at the close of the state's case-in-chief, the defendant rested without putting on evidence, and the jury found the defendant guilty of murder. *Held*:

1. The trial court properly denied the defendant's motion for a judgment of acquittal, as there was sufficient evidence for the jury to have found the defendant guilty of murder beyond a reasonable doubt: even though the defendant claimed that there was insufficient evidence to establish that he caused the victim's death or that he had the specific intent to cause her death, the defendant conceded that there was sufficient evidence to support an inference that he dragged the victim's body out of their apartment, down the stairs and across the grass, that he put the body into his vehicle and drove, in broad daylight, to a used car shop, where he left the body in his vehicle all day, and that he subsequently transferred the body to another vehicle and drove the body back to the apartment, where he remained for several hours before calling 911, and, therefore, the evidence was more than sufficient for the jury to have concluded that the defendant intended to kill the victim and did succeed in killing the victim; moreover, there was substantial evidence of consciousness of guilt, including that the defendant declined to provide emergency assistance to the victim and repeatedly lied to the police and emergency personnel, and the jury could have inferred an intent

to kill from the infliction of numerous superficial wounds caused by a sharp weapon, followed by the defendant's failure to summon help as the victim bled to death.

2. The defendant could not prevail on his claim that this court should change its long-standing standard of review with respect to sufficiency of evidence claims to a more rigorous standard that would require this court to determine if there was a reasonable view of the evidence that would support a hypothesis of innocence; our Supreme Court recently addressed and rejected a similar claim, determining that a reviewing court does not ask whether there is a reasonable view of the evidence that would support a reasonable hypothesis of innocence but, rather, asks whether there is a reasonable view of the evidence that supports the jury's verdict of guilty, and as an intermediate appellate court, it was not within this court's power to overrule Supreme Court authority.

Argued October 17—officially released December 31, 2019

Procedural History

Substitute information charging the defendant with the crime of murder, brought to the Superior Court in the judicial district of Hartford and tried to the jury before *Crawford*, *J.*; thereafter, the court denied the defendant's motion for a judgment of acquittal; verdict and judgment of guilty, from which the defendant appealed. *Affirmed*.

Conrad Ost Seifert, assigned counsel, for the appellant (defendant).

Denise B. Smoker, senior assistant state's attorney, with whom, on the brief, were *Gail P. Hardy*, state's attorney, and *Donna Mambrino*, senior assistant state's attorney, for the appellee (state).

Opinion

BRIGHT, J. The defendant, Maurice Francis, appeals from the judgment of conviction rendered by the trial court of one count of murder in violation of General Statutes § 53a-54a. On appeal, the defendant claims that the court improperly denied his motion for a judgment of acquittal[1] because there was insufficient evidence to

[1] "[W]hen a motion for [a judgment of acquittal] at the close of the state's case is denied, a defendant may not secure appellate review of the trial court's ruling without [forgoing] the right to put on evidence in his or her own behalf. The defendant's sole remedy is to remain silent and, if convicted,

establish that he caused the death of the victim[2] or that he had the specific intent to cause the death of the victim. In the alternative, the defendant requests that we change our long-standing standard of review with respect to insufficiency of evidence claims, so that we review the evidence under a much more rigorous standard to determine if there is a reasonable view of the evidence that would support a hypothesis of innocence. We affirm the judgment of the trial court.

The following evidence, which was admitted at trial, and relevant procedural history inform our review. The victim and the defendant lived together in an apartment building located at 47 Berkeley Drive in Hartford. The victim was employed as a school bus monitor with Specialty Transportation (Specialty), which was previously known as Logisticare. She had worked in that position for approximately four or five years. Her supervisor was Timothy Gamble. Gamble described the victim as "happy, always smiling, [and] coming to work on time every day . . . ." Gamble stated that when the victim began dating the defendant, however, she changed. The victim then began to come to work with cuts, bruises, and other injuries to her body. Her disposition changed. On more than one occasion, she arrived at work with a bloodied shirt and injuries. On one specific occasion, she arrived at work wearing dark glasses in an attempt to hide her blackened eye. As time went on, Gamble became so concerned for the victim that he invited her to move in with him and his wife, an offer

to seek reversal of the conviction because of insufficiency of the state's evidence. If the defendant elects to introduce evidence, the appellate review encompasses the evidence in toto." (Internal quotation marks omitted.) *State* v. *Seeley*, 326 Conn. 65, 67 n.3, 161 A.3d 1278 (2017); see Practice Book § 42-41. In the present case, the defendant rested following the court's denial of his motion for a judgment of acquittal.

[2] In accordance with our policy of protecting the privacy interests of the victims of family violence, we decline to use the victim's full name. See General Statutes § 54-86e.

which the victim declined. He also suggested that she go to a women's shelter, which she also declined.

On the morning of Saturday, November 1, 2008, at approximately 8:30 a.m., Beverly Copeland, who lived across the street from the defendant and the victim, left her apartment. As Copeland went to get into her vehicle, which was parked in front of her building, she saw a black male standing, looking down at the grass in front of his apartment building. At first, Copeland thought the man was looking at a pile of clothing in the grass. When the man bent down to pick up what was in the grass, Copeland realized that it was not a pile of clothing, but, rather, it was the body of a woman, who had braids in her hair. Copeland then saw the man put the woman's body over his shoulders. After taking a couple of steps, the man put down the woman and then began to drag her by the hands and arms across the street, as her back dragged along the ground. The woman, herself, did not move. After the man got to a silver Volvo station wagon that was parked across the road, he put the woman's body into the front passenger's seat. Still, the woman did not move. The man then got into the driver's seat of the silver Volvo station wagon and began to drive away; Copeland wrote down the license plate number, which was 110-XDZ.[3]

The defendant drove the silver 1998 Volvo station wagon (1998 Volvo), with the woman's body in the passenger's seat, to Sparks Motor Sales in Hartford (Sparks). When he arrived at approximately 9 a.m., he telephoned Garth Wallen, the owner of Sparks, who was still at home. The defendant had purchased his 1998 Volvo from Sparks the previous month, and he recently had made arrangements with Wallen to

[3] Copeland later gave the license plate number and a description of the vehicle to the police, who determined that the license plate was registered to the defendant's silver 1998 Volvo station wagon. At trial, Copeland positively identified photographs of the defendant's silver 1998 Volvo station wagon, as well.

exchange that vehicle for a different vehicle. When Wallen arrived at Sparks, the defendant was standing beside his 1998 Volvo, which was parked in front of the locked driveway gate. Wallen then opened the gate so they could enter. Wallen saw a woman in the passenger's seat, whom he recognized to be the defendant's girlfriend, but the woman did not speak or make any gestures. The defendant then drove the 1998 Volvo down the driveway, parking it with the driver's side of the vehicle along the wall of the building, facing a wooden fence, in an area where a dumpster generally is kept but which was not present at that time. The defendant got out of his vehicle, leaving the woman inside. The defendant was "hanging around" at Sparks until approximately 4 p.m., when Wallen obtained a 1999 Volvo for him to test drive for the weekend. The woman never got out of the defendant's vehicle during the six or seven hours it was parked at Sparks, used the bathroom, or looked at the 1999 Volvo when it was brought over. The defendant, however, at one point during the day, asked Wallen if it would be okay if he got his girlfriend a cup of water; Sparks had a rented Poland Spring dispenser with cups.

After obtaining the 1999 Volvo, the defendant moved the 1998 Volvo and aligned it beside the 1999 Volvo, passenger side to passenger side, in the "back section" of Sparks. Wallen, thereafter, was busy assisting a customer. He noticed, however, that the defendant later moved the 1998 Volvo back to where he had parked it in the morning, alongside the wall of the building. The defendant also took the plates off his 1998 Volvo and put them on the 1999 Volvo, hung the keys to his 1998 Volvo in the garage, and drove away in the 1999 Volvo. Because the windows of the 1999 Volvo were tinted, Wallen could not see the defendant's girlfriend inside the 1999 Volvo as the defendant drove away in the vehicle. The defendant and Wallen had made plans that

they would wrap up the paperwork for the purchase of the 1999 Volvo the following week. They had no plans to talk again until then. The defendant, however, telephoned Wallen later that day, after leaving Sparks, and he told Wallen that a kid in his neighborhood really liked the 1999 Volvo and that he just wanted Wallen to know.

At 10:50 p.m. that night, the defendant called 911, and he told the dispatcher he had just returned home when he found the victim in the bathtub, after having spoken to her on the phone approximately a half hour or an hour before;[4] the front door was open when he returned home and every light was on; he had dropped off the victim at home a "couple of hours ago"; the victim had no pulse when he found her; he did not want to attempt CPR on her; he did not want to touch the victim; the victim had been having problems with a neighbor who had psychological problems; the victim was kind of "retarded"; the victim had been having mental problems and problems like "falling down the stairs," which could be verified by hospital records; the victim had a cut over her left eye; the victim had been with him all day; and he could provide "proof" that she had been with him from the owner of a car dealership.

At approximately 11 p.m., Michael DiGiacamo, a firefighter with the Hartford Fire Department, arrived at 47 Berkeley Drive. The defendant, who was standing outside, directed DiGiacamo to his second floor apartment. Upon entering the apartment, DiGiacamo saw the victim lying in the bathtub. She was naked, dry, cold and unresponsive; the bathtub contained no water or blood. DiGiacamo and another firefighter removed the victim from the tub and began CPR; the victim still

[4] Andrew Weaver, who was a member of the Hartford Police Department in November, 2008, and was trained in computers, cell phones, and cell phone call data mapping, testified that the defendant's cell phone was not used to call the victim's cell phone on November 1, 2008.

did not respond. DiGiacamo noticed that the victim had "multiple wounds and laceration type stab wounds" on her body. Additional emergency medical personnel arrived and continued CPR. While the paramedics were attending to the victim, DiGiacamo went into the living room where the defendant was speaking with a lieutenant from the fire department. The defendant repeatedly asked if the victim was dead. DiGiacamo thought this was odd because, in his experience, most people ask whether a victim is okay, not whether a victim is dead.

