CONNECTICUT LAW JOURNAL

Published in Accordance with General Statutes Section 51-216a

VOL. LXXX No. 33 February 12, 2019 113 Pages

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CONNECTICUT LAW JOURNAL
(ISSN 87500973)

Published by the State of Connecticut in accordance with the provisions of General Statutes § 51-216a.

Commission on Official Legal Publications
Office of Production and Distribution
111 Phoenix Avenue, Enfield, Connecticut 06082-4453
Tel. (860) 741-3027, FAX (860) 745-2178
www.jud.ct.gov

RICHARD J. HEMENWAY, *Publications Director*

Published Weekly – Available at https://www.jud.ct.gov/lawjournal

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The deadline for material to be published in the Connecticut Law Journal is Wednesday at noon for publication on the Tuesday six days later. When a holiday falls within the six day period, the deadline will be noon on Tuesday.

CONNECTICUT REPORTS

Vol. 330

CASES ARGUED AND DETERMINED

IN THE

SUPREME COURT

OF THE

STATE OF CONNECTICUT

RESTAURANT SUPPLY, LLC *v.* GIARDI LIMITED PARTNERSHIP
(SC 20154)

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

Syllabus

Pursuant to statute (§ 42a-2-328 [3]), a sale of goods by auction is with reserve unless the goods are in explicit terms put up without reserve, and, in an auction without reserve, after the auctioneer calls for bids, the article cannot be withdrawn unless no bid is made within a reasonable time.

The plaintiff, R Co., brought an action seeking, inter alia, specific performance of an alleged agreement to purchase certain real property in Hartford owned by the defendant G Co. R Co.'s complaint alleged that, after G Co. had received multiple offers for its property, it requested that all prospective buyers submit their highest and best offers. R Co. further claimed that it had submitted the highest and best offer but that G Co. did not accept that offer and, instead, accepted a purportedly lower offer submitted by H Co. While R Co.'s action was pending, G Co. executed a special warranty deed conveying the property to H Co. R Co. thereafter added H Co. as a defendant and amended its complaint, adding a second count against H Co. G Co. and H Co. thereafter each moved to strike the count of the amended complaint directed at them, which R Co. opposed. R Co. claimed that, by alleging that G Co. had requested that buyers submit their highest and best offers, it had sufficiently pleaded the existence of an auction without reserve, which contractually bound G Co. to accept the bid submitted by R Co., the highest bidder, and created an enforceable agreement that was an exception to the requirement of the statute of frauds that there be a writing signed by the party to be charged in order for it to be enforceable. The trial court granted the motions to strike, concluding that the statute of frauds barred R Co.'s claim and rejecting R Co.'s argument that G Co.'s request for the highest and best offers constituted an auction without reserve. *Held* that the trial court properly granted the motions to strike filed by G Co. and H Co., R Co. having failed to plead in its amended complaint that its offer either complied with the statute of frauds or fell within an exception thereto; R Co. acknowledged that it failed to plead that G Co. explicitly stated that it was selling its property in an auction without reserve, R Co.'s amended compliant failed to mention the words "auction" or "bid," or to describe or attach the document or communication constituting the auction or bid, and, even if this court were to assume that R Co.'s amended complaint sufficiently alleged an auction, R Co.'s allegation that G Co. used the phrase "highest and best" offers, without more, did not indicate that G Co. intended to be bound by the highest and best offer, and, therefore, R Co.'s allegation was insufficient to plead an auction without reserve.

Argued November 5, 2018—officially released February 12, 2019

Procedural History

Action for, inter alia, specific performance of an alleged agreement to purchase certain of the named defendant's real property, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the court, *Noble, J.*, granted the plaintiff's motion to add Hartford Auto Park, LLC, as a defendant; there-

after, the plaintiff filed an amended complaint; subsequently, the court, *Noble*, *J.*, granted the defendants' motions to strike and rendered judgment thereon, from which the plaintiff appealed. *Affirmed.*

Kerry M. Wisser, with whom, on the brief, was *Sarah Black Lingenheld*, for the appellant (plaintiff).