In an interview conducted at the Hartford Police Department on November 2, 2008, the defendant told Detective R. Kevin Salkeld that, on the morning of November 1, 2008, after showering at 8 a.m., he and the victim went to Sparks in his 1998 Volvo. He stated that the victim stayed in the passenger's seat of the car all day while he did odd jobs for Wallen until approximately 5 p.m.[5] The defendant told Salkeld that he brought the victim five bottles of water during the day, which she drank.[6] The defendant also told Salkeld that he went to Sparks because he wanted to pick up a 1999 Volvo to test drive for the weekend, which is the car in which he and the victim drove home after he did the odd jobs throughout the day. The defendant also told Salkeld that he unlocked the door for the victim when they arrived home, and that he then returned to Sparks to help Wallen clean up, and although it was the victim's habit to lock the doors, when the defendant returned home the front door was open.[7] According to the defendant, he was supposed to meet Wallen at Wallen's home

[5] Wallen testified that the defendant was "hanging around" Sparks all day but that he did not do any odd jobs.

[6] Wallen testified that Sparks had a Poland Springs water dispenser that used cups and that the defendant asked once to bring the victim a cup of water.

[7] Wallen testified that the defendant did not return to Sparks that evening, and that he closed up shortly after the defendant left.

after the cleanup, and, although he went to Wallen's home, Wallen never came;[8] the defendant stated that he waited at Wallen's home and that he repeatedly telephoned Wallen until approximately 10:30 p.m., but Wallen did not answer the calls;[9] the defendant told Salkeld, however, that he did not remember Wallen's home address. The defendant told Salkeld that after waiting for Wallen, he returned home, found the door open, and saw the victim lying in the bathtub; he then called 911.[10]

At approximately 7:12 a.m., on November 2, 2008, Detective Ramon Baez from the Hartford Police Department Crime Scene Division, began to process the scene of the victim's death. One of the items Baez processed was a clump of braided hair that he discovered in front of the apartment building. John Schienman, a forensic science examiner from the Division of Scientific Services, performed DNA testing on the roots of several pieces of hair from the clump that was found by Baez, and he determined that the DNA found on those hair roots was consistent with the victim's DNA profile.[11] Baez also found numerous small blood stains through-

[8] Wallen testified that he and the defendant did not have plans to meet up later that evening, and that the defendant telephoned him the following day to tell him about the victim's death and to suggest to him that he "remember" that the defendant was supposed to come back to Sparks the previous evening to help Wallen clean up. Wallen said that he told the defendant that he did not want to hear it, and he hung up the telephone.

[9] Weaver testified, however, that no phone calls were made by the defendant's cell phone to Wallen's cell phone after 4:45 p.m.

[10] Salkeld testified, however, that both he and Detective Seth Condon, the lead investigator on the victim's suspicious death, who had since passed away, were at the scene after the defendant called 911. Salkeld explained that the defendant also had stated at that time that he had just returned home and found the victim and that Condon then walked over to the 1999 Volvo and felt the hood, which was cold to the touch. The defendant, thereafter, complained of chest pains and had to be taken to the hospital.

[11] For example, Dr. Schienman testified that, as to one of the hair roots, labeled as 2Z3, "the expected frequency of individuals who could be the source of item 2Z3, was less than one in seven billion in [population groups consisting of African Americans, Caucasians, and Hispanics]."

out the defendant's apartment.[12] Dr. Schienman testified that DNA in the swabs of those stains also was consistent with the victim's DNA profile.

Inspector Claudette Kosinski, also from the Hartford Police Department Crime Scene Division, processed the two Volvo vehicles. In the 1998 Volvo, Kosinski took samples from two stains in the front passenger's seat that appeared to be blood; the presence of blood was confirmed by Jane R. Codraro, a forensic biologist, from the state's Forensic Science Laboratory. Dr. Schienman performed a DNA analysis of the DNA from these blood stains and determined that the DNA was consistent with the victim's DNA profile.[13]

On November 3, 2008, Susan Williams, an associate medical examiner and forensic pathologist, performed an autopsy of the victim. Dr. Williams found that the victim's eyes were cloudy, demonstrating "decompositional changes," and that she had "multiple small cuts or incised wounds[14] over her body, as well as many small linear . . . scars all over her body." (Footnote added.) The victim had very little blood remaining in her body. The victim had a fresh three-quarter inch linear incised wound on the upper right area of her forehead, a fresh one and one-half inch linear incised wound "over her left eyebrow extending . . . down onto her face," and another fresh linear incised wound

[12] Baez also saw several towels that appeared to be soaked with water and blood in the bathroom where the victim's body was found. The towels, however, were not examined by the forensic science laboratory.

[13] Dr. Schienman testified that "the expected frequency of individuals who could be the source [of the DNA on the blood stains from the passenger's seat of the 1998 Volvo] is less than one in seven billion in the three population groups."

[14] Dr. Williams explained that an incised wound is "a wound made by a sharp instrument, such as a knife or a machete or the sharp end of a scissor. The edges are smooth . . . and it cuts through the tissue below it. . . . [A]n incised wound is wider on the skin [than] it is deep, as opposed to, for instance, a stab wound."

on her left upper eyelid; she also sustained a "fracture of the skull of her orbital ridge" that was a "sharp forced injury," meaning it was caused by "a knife or a machete," rather than a fall or a hit with something akin to a baseball bat. The victim also had a fresh incised wound to the right side of her abdomen and several on her arms, legs, back, and chest; she also had blunt force bruising to her back, wrist, and legs. She had no alcohol or illegal drugs in her system. Dr. Williams concluded that the victim was the victim of a homicide, brought about by "multiple sharp forced injuries"; Dr. Williams opined that the victim "did not have enough blood in her system . . . to sustain [her] life."

Following the testimony of Dr. Williams, the state rested, and the defendant moved for a judgment of acquittal, arguing that the state had not established a prima facie case; the court denied the motion, and the defense rested without putting on evidence. Following closing arguments and the court's charge to the jury, the jury found the defendant guilty of murder. The court accepted the jury's verdict and, thereafter, rendered a judgment of conviction, sentencing the defendant to fifty years of incarceration. This appeal followed.

The defendant claims that the court improperly denied his motion for a judgment of acquittal. He argues that the evidence was insufficient to establish that he caused the death of the victim or that he had the specific intent to cause the death of the victim. We are not persuaded.

The following general principles guide our review. "In reviewing a sufficiency of the evidence claim, we apply a two-part test. First, we construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the jury reasonably could have concluded that the

cumulative force of the evidence established guilt beyond a reasonable doubt. . . . On appeal, we do not ask whether there is a reasonable view of the evidence that would support a reasonable hypothesis of innocence. We ask, instead, whether there is a reasonable view of the evidence that supports the jury's verdict of guilty." (Internal quotation marks omitted.) *State* v. *Daniel B.*, 331 Conn. 1, 12, 201 A.3d 989 (2019).

"[T]he jury must find every element [of a crime] proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense, [but] each of the basic and inferred facts underlying those conclusions need not be proved beyond a reasonable doubt. . . . If it is reasonable and logical for the jury to conclude that a basic fact or an inferred fact is true, the jury is permitted to consider the fact proven and may consider it in combination with other proven facts in determining whether the cumulative effect of all the evidence proves the defendant guilty of all the elements of the crime charged beyond a reasonable doubt." (Internal quotation marks omitted.) *State* v. *Taupier*, 330 Conn. 149, 187, 193 A.3d 1 (2018), cert. denied, U.S. , 139 S. Ct. 1188, 203 L. Ed. 2d 202 (2019).

"[I]t does not diminish the probative force of the evidence that it consists, in whole or in part, of evidence that is circumstantial rather than direct. . . . It is not one fact, but the cumulative impact of a multitude of facts which establishes guilt in a case involving substantial circumstantial evidence. . . . In evaluating evidence, the [finder] of fact is not required to accept as dispositive those inferences that are consistent with the defendant's innocence. . . . The [finder of fact] may draw whatever inferences from the evidence or facts established by the evidence it deems to be reasonable and logical." (Internal quotation marks omitted.) *State* v. *Campbell*, 328 Conn. 444, 504, 180 A.3d 882 (2018).

"[T]he state of mind of one accused of a crime is often the most significant and, at the same time, the most elusive element of the crime charged. . . . Because it is practically impossible to know what someone is thinking or intending at any given moment, absent an outright declaration of intent, a person's state of mind is usually [proven] by circumstantial evidence . . . ." (Internal quotation marks omitted.) *State* v. *Bonilla*, 317 Conn. 758, 766, 120 A.3d 481 (2015). "Intent to cause death may be inferred from the type of weapon used, the manner in which it was used, the type of wound inflicted and the events leading to and immediately following the death." (Internal quotation marks omitted.) *State* v. *Campbell*, supra, 328 Conn. 504.

The defendant argues that the state's case was based on circumstantial evidence and that "the jury resorted to speculation when it found [that he] caused [the victim's] death" and that he "had the specific intent to kill [the victim]." In his reply brief, the defendant argues: "The defendant agrees with the state that there is sufficient factual evidence to support the jury inferring that the defendant dragged the already dead body of [the victim] out of the apartment, down the stairs, and dragged it across the grass, put it into his 1998 Volvo and drove, in broad daylight, to Mr. Wallen's used car shop on November 1, 2008. And, the jury could possibly infer that somehow, without being seen by anyone while her body sat upright in the defendant's 1998 Volvo with no tinted windows for hours on end, the defendant then transferred her body to the 1999 Volvo which Mr. Wallen allowed the defendant to have in trade for the 1998 Volvo. The defendant, for whatever unknown reason, then drove the body back to their apartment, got the . . . body up the stairs and into the bathtub. . . . A few hours later, the defendant called 911. Bringing the body back to the apartment in his new car makes no logical sense, but, ignoring the bizarre nature of the

conduct for a moment, all of this inferred postdeath conduct fails to prove murder." We conclude that the evidence was sufficient for the court to have denied the defendant's motion for a judgment of acquittal and for the jury to have found him guilty of murder beyond a reasonable doubt.

Although we recognize that "the jury could not properly have inferred an intent to commit murder from the mere fact of the death of the victim, [or] even from her death at the hands of the defendant"; (internal quotation marks omitted) *State* v. *Otto*, 305 Conn. 51, 67, 43 A.3d 629 (2012); we conclude that the evidence in this case was more than sufficient for the jury to have concluded that the defendant intended to kill the victim and indeed succeeded in killing the victim.

As conceded by the defendant, the jury reasonably could have found that he dragged the victim's dead body out of the apartment, down the stairs, across the lawn, and into his 1998 Volvo, that he then drove her to Sparks where he left her body in his vehicle all day, that he thereafter transferred her body into the new 1999 Volvo and drove her home, that he then dragged her back into the apartment and put her in the bathtub, that he remained in the apartment for several more hours, and that he then called 911 to report her death. See id., 68 (defendant's failure to summon medical help to render aid to victim supports an "antecedent intent to cause death" [internal quotation marks omitted]). The evidence also proved that the victim died as a result of multiple incised wounds all over her body that caused her to bleed to death, that by the time the defendant called 911, the victim had very little blood in her body, that her blood was throughout the apartment, on doors, walls, and floors, and that it was in the 1998 Volvo, on the passenger's seat. Several of the incised wounds were in areas of her body, including her back, where the victim could not have inflicted them on herself.

There also was evidence from which the jury reasonably could have inferred that the defendant physically assaulted the victim on multiple occasions, leaving her cut, bruised and bloodied.

In addition to this evidence, there was substantial evidence of consciousness of guilt, including that the defendant declined to provide emergency assistance to the victim when he did not call 911 on the morning of November 1, 2008, but, instead, dragged her body down the stairs and across the lawn at approximately 8:30 a.m., kept her in a vehicle for up to seven hours, in an apparent attempt to construct an alibi, and failed to call 911 until 10:50 p.m.; he lied both to the 911 dispatcher and to Detectives Salkeld and Condon when he told them that he had been out in the 1999 Volvo and had just returned home when he found the victim and called 911; he lied to the police about having plans with Wallen in the evening of November 1, 2008; he lied to the police about having gone to Wallen's home in the evening of November 1, 2008; he lied to the police about having returned to Sparks to help Wallen clean up in the early evening of November 1, 2008; he lied to the police about having telephoned Wallen repeatedly over a period of several hours; and he lied to the 911 dispatcher and to the police about having telephoned the victim shortly before calling 911. Our Supreme Court has explained: "[C]onsciousness of guilt evidence [is] part of the evidence from which a jury may draw an inference of an intent to kill." *State* v. *Sivri*, 231 Conn. 115, 130, 646 A.2d 169 (1994); see *State* v. *Otto*, supra, 305 Conn. 72–73.

In fact, the evidence in this case is similar to, if not stronger than, the evidence our Supreme Court held was sufficient to convict the defendant in *Sivri*. In *Sivri*, the defendant was convicted of murdering the victim in his home even though the victim's body was never found. *State* v. *Sivri*, supra, 231 Conn. 130. Although

there was significant evidence that the victim was killed in the defendant's home, and blood of the same type as the victim's was found in the defendant's car, the defendant argued that there was insufficient evidence to prove that he had the specific intent to kill the victim. Id., 121–26. Our Supreme Court noted that there was no evidence of a body, no evidence of a specific weapon used, no evidence of the specific type of wound inflicted on the victim, and no evidence of "prior planning, preparation or motive." Id., 127. Nevertheless, the court pointed to various pieces of circumstantial evidence from which the jury could infer that the defendant intended to kill the victim. Id., 127–31.

First, the court noted that the amount of blood of the victim's blood type found in the defendant's home was significant, representing "approximately one-fourth of the total blood in the body of a woman of average build." Id., 128. In the present case, Dr. Williams testified that the victim died from a slow loss of blood that resulted in her body going into shock because there was insufficient blood to make a pulse and keep her heart beating. Dr. Williams further testified that a person enters into an irreversible shock when she loses approximately 40 percent of her blood. The jury reasonably could have inferred from the victim's extensive slow blood loss that the defendant intended to kill the victim because he allowed her slowly to bleed to death from her wounds.

Second, the court in *Sivri* noted that there was sufficient evidence from the amount of blood present in the defendant's home to support the inference that the victim's fatal wound was caused by a weapon. Id. In the present case, Dr. Williams testified that the victim's fatal wounds were caused by a weapon, in particular, "a sharp instrument, such as a knife, or a machete, or the sharp end of a scissor."

Third, in *Sivri*, the state's expert testified that the amount of blood found in the defendant's home required the weapon used to cut very deeply into the victim's body or to have cut a vein or artery. *State* v. *Sivri*, supra, 231 Conn. 128. The court concluded that the jury could infer from this testimony that the weapon the defendant used had an edge or point and had been used vigorously enough to cause massive bleeding. Id., 128–29. In the present case, as noted previously, Dr. Williams testified that the victim's wounds were caused by a sharp edged weapon. Although, unlike in *Sivri*, the victim in the present case died from slow blood loss from multiple wounds, as opposed to massive blood loss from a single wound, the jury could have inferred an intent to kill from the methodical infliction of numerous superficial wounds, followed by the defendant's failure to summon medical help as the victim slowly bled to death.

Fourth, in *Sivri*, the court noted that the jury could have inferred that the victim's death occurred in the defendant's family room, a room not likely to have weapons readily at hand, suggesting that the defendant either had such a weapon in his possession while he was in that room or had purposefully obtained the weapon from another room of the house and brought it into the family room to kill the victim. Id., 129. In the present case, the jury reasonably could have inferred that the defendant's actions were purposeful from the fact that he methodically used a weapon to inflict multiple wounds all over the victim's body.

Fifth, in *Sivri*, the court noted the defendant's failure to summon medical assistance for the victim as evidence that the defendant intended to cause her death. Id. Similarly, in the present case, the defendant did not summon medical assistance on the morning of November 1, 2008. Instead, he dragged the victim's body from the apartment, placed her in his car, and kept her there for hours before returning her to the apartment,

undressing her, and placing her in the bathtub. This course of conduct is particularly relevant to the defendant's intent because of the slow manner in which the victim died, as her blood drained from her body. The defendant had more time to summon help to save the victim's life than would have been the case if the victim had been subjected to a single grievous injury.

Finally, the court in *Sivri* relied on the defendant's actions *after* the victim's death to show a consciousness of guilt as evidence of his intent to kill the victim. Id., 130. In the present case, the jury was presented with very strong consciousness of guilt evidence, including the defendant's failure to aid the victim as she bled out, dragging the victim's body to his 1998 Volvo, leaving her in that vehicle all day, dragging her back to his apartment, and repeatedly lying to emergency personnel.

In sum, we conclude that there was sufficient evidence for the jury reasonably to have inferred that (1) On November 1, 2008, the defendant killed the victim; (2) the defendant used a weapon with a sharp edge repeatedly to cut or penetrate the body of the victim, in such a manner as to cause the victim to lose much of the blood that was in her body; (3) the defendant, after inflicting the many wounds, failed to summon medical assistance for his victim and, instead, allowed her to bleed out; (4) the defendant dragged her body down the stairs, across the lawn and into his 1998 Volvo, driving her to Sparks for the day and then returned her body to their apartment and placed her in bathtub; (5) even after returning from this day long expedition, the defendant still waited nearly six more hours before calling 911; and (6) the defendant repeatedly lied to the 911 dispatcher and to the police. Viewing all of this evidence together, we conclude that its cumulative force reasonably supports the inference that the defendant intended to kill the victim and succeeded in doing so.

The defendant also asks that we change our long-standing standard of review so that we review the evidence under a much more rigorous standard to see if there is a reasonable view of the evidence that would support a hypothesis of innocence. Our Supreme Court addressed and rejected a similar request in *Sivri*, stating: "This, of course, would be directly contrary to our traditional scope of review of jury verdicts, and to the way in which we traditionally employ it. Under that scope of review and application, we give deference not to the hypothesis of innocence posed by the defendant, but to the evidence and the reasonable inferences drawable therefrom that support the jury's determination of guilt. On appeal, we do not ask whether there is a reasonable view of the evidence that would support a reasonable hypothesis of innocence. We ask, instead, whether there is a reasonable view of the evidence that supports the jury's verdict of guilty." Id., 134. Our Supreme Court very recently confirmed this standard of review in *State* v. *Daniel B.*, supra, 331 Conn. 12. As an intermediate appellate court, it is not within our power to overrule Supreme Court authority. See *State* v. *Fuller*, 56 Conn. App. 592, 609, 744 A.2d 931, cert. denied, 252 Conn. 949, 748 A.2d 298, cert. denied, 531 U.S. 911, 121 S. Ct. 262, 148 L. Ed. 2d 190 (2000).

The judgment is affirmed.

In this opinion the other judges concurred.