Johanna S. Katz, with whom was *Richard C. Robinson*, for the appellee (named defendant).

John F. Conway, with whom was *James E. Ringold*, for the appellee (defendant Hartford Auto Park, LLC).

Opinion

KAHN, J. The present appeal requires us to consider whether a plaintiff has sufficiently pleaded that a transaction was an auction without reserve by simply alleging that the owner of the real property for sale sought highest and best offers from potential buyers and the plaintiff submitted the highest and best offer, and, if so, whether an auction without reserve for the sale of real property creates an enforceable agreement constituting an exception to the statute of frauds. The plaintiff, Restaurant Supply, LLC, appeals[1] from the trial court's judgment rendered after it had granted motions to strike by the defendants, Giardi Limited Partnership (Giardi) and Hartford Auto Park, LLC (Hartford Auto Park). The court determined that the plaintiff failed to allege that Giardi's request that potential buyers of its property, 19 and 43 West Service Road, Hartford (property), submit their highest and best offers constituted an auction without reserve and, thus, created an exception to the requirement under the statute of frauds that there be a "writing . . . signed by the party . . . to be charged

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

. . . .”[2] General Statutes § 52-550 (a). The parties disagree as to whether the plaintiff's allegation that Giardi's request for “ ‘[h]ighest and [b]est' offers” constitutes “explicit terms” that Giardi was putting the property up for auction without reserve for purposes of General Statutes § 42a-2-328 (3).[3] We conclude that, under the facts of this case, the plaintiff's allegations are insufficient to allege an auction without reserve, and, as such, we do not resolve the issue of whether an exception to the statute of frauds should be created for auctions without reserve.

The amended complaint alleges the following facts. Giardi sought to sell its property at an original listing price of $450,000. In response to this listing, the plaintiff offered to buy the property for $425,000, with no contingencies, by providing Giardi with a purchase agreement and a $50,000 deposit check. In response to this and other offers, Giardi directed all prospective buyers to resubmit their highest and best offers. In response to Giardi's request, the plaintiff submitted a cash offer of $460,000, with no contingencies, by providing a pur-

[2] The plaintiff was aggrieved by the decision of the trial court to strike its amended complaint and, as such, has standing to bring this appeal. See General Statutes § 52-263 (party that is “aggrieved” by final judgment of trial court may bring appeal).

[3] Giardi and Hartford Auto Park initially contend that § 42a-2-328, which adopted § 2-328 of the Uniform Commercial Code (UCC), applies only to the sale of goods and not to the sale of real estate. Although this court has not decided that issue, we have held that “precedents from other jurisdictions are helpful in construing [uniform] act[s].” *Cain* v. *Moore*, 182 Conn. 470, 473, 438 A.2d 723 (1980), cert. denied, 454 U.S. 844, 102 S. Ct. 157, 70 L. Ed. 2d 129 (1981). We observe that other jurisdictions have applied § 2-328 of the UCC to the sale of real estate. See, e.g., *Forbes* v. *Wells Beach Casino, Inc.*, 307 A.2d 210, 219 (Me. 1973) (“we consider the principle announced by [§ 2-328 (4) of the UCC] eminently applicable to protect the rights of the highest good-faith bidder in a sale of real estate”). Even if we were to agree that that section of the UCC was applicable to the sale of real estate, however, both defendants argue that the plaintiff in the present case failed to allege that Giardi used “explicit terms” to put the property up without reserve, under either § 42a-2-328 or § 2-328 of the UCC.

chase agreement signed by the plaintiff and redirecting the prior $50,000 deposit check, which it claims was the highest and best offer. Giardi did not accept that offer, however, and instead accepted a purportedly lower offer presented by Hartford Auto Park.

In December, 2016, the plaintiff filed a one count complaint, seeking an order requiring Giardi, which at that time still owned the property, to convey title to the property to the plaintiff. The plaintiff claimed that, by requesting highest and best offers, Giardi was bound to accept the highest offer and, therefore, entered into an enforceable contract with the plaintiff for the sale of the property.[4] The plaintiff also requested an injunction, restraining Giardi from "conveying, encumbering or in any manner disposing of the [p]roperty." In addition, the plaintiff recorded a lis pendens on the land records, notifying interested parties of the pending action.