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Foreclosure; special defenses; counterclaims; whether trial court properly rendered summary judgment as to vexatious litigation counterclaim; whether vexatious litigation counterclaim was premature; whether trial court properly rendered summary judgment as to abuse of process counterclaim; claim that genuine issues of material fact existed regarding trial court's previous dismissal of foreclosure action for failure to establish proper chain of custody; whether trial court properly determined that no genuine issues of material fact existed that plaintiff's primary purpose in filing present action was to prosecute foreclosure and that plaintiff was owner of note and mortgage; whether abuse of power counterclaim was premature; claim that trial court improperly relied on plaintiff's uncontested evidence of debt without holding evidentiary hearing.
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Habeas corpus; sexual assault in first degree; risk of injury to child; ineffective assistance of trial counsel; whether habeas court abused its discretion when it denied petitioner's request to reinstate claim that had been withdrawn that trial counsel was deficient in failing to present certain medical testimony; claim that habeas court should have allowed into evidence documents that related to petitioner's medical condition; claim that trial counsel was ineffective in failing to pursue motion to dismiss based on statute of limitations in (§ 54-193a); whether there was any credible evidence to show actual commencement of statute of limitations in March, 1999; claim that trial counsel was ineffective in failing to object to allegedly harmful, inflammatory language in substitute information that was read by court clerk to jury; claim that trial counsel was ineffective by failing to assist petitioner in freely choosing whether to testify in own defense; claim that trial counsel was deficient in failing to pursue hearing pursuant to Franks *v.* Delaware *(438 U.S. 154) in pretrial stage of criminal proceedings;*

claim that trial counsel was ineffective in failing to obtain victim's education records in order to undermine allegations; whether petitioner demonstrated any harm that was caused by absence of education records; claim that trial counsel provided ineffective assistance by failing to file motion to suppress evidence concerning photographs taken of petitioner's apartment during allegedly illegal search.

NOTICES OF CONNECTICUT STATE AGENCIES

DEPARTMENT OF SOCIAL SERVICES

Notice of Intent to Amend the Personal Care Assistant Medicaid Waiver

In accordance with the provisions of section 17b-8 of the Connecticut General Statutes, notice is hereby given that the Commissioner of the Department of Social Services (DSS) intends to amend the Personal Care Assistant (PCA) waiver and proposes to add two additional services.

DSS proposes to add Personal Emergency Response Systems (PERS) and Home Delivered Meals (MOW) to the PCA waiver because these services are not currently available to individuals who opt for agency-based PCA services under the PCA waiver. These two services are currently available to persons who are self-directing their PCA Services under the 1915k state plan Community First Choice Option. By adding PERS and MOW to the PCA waiver, the services would be available to all individuals on the PCA waiver regardless of whether they choose to self-direct their PCA services or opt for agency-based PCA services.

The Department will be requesting a retroactive effective date of 10/1/19 to add these services.

A complete text of the waiver amendment is available, at no cost, upon request to the Community Options Unit, Department of Social Services, 55 Farmington Ave., Hartford, Connecticut 06106; email shirlee.stoute@ct.gov.

All written comments, questions, and concerns regarding these amendments may be submitted within 30 days of the publication of this notice to the Department of Social Services, Community Options Unit, 55 Farmington Ave, Hartford or to Kathy.a.bruni@ct.gov.

DEPARTMENT OF SOCIAL SERVICES

Notice of Intent to Renew the CT Home Care Program for Elders Medicaid Waiver and the 1915(b)-4 Selective Contracting Program

In accordance with the provisions of section 17b-8 of the Connecticut General Statutes, notice is hereby given that the Commissioner of the Department of Social Services intends to renew the CT Home Care Program for Elders Medicaid Waiver and the 1915(b)-4 Selective Contracting Program effective 7/1/20. The 1915(b)-4 allows the state to select providers of care management under DSS' Medicaid waiver programs based on a competitive procurement.

The only change proposed in this renewal is to eliminate Support and Planning Coach as a Waiver Service. The Support and Planning Coach service is available under the state's 1915(k) Community First Choice program and is intended to assist persons in their efforts to self direct their services. Retaining the service in this waiver would be duplicative. No waiver participants will lose any services or be impacted negatively as a result of this change.

A complete text of the waiver amendment is available, at no cost, upon request to the Community Options Unit, Department of Social Services, 55 Farmington Ave., Hartford, Connecticut 06106; email shirlee.stoute@ct.gov.

All written comments, questions, and concerns regarding these amendments may be submitted within 30 days of the publication of this notice to the Department of Social Services, Community Options Unit, 55 Farmington Ave, Hartford or to Kathy.a.bruni@ct.gov.

DEPARTMENT OF SOCIAL SERVICES

Notice of Proposed Medicaid Waiver

Selective Provider Contracting Waiver
Pursuant to Section 1915(b)(4) of the Social Security Act
for
Connecticut Housing Engagement and Support Services (CHESS) Initiative
State Plan Home and Community-Based Services (HCBS)
Pursuant to Section 1915(i) of the Social Security Act

In accordance with section 17b-8 of the Connecticut General Statutes, the State of Connecticut Department of Social Services (DSS), which is Connecticut's single state Medicaid agency, provides notice that DSS proposes to submit the following Medicaid waiver to the Centers for Medicare & Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS).

Changes to Medicaid State Plan

Effective on or after June 1, 2020, the above-referenced waiver enables the state to limit to those who meet all CHESS requirements and also have been selected through the Department of Mental Health and Addiction Services (DMHAS) supportive housing provider competitive procurement process. The waiver includes assurances that the procurement is structured in a manner to ensure that there is sufficient access to services for all members, while also ensuring that each provider has sufficient caseloads to maintain efficiency, expertise, and high quality services. More detail is described in the draft waiver application.

This waiver does not affect Medicaid coverage, eligibility, or payment for CHESS, which are described in Medicaid State Plan Amendment (SPA) 20-K, which will implement CHESS through Medicaid State Plan HCBS services pursuant to section 1915(i) of the Social Security Act. The purpose of the CHESS Initiative is to improve housing stability and health outcomes for a targeted set of Medicaid members who have complex health conditions, have experienced homelessness, and have been determined to be likely to benefit from targeted tenancy sustaining services.

Fiscal Impact

This waiver does not affect payments to CHESS providers. By limiting the number of providers, the waiver is anticipated to reduce administrative expenditures for the state.

Obtaining Waiver Language and Submitting Comments

The proposed waiver is posted on the DSS website at this link: http://portal.ct.gov/dss. Scroll down to the bottom of the webpage and click on ''Publications'' and then click on ''Updates.'' Then click on ''Medicaid State Plan Amendments''. The proposed SPA may also be obtained at any DSS field office, at the Town of Vernon Social Services Department, or upon request from DSS (see below).

To request a copy of the waiver from DSS or to send comments about the waiver, please email: Public.Comment.DSS@ct.gov or write to: Department of Social Services, Medical Policy Unit, 55 Farmington Avenue, 9th Floor, Hartford, CT 06105 (Phone: 860-424-5067). Please reference ''CHESS Initiative – Section 1915(b)(4) Qualified Provider Waiver''.

Anyone may send DSS written comments about this SPA. Written comments must be received by DSS at the above contact information no later than January 30, 2020.

DEPARTMENT OF SOCIAL SERVICES

Notice of Proposed Medicaid State Plan Amendment (SPA)

SPA 20-A: Physician and Psychologist Services – HIPAA Compliance Billing Code and Reimbursement Updates

The State of Connecticut Department of Social Services (DSS) proposes to submit the following Medicaid State Plan Amendment (SPA) to the Centers for Medicare & Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS).

Changes to Medicaid State Plan

Effective on or after January 1, 2020, SPA 19-C will amend Attachment 4.19-B of the Medicaid State Plan as described below. First, this SPA will incorporate various 2020 Healthcare Common Procedure Coding System (HCPCS) updates (additions, deletions and description changes) to the Physician Office & Outpatient, Physician-Radiology, Physician-Surgery, and Psychology fee schedules. Codes that are being added are being priced using a comparable methodology to other codes in the same or similar category. DSS is making these changes to ensure that these fee schedules remain compliant with the Health Insurance Portability and Accountability Act (HIPAA).

Second, this SPA will also amend Attachment 4.19-B of the Medicaid State Plan to update the reimbursement rate type and reimbursement methodology for Mifepristone and Misoprostol. Effective for dates of services January 1, 2020 and forward, the reimbursement rates for these physician-administered drugs will be priced off the National Drug Code (NDC) of these drugs in accordance with the existing federally approved methodology for physician-administered drugs in the Medicaid State Plan.

Lastly, in accordance with the existing federally approved methodology for physician-administered drugs in the Medicaid State Plan, this SPA will also amend Attachment 4.19-B of the Medicaid State Plan to update the reimbursement methodology to 100% of the January 2020 Medicare Average Sales Price (ASP) Drug Pricing file for physician-administered drugs, immune globulins, vaccines and toxoids.

For procedure codes that are not priced on the January 2019 Medicare ASP Drug Pricing File and procedure codes that are described as ''unclassified'', the drug will be priced at the lowest of:

- The usual and customary charge to the public or the actual submitted ingredient cost;
- The National Average Drug Acquisition Cost (NADAC) established by CMS;
- The Affordable Care Act Federal Upper Limit (FUL); or
- Wholesale Acquisition Cost (WAC) plus zero (0) percent when no NADAC is available for the specific drug.

Fee schedules are published at this link: http://www.ctdssmap.com, then select ''Provider'', then select ''Provider Fee Schedule Download.''

Fiscal Impact

Overall, DSS estimates that HIPAA compliance changes will increase annual aggregate expenditures by approximately $26,000 in State Fiscal Year (SFY) 2020 and $63,000 in SFY 2021. Based on the data that is available at this time, DSS does not anticipate significant changes in annual aggregate expenditures as a result of updating the physician-administered drugs to the January 2020 Medicare ASP Drug Pricing File as required by the existing approved Medicaid State Plan payment methodology for physician-administered drugs.

Obtaining SPA Language and Submitting Comments

The proposed SPA is posted on the DSS website at this link: http://portal.ct.gov/dss. Scroll down to the bottom of the webpage and click on ''Publications'' and then click on ''Updates.'' Then click on ''Medicaid State Plan Amendments''. The proposed SPA may also be obtained at any DSS field office, at the Town of Vernon Social Services Department, or upon request from DSS (see below).

To request a copy of the SPA from DSS or to send comments about the SPA, please email: Public.Comment.DSS@ct.gov or write to: Department of Social Services, Medical Policy Unit, 55 Farmington Avenue, 9th Floor, Hartford, CT 06105 (Phone: 860-424-5067). Please reference ''SPA 20-A: Physician and Psychologist Services – HIPAA Compliance Billing Code and Reimbursement Updates''.

Anyone may send DSS written comments about this SPA. Written comments must be received by DSS at the above contact information no later than January 15, 2020.

DEPARTMENT OF SOCIAL SERVICES

Notice of Proposed Medicaid State Plan Amendment (SPA)

SPA 20-B: Clinics – HIPAA Compliance Billing Code and Reimbursement Updates

The State of Connecticut Department of Social Services (DSS) proposes to submit the following Medicaid State Plan Amendment to the Centers for Medicare & Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS).

Changes to Medicaid State Plan

Effective on or after January 1, 2020, SPA 20-B will amend Attachment 4.19-B of the Medicaid State Plan to revise the Medical Clinic, Family Planning Clinic, Behavioral Health Clinic, Rehabilitation Clinic, and Ambulatory Surgical Center fee schedules as described below. These revisions incorporate the 2020 Healthcare Common Procedure Coding System (HCPCS) changes (additions, deletions and description changes) to remain compliant with the Health Insurance Portability and Accountability Act (HIPAA). Codes that are being added are being priced using a comparable methodology to other codes in the same or similar category. For newly added codes that are replacing codes that are being deleted, they are being priced in a manner designed to be cost-neutral to the previous overall payment methodology.

In addition to the HIPAA compliant update, this SPA will also add the following codes to the Family Planning Clinic fee schedule:

CPT Code	Description	Rates
17110	Destruct b9 lesion 1-14	$79.20
17111	Destruct lesion 15 or more	$93.12
46924	Destruction anal lesion(s)	$402.26
99408	Screening and Brief Intervention (SBI) services for alcohol and/or substance misuse or abuse other than tobacco; 15 to 30 minutes	$22.40
99409	Screening and Brief Intervention services greater than 30 minutes	$43.01

Fee schedules are published at this link: http://www.ctdssmap.com, then select ''Provider'', then select ''Provider Fee Schedule Download.''

Fiscal Impact

Based on the information that is available at this time, DSS does not anticipate that the HIPAA compliance updates portions of this SPA will substantially affect annual aggregate expenditures.

The addition of the codes specified above on the Family Planning Clinic fee schedule will result in an increase of annual aggregate expenditures by approximately $15,000 in State Fiscal Year (SFY) 2020 and $36,000 in SFY 2021.

Obtaining SPA Language and Submitting Comments

The proposed SPA is posted on the DSS website at this link: http://portal.ct.gov/dss. Scroll down to the bottom of the webpage and click on ''Publications'' and then click on ''Updates.'' Then click on ''Medicaid State Plan Amendments''. The proposed SPA may also be obtained at any DSS field office, at the Town of Vernon Social Services Department, or upon request from DSS (see below).

To request a copy of the SPA from DSS or to send comments about the SPA, please email: Public.Comment.DSS@ct.gov or write to: Department of Social Services, Medical Policy Unit, 55 Farmington Avenue, 9th Floor, Hartford, CT 06105 (Phone: 860-424-5067). Please reference ''SPA 20-B: Clinics – HIPAA Compliance Billing Code and Reimbursement Updates''.

Anyone may send DSS written comments about this SPA. Written comments must be received by DSS at the above contact information no later than January 15, 2020.

DEPARTMENT OF SOCIAL SERVICES

Notice of Proposed Medicaid State Plan Amendment (SPA)

SPA 20-C: Independent Radiology and Independent Laboratory – HIPAA Compliance Billing Code Update

The State of Connecticut Department of Social Services (DSS) proposes to submit the following Medicaid State Plan Amendment (SPA) to the Centers for Medicare & Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS).

Changes to Medicaid State Plan

Effective on or after January 1, 2020, SPA 20-C will amend Attachment 4.19-B of the Medicaid State Plan to incorporate the 2020 Healthcare Common Procedure Coding System (HCPCS) changes (additions, deletions and description changes) to the Independent Radiology and Independent Laboratory fee schedules to remain compliant with the Health Insurance Portability and Accountability Act (HIPAA). Codes that are being added are being priced using a comparable methodology to other codes in the same or similar category.

Fee schedules are published at this link: http://www.ctdssmap.com, then select ''Provider'', then select ''Provider Fee Schedule Download.''

Fiscal Impact

Based on the information that is available at this time, DSS does not anticipate that this SPA will substantially affect annual aggregate expenditures.

Obtaining SPA Language and Submitting Comments

This SPA is posted on the DSS web site at the following link: http://portal.ct.gov/dss. Scroll down to the bottom of the webpage and click on ''Publications'' and then click on ''Updates.'' Then click on ''Medicaid State Plan Amendments''. The proposed SPA may also be obtained at any DSS field office, at the Town of Vernon Social Services Department, or upon request from DSS (see below).

To request a copy of the SPA from DSS or to send comments about the SPA, please email: Public.Comment.DSS@ct.gov or write to: Department of Social Services, Medical Policy Unit, 55 Farmington Avenue, 9th Floor, Hartford, CT 06105 (Phone: 860-424-5067). Please reference ''SPA 20-C: Independent Radiology and Independent Laboratory – HIPAA Compliance Billing Code Update''.

Anyone may send DSS written comments about this SPA. Written comments must be received by DSS at the above contact information no later than January 15, 2020.

DEPARTMENT OF SOCIAL SERVICES

Notice of Proposed Medicaid State Plan Amendment (SPA)

SPA 20-D: Dental Services – HIPAA Compliance Billing Code Update

The State of Connecticut Department of Social Services (DSS) proposes to submit the following Medicaid State Plan Amendment (SPA) to the Centers for Medicare & Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS).

Changes to Medicaid State Plan

Effective on or after January 1, 2020, SPA 20-D will amend Attachment 4.19-B of the Medicaid State Plan to update the dental fee schedules for adults and children as follows. This SPA will incorporate various 2020 Healthcare Common Procedure Coding System (HCPCS) (additions, deletions and description changes) to the adult and children's dental fee schedules. Codes that are being added are being priced using a comparable methodology to other codes in the same or similar category and replacement codes are being priced in a manner designed to make the billing code updates cost-neutral. DSS is making these changes to ensure that these fee schedules remain compliant with the Health Insurance Portability and Accountability Act (HIPAA).

Fee schedules are published at this link: http://www.ctdssmap.com, then select ''Provider'', then select ''Provider Fee Schedule Download'' Accept or Decline the Terms and Conditions and go to the Adult or Children's Dental Fee Schedule.

Fiscal Impact

DSS anticipates that this SPA will not substantially affect annual aggregate expenditures.

Obtaining SPA Language and Submitting Comments

The proposed SPA is posted on the DSS website at this link: http://portal.ct.gov/dss. Scroll down to the bottom of the webpage and click on ''Publications'' and then click on ''Updates.'' Then click on ''Medicaid State Plan Amendments''. The proposed SPA may also be obtained at any DSS field office, at the Town of Vernon Social Services Department, or upon request from DSS (see below).

To request a copy of the SPA from DSS or to send comments about the SPA, please email: Public.Comment.DSS@ct.gov or write to: Department of Social Services, Medical Policy Unit, 55 Farmington Avenue, 9th Floor, Hartford, CT 06105 (Phone: 860-424-5067). Please reference ''SPA 20-D: Dental Services – HIPAA Compliance Billing Code Update''.

Anyone may send DSS written comments about this SPA. Written comments must be received by DSS at the above contact information no later than January 15, 2020.

DEPARTMENT OF SOCIAL SERVICES

Notice of Proposed Medicaid State Plan Amendment (SPA)

SPA 20-E: Audiology and Speech & Language Pathology, Physical and Occupational Therapies – HIPAA Compliance Billing Code and Reimbursement Update

The State of Connecticut Department of Social Services (DSS) proposes to submit the following Medicaid State Plan Amendment (SPA) to the Centers for Medicare & Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS).

Changes to Medicaid State Plan

Effective on or after January 1, 2020, SPA 20-E will amend Attachment 4.19-B of the Medicaid State Plan to incorporate the 2020 Healthcare Common Procedure Coding System (HCPCS) changes (additions, deletions and description changes) to the Audiology and Speech & Language Pathology and the Independent Physical and Occupational Therapy fee schedules. The Department is making these changes to remain compliant with the Health Insurance Portability and Accountability Act (HIPAA). New codes are being priced in accordance with the same methodology as existing codes, priced at 57.5% of the 2020 Medicare physician fee schedule.

In addition to the HIPAA compliant updates, this SPA also adds the following code to the Independent Physical and Occupational Therapy fee schedule:

Procedure Code	Description	Rate
97535	Self-care management	$17.92

It is necessary to add this in order to ensure the fee schedules incorporate medically necessary services rendered in that setting.

Fee schedules are published at this link: http://www.ctdssmap.com, then select ''Provider'', then select ''Provider Fee Schedule Download.''

Fiscal Impact

Based on the information that is available at this time, DSS estimates that overall, this SPA will increase annual aggregate expenditures by approximately $10,000 in State Fiscal Year (SFY) 2020 and $24,000 in SFY 2021.