Despite the plaintiff's actions, in March, 2017, Giardi sold the property to Hartford Auto Park and executed a special warranty deed, which conveyed the property subject to the lis pendens, and Hartford Auto Park recorded the deed. Thereafter, the plaintiff amended its complaint, adding Hartford Auto Park as a defendant and asserting a second count against it.

In response, Hartford Auto Park moved to strike count two of the amended complaint pursuant to Practice Book § 10-39, contending that the statute of frauds barred the plaintiff's claim because the purchase agreement given to Giardi by the plaintiff was not signed by the party to be charged, namely, Giardi. The plaintiff opposed the motion, claiming that, by alleging that

[4] Although not averred in the complaint or in the amended complaint, the plaintiff argued in its opposition to Hartford Auto Park's motion to strike that, by requesting highest and best offers, Giardi offered to sell the property to the highest bidder, transforming the plaintiff's offer into an acceptance and creating an enforceable agreement.

Giardi requested "[h]ighest and [b]est offers," it sufficiently pleaded the existence of an auction without reserve, which contractually binds the seller to the highest bidder and, therefore, according to the plaintiff, does not require a writing signed by the party to be charged in order to be enforceable.[5]

The trial court granted Hartford Auto Park's motion to strike, concluding that the statute of frauds barred the plaintiff's claim, and rendered judgment on count two in favor of Hartford Auto Park.[6] In its memorandum of decision, the trial court rejected the plaintiff's argument that Giardi's request for highest and best offers constituted an auction without reserve and, as such, created an exception to the requirement that it produce a writing signed by the party to be charged, and noted that none of the cases cited by the plaintiff provided persuasive authority because they did take into consideration the statute of frauds.[7] Thereafter, Giardi moved

[5] Specifically, the plaintiff argued that an auction without reserve constitutes an exception to the writing requirement under the statute of frauds, because the plaintiff's purportedly highest and best offer created an acceptance and the plaintiff's delivery of a purchase agreement constituted partial performance of their agreement, which "is an essential element of the estoppel exception to the statute of frauds." *Glazer* v. *Dress Barn, Inc.*, 274 Conn. 33, 63, 873 A.2d 929 (2005).

[6] The plaintiff failed to file a new pleading against Hartford Auto Park within the fifteen day period required under Practice Book § 10-44, which provides in relevant part: "[When] the party whose pleading or a count thereof has been so stricken fails to file a new pleading within that fifteen day period, the judicial authority may, upon motion, enter judgment against said party on said stricken complaint . . . ." The plaintiff additionally claims that the trial court's grant of the motions to strike by Hartford Auto Park and Giardi prevented it from developing "a full factual record" that would have helped this court "fully [address] the circumstances under which an agreement may be created by a without reserve auction." Hartford Auto Park challenges the plaintiff's preservation of this claim on the ground that the plaintiff did not raise this issue at the trial court. Notwithstanding that challenge, we observe that the plaintiff had an opportunity to expand the factual record through amending its complaint.

[7] We observe that, in one of the cases cited by the plaintiff in its opposition to Hartford Auto Park's motion to strike, *Pyles* v. *Goller*, 109 Md. App. 71, 674 A.2d 35 (1996), the court did address the issue of whether, even though

to strike count one of the amended complaint. Applying the same rationale it had used in ruling on Hartford Auto Park's motion, the trial court granted Giardi's motion and rendered judgment in its favor. This appeal followed.