Obtaining SPA Language and Submitting Comments

This SPA is posted on the DSS web site at the following link: http://portal.ct.gov/dss. Scroll down to the bottom of the webpage and click on ''Publications'' and then click on ''Updates.'' Then click on ''Medicaid State Plan Amendments''. The proposed SPA may also be obtained at any DSS field office, at the Town of Vernon Social Services Department, or upon request from DSS (see below).

To request a copy of the SPA from DSS or to send comments about the SPA, please email: Public.Comment.DSS@ct.gov or write to: Department of Social Services, Medical Policy Unit, 55 Farmington Avenue, 9th Floor, Hartford, CT 06105 (Phone: 860-424-5067). Please reference ''SPA 20-E: Audiology and Speech & Language Pathology, Physical and Occupational Therapies – HIPAA Compliance Billing Code and Reimbursement Update''.

Anyone may send DSS written comments about this SPA. Written comments must be received by DSS at the above contact information no later than January 15, 2020.

DEPARTMENT OF SOCIAL SERVICES

Notice of Proposed Medicaid State Plan Amendment (SPA)

SPA 20-I: Person-Centered Medical Home Plus (PCMH+) Program Updates

The State of Connecticut Department of Social Services (DSS) proposes to submit the following Medicaid State Plan Amendment (SPA) to the Centers for Medicare & Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS).

Changes to Medicaid State Plan

Effective on or after January 1, 2020, SPA 20-I will amend Attachments 3.1-A, 3.1-B, and 4.19-B of the Medicaid State Plan to implement the various program changes in Wave 3 of the PCMH+ program as described in brief below and in detail in the SPA pages and to set forth the total amount available for care coordination add-on payments to Federally Qualified Health Centers (FQHCs) that are Participating Entities in the PCMH+ program for calendar years 2020 and 2021. The PCMH+ program is codified in the Medicaid State Plan as an Integrated Care Model within section 1905(a)(29) of the Social Security Act (Act), which is the Medicaid benefit category for ''any other medical care, and any other type of remedial care recognized under State law, specified by the [HHS] Secretary.'' PCMH+ involves shared savings payments and care coordination add-on payments for primary care case management (PCCM) services, as defined by section 1905(t) of the Act. All of the changes are described in more detail in the SPA pages, which are summarized as follows:

Electronic Health Records (EHR) Requirements: Each PCMH+ participating entity (PE) must have either a unified system using one single EHR among practice sites or an established system that fully integrates multiple EHRs into one unified system, so that care coordinators in any part of the PE have access to relevant information for members for whom they are providing care coordination services.

Provider Qualifications: Wave 3 eliminates the 18-month period to obtain PCMH certification and now requires all primary care providers within a PCMH+ PE to have full PCMH status at the time of attribution and assignment for each performance year.

Care Coordination: Enhanced care coordination requirements will be amplified in Wave 3. PEs must develop fully integrated, dynamic, interdisciplinary care teams that work in collaboration across the organization and at each service location where members are seen. All members of the care team are to have access to the member records to support seamless care coordination.

Quality Measures: The Department has refined the core set of quality measures. The Department has developed several elective measures, for use in the quality scoring of the Challenge Pool.

Quality Measurement Scoring: The Department has modified the shared savings payment scoring methods for the purpose of rewarding both high performers and significant improvement. Performance gates have been added in W3 that will require PEs to improve year-over-year in avoidable hospitalizations and ED visits prior to qualifying for the Challenge Pool component of shared savings.

Challenge Pool Gate: The requirement to participate in the Challenge Pool is based on level of adoption of care management interventions, care delivery and other measurable action tied to member care.

The purpose of this SPA is to enable implementation of PCMH+ Wave 3, including the various changes described in brief above and in more detail in the SPA pages.

Fiscal Impact

Based on the information that is available at this time, by enabling the continuation of the implementation of PCMH+ into Wave 3, DSS estimates that this SPA will increase annual aggregate expenditures by up to the amount authorized in the state budget or approximately $6.6 million each year in calendar years 2020 and 2021 for the per-member per-month care coordination add-on payments to PEs that are FQHCs. Other changes described above may also affect annual aggregate expenditures for the program in various ways, including potentially changing the individual and challenge pool shared savings payments, but it is not possible to quantify those amounts at this time.

Obtaining SPA Language and Submitting Comments

This SPA is posted on the DSS web site at the following link: http://portal.ct.gov/dss. Scroll down to the bottom of the webpage and click on ''Publications'' and then click on ''Updates.'' Then click on ''Medicaid State Plan Amendments''. The proposed SPA may also be obtained at any DSS field office, at the Town of Vernon Social Services Department, or upon request from DSS (see below).

To request a copy of the SPA from DSS or to send comments about the SPA, please email: Public.Comment.DSS@ct.gov or write to: Department of Social Services, Medical Policy Unit, 55 Farmington Avenue, 9th Floor, Hartford, CT 06105 (Phone: 860-424-5067). Please reference ''SPA 20-I: PCMH+ Program Updates''.

Anyone may send DSS written comments about this SPA. Written comments must be received by DSS at the above contact information no later than January 15, 2020.

DEPARTMENT OF SOCIAL SERVICES

Notice of Proposed Medicaid State Plan Amendment (SPA)

SPA 20-J: Publicly Operated Nursing Facility Reimbursement

The State of Connecticut Department of Social Services (DSS) proposes to submit the following Medicaid State Plan Amendment (SPA) to the Centers for Medicare and Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS).

Changes to Medicaid State Plan

Effective on or after February 1, 2020, SPA 20-J will amend Attachment 4.19-D of the Medicaid State Plan to add a reimbursement methodology for a publicly operated Chronic and Convalescent Nursing Home (CCNH) operated by the State of Connecticut Department of Veterans Affairs. This reimbursement methodology will be cost-based and will be based on cost reports and cost reimbursement methodology described in the state plan pages.

Fiscal Impact

Based currently available data, DSS estimates that this SPA will increase annual aggregate Medicaid expenditures by approximately $6.4 million in State Fiscal Year (SFY) 2020 and $18.3 million in SFY 2021.

Obtaining SPA Language and Submitting Comments

This SPA is posted on the DSS website at the following link: http://portal.ct.gov/dss. Scroll down to the bottom of the webpage and click on ''Publications'' and then click on ''Updates''. Then click on ''Medicaid State Plan Amendments''. The proposed SPA may also be obtained at any DSS field office, at the Town of Vernon Social Services Department, or upon request from DSS (see below).

To request a copy of the SPA from DSS or to send comments about the SPA, please email: Public.Comment.DSS@ct.gov or write to: Department of Social Services, Medical Policy Unit, 55 Farmington Avenue, 9th Floor, Hartford, CT 06105 (Phone: 860-424-5067). Please reference ''SPA 20-J: Publicly Operated Nursing Facility Reimbursement''.

Anyone may send DSS written comments about this SPA. Written comments must be received by DSS at the above contact information no later than January 30, 2020.

DEPARTMENT OF SOCIAL SERVICES

Notice of Proposed Medicaid State Plan Amendment (SPA)

SPA 20-K: Connecticut Housing Engagement and Support Services (CHESS) Initiative
State Plan Home and Community-Based Services (HCBS)
Pursuant to Section 1915(i) of the Social Security Act

The State of Connecticut Department of Social Services (DSS) proposes to submit the following Medicaid State Plan Amendment (SPA) to the Centers for Medicare & Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS).

Changes to Medicaid State Plan

Effective on or after June 1, 2020, SPA 20-K will amend Attachments 2.2-A, 3.1-i, and 4.19-B of the Medicaid State Plan to implement CHESS through Medicaid State Plan HCBS services pursuant to section 1915(i) of the Social Security Act. The purpose of the CHESS Initiative is to improve housing stability and health outcomes for a targeted set of Medicaid members who have complex health conditions, have experienced homelessness, and have been determined to be likely to benefit from targeted tenancy sustaining services.

Service Categories: This SPA would establish four service categories: care plan development and monitoring, pre-tenancy and transition assistance, housing and tenancy sustaining services, and transportation.

Targeting Criteria: This benefit would be available only to Medicaid members who meet all of the following targeting criteria: age 18 and over, documentation of homelessness in accordance with federal Department of Housing and Urban Development regulations, have relevant diagnoses and Medicaid claims to have a risk score as defined by the Healthcare Effectiveness Data and Information Set (HEDIS) Plan All-Cause Readmissions measure, and be determined based on the methodology described in the SPA pages that the individual is experiencing more significant inpatient services than would be predicted based on the individual's risk score.

Payment Methodology: Care plan development will be paid as a fixed fee of $200. Pre-tenancy and transition assistance, and housing and tenancy sustaining services will each be paid as a per-member per-month payment calculated based on the average salary and related costs for relevant provider staff, with a withhold of 25% from the rate that will be paid based on the provider's performance on specified outcome measures.

Provider Qualifications: The provider entity and individual staff qualifications are described in more detail in the SPA pages. Provider entities are limited to those who meet all CHESS requirements and also have been selected through the Department of Mental Health and Addiction Services (DMHAS) supportive housing provider competitive procurement process. DSS also plans to submit a Selective Provider Contracting Waiver pursuant to section 1915(b)(4) of the Social Security Act in order to enable the incorporation of the DHMAS competitive procurement.

More details on all aspects of the SPA are detailed in the SPA pages. In additional, more information regarding the CHESS Initiative is posted on the DSS website at this link: https://portal.ct.gov/DSS/Health-And-Home-Care/Connecticut-Housing-Engagement-and-Support/Connecticut-Housing-Engagement-and-Support.

Fiscal Impact

Based on the information that is available at this time, DSS anticipates that this SPA will increase annual aggregate expenditures by approximately $1.7 million in State Fiscal Year (SFY) 2021 and $5.4 million in SFY 2022.

Obtaining SPA Language and Submitting Comments

The proposed SPA is posted on the DSS website at this link: http://portal.ct.gov/dss. Scroll down to the bottom of the webpage and click on ''Publications'' and then click on ''Updates.'' Then click on ''Medicaid State Plan Amendments''. The proposed SPA may also be obtained at any DSS field office, at the Town of Vernon Social Services Department, or upon request from DSS (see below).

To request a copy of the SPA from DSS or to send comments about the SPA, please email: Public.Comment.DSS@ct.gov or write to: Department of Social Services, Medical Policy Unit, 55 Farmington Avenue, 9th Floor, Hartford, CT 06105 (Phone: 860-424-5067). Please reference ''SPA 20-K: CHESS Initiative – Section 1915(i) State Plan HCBS''.

Anyone may send DSS written comments about this SPA. Written comments must be received by DSS at the above contact information no later than January 30, 2020.

DEPARTMENT OF SOCIAL SERVICES

Notice of Proposed Medicaid State Plan Amendment (SPA)

SPA 20-L: Updates to Alternative Benefit Plan (ABP) for the Medicaid Coverage Group for Low-Income Adults Regarding Connecticut Housing Engagement and Support Services (CHESS) Initiative State Plan Home and Community-Based Services (HCBS) Pursuant to Section 1915(i) of the Social Security Act

The State of Connecticut Department of Social Services (DSS) proposes to submit the following Medicaid State Plan Amendment (SPA) to the Centers for Medicare & Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS), which will amend the Alternative Benefit Plan (ABP) at Attachment 3.1-L of the Medicaid State Plan.

The ABP is the benefit package that, effective January 1, 2014, is provided to the Medicaid low-income adult population under section 1902(a)(10)(A)(i)(VIII) of the Social Security Act (also known as HUSKY D). Pursuant to section 2001 of the Affordable Care Act, effective January 1, 2014, Connecticut expanded Medicaid eligibility to low-income adults with incomes up to and including 133% of the federal poverty level. The expanded coverage group is referred to as Medicaid Coverage for the Lowest-Income Populations.

Changes to Medicaid State Plan

Effective on or after June 1, 2020, SPA 20-L will amend the ABP (Attachment 3.1-L of the Medicaid State Plan) in order to add CHESS through Medicaid State Plan HCBS services pursuant to section 1915(i) of the Social Security Act. The purpose of the CHESS Initiative is to improve housing stability and health outcomes for a targeted set of Medicaid members who have complex health conditions, have experienced homelessness, and have been determined to be likely to benefit from targeted tenancy sustaining services. All details regarding the CHESS Initiative, which are being incorporated by reference into the ABP are described in SPA 20-K.

This SPA will not make any other changes to the ABP than as described above, which will continue to reflect the same coverage in the ABP for HUSKY D Medicaid members as in the underlying Medicaid State Plan. Accordingly, the ABP will continue to provide full access to Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services to beneficiaries under age twenty-one. This includes informing them that EPSDT services are available and of the need for age-appropriate immunizations. The ABP also provides or arranges for the provision of screening services for all children and for corrective treatment as determined by child health screenings. These EPSDT services are provided by the DSS fee-for-service provider network. EPSDT clients are also able to receive any additional health care services that are coverable under the Medicaid program and found to be medically necessary to treat, correct or reduce illnesses and conditions discovered regardless of whether the service is covered in Connecticut's Medicaid State Plan.

Likewise, this SPA will not make any changes to cost sharing for the services provided under the ABP. Connecticut does not currently impose cost sharing on Medicaid beneficiaries. Because there are no Medicaid cost sharing requirements for Connecticut beneficiaries, no exemptions are necessary in order to comply with the cost sharing protections for Native Americans found in section 5006(e) of the American Recovery and Reinvestment Act of 2009.

Fiscal Impact

This SPA will not change annual aggregate expenditures.

Obtaining SPA Language and Submitting Comments

The proposed SPA is posted on the DSS website at this link: http://portal.ct.gov/dss. Scroll down to the bottom of the webpage and click on ''Publications'' and then click on ''Updates.'' Then click on ''Medicaid State Plan Amendments''. The proposed SPA may also be obtained at any DSS field office, at the Town of Vernon Social Services Department, or upon request from DSS (see below).

To request a copy of the SPA from DSS or to send comments about the SPA, please email: Public.Comment.DSS@ct.gov or write to: Department of Social Services, Medical Policy Unit, 55 Farmington Avenue, 9th Floor, Hartford, CT 06105 (Phone: 860-424-5067). Please reference ''SPA 20-L: Update to Alternative Benefit Plan (ABP) for the Medicaid Coverage Group for Low-Income Adults to Add CHESS Initiative Section 1915(i) State Plan HCBS''.

Anyone may send DSS written comments about this SPA. Written comments must be received by DSS at the above contact information no later than January 30, 2020.

NOTICES

CONNECTICUT BAR EXAMINING COMMITTEE

The following 165 persons have applied for admission to the Connecticut bar by examination to be held on February 25 & 26, 2020. Written objections or comments regarding any candidate should be addressed to the Connecticut Bar Examining Committee, 100 Washington Street, 1st Floor, Hartford, CT 06106 as soon as possible.

Jessica F. Kallipolites
Administrative Director

Abovyan, Lusine Rafiki of Bridgeport, CT
Altieri, Raymond James of Shelton, CT
Amaral, Korrin Nichole of Mystic, CT
Ambrogio, Kelly Anne of Hartford, CT
Amin, Dawud W. of New Haven, CT
Anderson, Lutherene A. of Miramar, FL
Andrews, Benjamin Z. of Wilton, CT
Antunes, Nicole Marie Carolino of Newington, CT
Arbizo, Eric Daniel of Stamford, CT
Armas, Mirella E. of Niantic, CT
Aulenti, Frank Vito of Charleston, SC
Ayers, Kathleen Lacey of Hamden, CT
Beckoff, Jay C. of Westport, CT
Berriault, Robert Wendell of New Britain, CT
Bertolino, Matthew Vincent of Trumbull, CT
Bixby, David Walter of Middletown, CT
Boet Repeta, Susan of Londonderry, NH
Bonito, Angela Marie of North Branford, CT
Boussias, Rocky John of Waterbury, CT
Brennan-Reilly, Joseph Richard of Hamden, CT
Brodzinski, Emily Kay of Chester, CT
Byrne, John Joseph of West Hartford, CT
Cale, Jose Carlos Cordeiro of Newington, CT
Callis, Katherine Alexandra of Farmington, CT
Canty, Shane Patrick of Ellington, CT
Carbray, Ashley Patrice of Bloomfield, CT
Carpenter Woods, Martina R. of Bowie, MD
Carredano, Jessenia Michele of Peabody, MA
Cassidy, Brendan Thomas of West Haven, CT
Chadha, Amrita of New York, NY
Chandler, Chiquita LaYvetta of Henrico, VA
Choiniere, Michael Patrick of Danbury, CT
Collazo Cruz, Mariedy of New London, CT
Collins, Anastasiya of Trumbull, CT
Corica, Dan Augustine of Shelton, CT
Cote, William P. of East Haven, CT
Crawford, Vanessa Kuoling of Hamden, CT
Cunniff, Peter Kevin of Seymour, CT
Czarnowski, Jennifer Eva of East Hampton, CT
da Rocha, Isabela Gomes Pereira of Middletown, CT
D'Abrosca, Evan Michael of West Warwick, RI
Darius, Joey-Lynn Dominique of Marlborough, CT
Davis, Alesha Marie of Austin, TX
Davis, LaTisha Monique of New Haven, CT
DeDominicis, Alyssa Marie of New Britain, CT
DeFalco, Kaila Michelle of Middletown, CT
DeJesus, Joseph A. of Methuen, MA
DeLanzo, Catherine Amelia of Middletown, CT
DeSalvatore, Kelly Alene of Newington, CT
Dressler, Tavi J. of West Hartford, CT
DuBack, Rebecca N. of Danbury, CT
Dubuc, Danielle Rejeanne of Longmeadow, MA
Dutra, Patricia Portes of Boston, MA
Esmail, Ramy of Hartford, CT
Eze, Paulette Nneka of West Hartford, CT
Falcon, Bernardo Martin of New Haven, CT
Fanny-Holston, Sasha Pauline Marie-Gabrielle Nicole of Revere, MA
Finnih, Titilope of Stoughton, MA
Foye, Bryan Paul of Warwick, RI
Francini, Anthony of East Hartford, CT
Freis, Jon H. of Sherman Oaks, CA
Gaughan, Jr., James Mark of Boston, MA
Georgio, Alfred Gerald of West Greenwich, RI
Gerosa, Nicole Marie of Branford, CT
Ghanbari, Maryam of Fairport, NY
Giancarlo, Taylor Leigh of Meriden, CT
Gibson, Brooke Lamar of Weston, CT
Giuliano, Jake Joseph of Wallingford, CT
Gonzalez, Joshua of Medford, MA
Govoni, Levi Sebastian of Wethersfield, CT
Haroon, Shehrezad of Southington, CT
Harris, Thomas L. of Haddam Neck, CT
Haven, Kevin Patrick of New Milford, CT
Helfman, Lotan Shely of Northampton, MA
Hindin, Gabrielle Shoshannah of Hamden, CT
Hodges, Ashley Elizabeth of Oxford, CT
Hruszko, Sergio of West Haven, CT
Hussain, Umer of Windsor, CT
Inzitari, Leonard F. of East Haven, CT
Ishikawa, David Wyatt of Hamden, CT
Isleib, Christopher Charles of Middletown, CT
Josephs, Garrick Dane of Norwalk, CT
Karamani, Christina Ruth of Wallingford, CT
Kennedy, Shannon Lynn of Shelton, CT
Khamsyvoravong, Xaykham Rexford of Providence, RI
Kim, Yewon of Hartford, CT
Koziatek, Albert James of East Haven, CT
Kraner, Nathan E. of Hartford, CT
LaFrance, Maxwell Colby of Meriden, CT
Lanza, Adam Carmelo Bergman of New York, NY
Larrubia, Trevor James of Middletown, CT
Lastrina, Angelo C. of Portland, CT