In resolving whether the trial court properly granted the motions to strike filed by Hartford Auto Park and Giardi, we begin with the general principles that guide our review of a trial court's decision to grant a motion to strike. "A motion to strike challenges the legal sufficiency of a pleading . . . and, consequently, requires no factual findings by the trial court. As a result, our review of the [trial] court's ruling is plenary. . . . We take the facts to be those alleged in the complaint that has been stricken and we construe the complaint in the manner most favorable to sustaining its legal sufficiency. . . . [I]f facts provable in the complaint would support a cause of action, the motion to strike must be denied. . . .Thus, we assume the truth of both the specific factual allegations and any facts fairly provable thereunder. In doing so, moreover, we read the allegations broadly . . . rather than narrowly." (Internal quotation marks omitted.) *Giacalone* v. *Housing Authority*, 306 Conn. 399, 403–404, 51 A.3d 352 (2012). It is well settled, however, that "[t]he failure to include a necessary allegation in a complaint precludes a recovery by the plaintiff under that complaint . . . ." (Internal quotation marks omitted.) *Sturm* v. *Harb Development, LLC*, 298 Conn. 124, 130, 2 A.3d 859 (2010).

The issue of whether the plaintiff's allegation that Giardi's request for " '[h]ighest and [b]est' offers" con-

there was no written agreement between the parties to satisfy the statute of frauds, a seller still may be ordered to specifically perform on a sale conducted in an auction without reserve. Id., 88. As we explain in footnote 9 of this opinion, however, *Pyles* is distinguishable from the present case because the plaintiff in that case sufficiently pleaded the existence of an auction without reserve. Id., 80, 83.

stitutes "explicit terms" that Giardi was putting the property up for auction without reserve[8] for purposes of § 42a-2-328 presents a question of statutory interpretation, over which we exercise plenary review, guided by well established principles regarding legislative intent. See, e.g., *Kasica* v. *Columbia*, 309 Conn. 85, 93, 70 A.3d 1 (2013) (explaining plain meaning rule under General Statutes § 1-2z and setting forth process for ascertaining legislative intent). We begin with the statutory language. Our sale by auction statute, § 42a-2-328, which our legislature adopted verbatim from § 2-328 of the Uniform Commercial Code, provides that an auction can be held "with reserve" or "without reserve." Section 42a-2-328 (3) provides that "*a sale is with reserve* unless the goods are in *explicit terms* put up without reserve." (Emphasis added.) A comment to § 42a-2-328 explains that the drafters intended the language to "make it clear" that "[a]n auction 'with reserve' is the normal procedure. . . . The prior announcement of the nature of the auction . . . as . . . without reserve will, however, enter as an 'explicit term' in the 'putting up' of the goods and conduct thereafter must be governed accordingly. . . ." Conn. Gen. Stat. Ann. § 42a-2-328 (West 2009), comment (2).

In the present case, the plaintiff acknowledges that it failed to plead that Giardi explicitly stated that it was selling its property in an auction "without reserve" but asks this court to hold that its allegation that Giardi requested " '[h]ighest and [b]est' offers" was sufficient to plead an auction without reserve. Although this court has never resolved whether the phrase "highest and

[8] General Statutes § 42a-2-328 (3) provides in relevant part: "In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid."

best" constitutes "explicit terms" sufficient to create an auction without reserve, "precedents from other jurisdictions are helpful in construing [uniform] act[s]." *Cain* v. *Moore*, 182 Conn. 470, 473, 438 A.2d 723 (1980), cert. denied, 454 U.S. 844, 102 S. Ct. 157, 70 L. Ed. 2d 129 (1981). Other jurisdictions that have adopted identical language to § 42a-2-328 have held that "[t]he statement that the sale [will] be made to the highest bidder is not the equivalent of an announcement that the auction [will] be without reserve." (Internal quotation marks omitted.) *Wells Fargo Bank, N.A.* v. *Holdco Asset Management, L.P.*, 729 Fed. Appx. 124, 126 (2d Cir. 2018); id., 125 (applying New York's sale by auction statute that contains language identical to § 42a-2-328); see also, e.g., *Sly* v. *First National Bank of Scottsboro*, 387 So. 2d 198, 200 (Ala. 1980) (applying identical language and concluding that seller's use of phrase " 'highest, best and last bidder' " did not transform auction into auction without reserve).