Lavache, Caminer of West Haven, CT
Lawless, Brendan R. of New Haven, CT
Lazo, Margie Stephanie of Lawrence, MA
Lee, Youngdo of New Britain, CT
Lewis, Lizeth Charlita Tarnella of Torrington, CT
Lloyd, Uriel Junior of Hartford, CT
Locklin, Susan Byrum of West Springfield, MA
Lowrie, Marvette Erica of Bloomfield, CT
MacSweeney, Maureen Ann of Winter Park, FL
Maharbiz, Carolina of Old Saybrook, CT
Maldonado, Jose Alberto of Windsor, CT
Mansfield-Marcoux, Danielle of South Windsor, CT
Marshall, Dylan Scott of Seekonk, MA
McGrory, Sean Michael of Springfield, MA
McLaughlin, Conor Joseph of Fairfield, CT
McLaughlin, Karen of Meriden, CT
Michelman, Glenn Perry of Boca Raton, FL
Min, Yuri Park of Southington, CT
Minicucci, Gabriella Marie of Watertown, CT
Mullany, David William of Wethersfield, CT
Musani, Mohamed Riaz of West Hartford, CT
Naclerio, Eric R. of Milford, CT
Napper, Tyrone of West Hartford, CT
Noujaim, Melissa Emile of Waterbury, CT
Olumide, Kunle M. of Windsor, CT
O'Mahony, Samuel Pike of New Canaan, CT
Orlowski, Lauren Michelle of Windsor, CT
O'Shaughnessy, Lillian Anne of Redding, CT
Oyunbazar, Odonchimeg of Ridgefield, CT
Palmer, Steven M. of Wolcott, CT
Panagoulias, Angeline Nicole of Monroe, CT
Paquette, Sean Edward of Berlin, CT
Pervez, Sahar of Danbury, CT
Phanngavong, Samantha of Stratford, CT
Phelps, Charles Ward of Stamford, CT
Photos, Dominique Nicole of Shelton, CT
Powell, Nancy Leigh of Windsor Locks, CT
Privat, Jeannine Weil of Woodbridge, CT
Reveliotty, Michael Allen of Madison, CT
Rhi, Rachael H. of Fairfax, VA
Riccio, JoAnn Lynn of Bristol, CT
Roberts, Samantha Kelly of Cheshire, CT
Robertson, Colin Fraser of Oakville, CT
Rodriguez-Torres, Carlos Luis of Waterbury, CT
Rotondo, Alexandra Lee of Glastonbury, CT
Ruhling, Jennifer Leonard of Lyme, CT
Russell-Donegal, Tashika Tashani of Bridgeport, CT
Ryff, Tyler Michael of Hartford, CT
Sadat, Wazhma of New Haven, CT
Sakaj, Frida of Simsbury, CT
Sanidad, Kevin G. of Glastonbury, CT
Santaniello, Natalie Paige of Hampden, MA
Santovasi, Nicholas Joseph of Goshen, CT
Scafariello, John Stephen of West Haven, CT
Semataska, Kevin Lawrence of Middletown, CT
Sevier, Shane D. of Sandy Hook, CT
Seyal, Amina Aziz of Fairfield, CT
Simon, Mary Jessica of New Haven, CT
Sisca, Cristina Marie of Stamford, CT
Sloane, Sarah E. of Hamden, CT
Thenor, Wilnick of Fall River, MA
Toler, Lorianne Updike of New Haven, CT
Tomasko, Helen F. of Bethel, CT
Townshend, William Augustin of Stamford, CT
Vakili, Sayyedeh Parastoo of Ashland, MA
Voyer, Jordan A. of West Hartford, CT
Ward, Johanna Mei Ping of Oxford, CT
Werner, Michael Daniel of East Haddam, CT
Wicken, Raagan L. of Norwich, CT
Woods, David Paul of Wallingford, CT
Woodside, Jamie Marie of Granby, CT
Zheng, Alexander Chen of Newington, CT
Zorrilla, Antonio A. of Bristol, RI

Electronic Publication of Orders of Notice in Civil and Family Cases

The Judicial Branch has created a Legal Notices page on the Judicial Branch website for orders of notice by publication issued by the court in civil and family cases. This new web page will be available January 2, 2020.

Historically, such notices have been ordered to be published in a newspaper. The new Legal Notices webpage will allow parties, when ordered by the court, to send their orders of notice to the Judicial Branch for publication on the Judicial Branch's website at no cost. Names published on the Legal Notices webpage will be searchable online. It is expected that this will save a great deal of time and expense, and provide greater accuracy and broader notice than newspaper publication.

FAQs for Legal Notice by Publication will be posted on the Judicial Branch website. Questions may be sent to **LegalNotice@jud.ct.gov**.

Hon. Patrick L. Carroll III
Chief Court Administrator

Notice of Inactive Status of Attorney

Pursuant to Practice Book Section 2-54, notice is hereby given that on November 15 2019, in Docket Number HHD-CV-19-6117504-S, William T. Shea (Juris# 056735) of Meriden, CT was ordered to remain on inactive status (from a previous order entered on October 22, 2019), due to his incapacity to practice law by reason of physical and/or mental illness until further order of this court.

David Sheridan
Presiding Judge

Notice of Reprimand of Attorneys

Pursuant to Practice Book Section 2-54, notice is hereby given of the following reprimands ordered by reviewing committees of the Statewide Grievance Committee:

Reviewing Committee Reprimands

September 27, 2019: Robert Louis Fiedler, Newington, Connecticut – 307165
Dale H. King, Pawcatuck, Connecticut – 303105

October 4, 2019: Lawrence J. Greenberg, New Haven, Connecticut – 024685

Copies of the full text of the decision of the Statewide Grievance Committee is available through the Committee's offices at Second Floor, Suite Two, 287 Main Street, East Hartford, Connecticut 06118-1885. The fee for copies is $.25 (twenty-five cents) per page. The full text of the decision is also available on the Connecticut Judicial Branch website (www.jud.ct.gov).

Attest:

Michael P. Bowler
Statewide Bar Counsel

Revised Law Journal Deadlines for Issues Published January 2020 through December 2020

To submit material to the Connecticut Law Journal please send a Word file to: COLPLJ@JUD.CT.GOV

The deadline for submitting material is Wednesday at noon for publication in the Law Journal on the Tuesday six days later.

If one or more holidays fall within the 6 day time period, the deadline will change as noted in bold type in the following deadline listing:

Law Journal Publication Date (every Tuesday)	Deadline Date (at 12:00 Noon)
January 7, 2020	**Tuesday December 31, 2019**
January 14, 2020	Wednesday January 8, 2020
January 21, 2020	**Tuesday January 14, 2020**
January 28, 2020	Wednesday January 22, 2020
February 4, 2020	Wednesday January 29, 2020
February 11, 2020	Wednesday February 5, 2020
February 18, 2020	**Monday February 10, 2020**
February 25, 2020	Wednesday February 19, 2020
March 3, 2020	Wednesday February 26, 2020
March 10, 2020	Wednesday February 4, 2020
March 17, 2020	Wednesday March 11, 2020
March 24, 2020	Wednesday March 18, 2020
March 31, 2020	Wednesday March 25, 2020
April 7, 2020	Wednesday April 1, 2020
April 14, 2020	**Tuesday April 7, 2020**
April 21, 2020	Wednesday April 15, 2020
April 28, 2020	Wednesday April 22, 2020
May 5, 2020	Wednesday April 29, 2020
May 12, 2020	Wednesday May 6, 2020
May 19, 2020	Wednesday May 13, 2020
May 26, 2020	**Tuesday May 19, 2020**
June 2, 2020	Wednesday May 27, 2020
June 9, 2020	Wednesday June 3, 2020
June 16, 2020	Wednesday June 10, 2020
June 23, 2020	Wednesday June 17, 2020
June 30, 2020	Wednesday June 24, 2020

July 7, 2020	**Tuesday June 30, 2020**
July 14, 2020	Wednesday July 8, 2020
July 21, 2020	Wednesday July 15, 2020
July 28, 2020	Wednesday July 22, 2020
August 4, 2020	Wednesday July 29, 2020
August 11, 2020	Wednesday August 5, 2020
August 18, 2020	Wednesday August 12, 2020
August 25, 2020	Wednesday August 19, 2020
September 1, 2020	Wednesday August 26, 2020
September 8, 2020	**Tuesday September 1, 2020**
September 15, 2020	Wednesday September 9, 2020
September 22, 2020	Wednesday September 16, 2020
September 29, 2020	Wednesday September 23, 2020
October 6, 2020	Wednesday September 30, 2020
October 13, 2020	**Tuesday October 6, 2020**
October 20, 2020	Wednesday October 14, 2020
October 27, 2020	Wednesday October 21, 2020
November 3, 2020	Wednesday October 28, 2020
November 10, 2020	Wednesday November 4, 2020
November 17, 2020	**Tuesday November 10, 2020**
November 24, 2020	Wednesday November 18, 2020
December 1, 2020	**Tuesday November 24, 2020**
December 8, 2020	Wednesday December 2, 2020
December 15, 2020	Wednesday December 9, 2020
December 22, 2020	Wednesday December 16, 2020
December 29, 2020	**Tuesday December 22, 2020**