The plaintiff in the present case alleged merely that Giardi *requested* " '[h]ighest and [b]est' offers," not that Giardi indicated that it intended to be *bound* by the highest and best offer.[9] Moreover, the plaintiff's amended complaint failed to mention the words "auc-

[9] This point distinguishes the present case from the cases and secondary sources on which the plaintiff relies. For example, in *Jenkins Towel Service, Inc.* v. *Fidelity-Philadelphia Trust Co.*, 400 Pa. 98, 101, 161 A.2d 334 (1960), the seller's letter at issue specifically stated that " 'an [a]greement of [s]ale [*would be*] *tendered to* the highest acceptable bidder' . . . ." (Emphasis added.) See also, e.g., *Forbes* v. *Wells Beach Casino, Inc.*, 307 A.2d 210, 216 (Me. 1973) ("contract provide[d] that the highest qualified cash offer '*shall be accepted*' " [emphasis altered]); *Pyles* v. *Goller*, 109 Md. App. 71, 77, 674 A.2d 35 (1996) (lots sold in auction in which " 'high bidder wins the right to choose a lot' "); *Short* v. *Sun Newspapers, Inc.*, 300 N.W.2d 781, 784 (Minn. 1980) (letter stated that " '[t]he newspapers *will be sold . . . to the highest bidder*' " [emphasis added]); 1 Restatement (Second), Contracts § 28, illustration (3) p. 81 (1981) ("I offer my farm Blackacre for sale to the highest cash bidder *and undertake to make conveyance to the person submitting the highest bid* received" [emphasis added]).

tion" or "bid," or even to describe or attach the document or communication constituting the auction or bid, calling into question whether the plaintiff sufficiently alleged that Giardi's request for offers constituted an auction at all. Even if we assume, arguendo, that the amended complaint sufficiently alleged an auction, we conclude that the plaintiff's allegation that Giardi used the phrase " '[h]ighest and [b]est' offers," without more, is insufficient to plead an auction without reserve. Consequently, because the plaintiff failed to plead compliance with or any exception to the statute of frauds, we conclude that the trial court properly granted the motions to strike filed by Hartford Auto Park and Giardi.

The judgment is affirmed.

In this opinion the other justices concurred.

ANGEL HUANG DO *v.* COMMISSIONER OF MOTOR VEHICLES (SC 19722)

Palmer, McDonald, Robinson, Mullins, Kahn and Vertefeuille, Js.*

Syllabus

The plaintiff, who had been arrested for operating a motor vehicle while under the influence of intoxicating liquor, appealed to the trial court from the decision of the defendant, the Commissioner of Motor Vehicles, who temporarily suspended her operator's license pursuant to statute (§ 14-227b). At the plaintiff's suspension hearing, the Department of Motor Vehicles offered into evidence an exhibit that consisted of a standard A-44 form and an investigation report that were prepared by B, the arresting officer, and the results of the plaintiff's breath analysis tests, which were administered shortly after the plaintiff's arrest. The plaintiff objected to the admission of the exhibit at the hearing on the ground that it was unreliable due to inconsistencies and errors in the A-44 form and the investigation report. The hearing officer admitted the exhibit into evidence, concluding that the inconsistencies and errors were merely scrivener's errors that went solely to the weight to be

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

ascribed to the exhibit rather than to its admissibility. The plaintiff did not testify or otherwise present any evidence at the hearing, and the hearing officer ultimately relied on the exhibit in suspending the plaintiff's license. On appeal to the trial court from the hearing officer's decision, the plaintiff challenged the admission of the exhibit. The trial court rendered judgment dismissing the plaintiff's appeal in part, concluding that the hearing officer did not abuse his discretion in admitting the exhibit because it was sufficiently reliable. The trial court nevertheless remanded the case to the hearing officer to resolve a factual discrepancy concerning which motor vehicle the plaintiff was operating when she was arrested, as the A-44 form stated that she was driving an Audi whereas the investigation report stated that she was driving a Mercedes-Benz. The plaintiff appealed from the trial court's judgment to the Appellate Court, claiming, inter alia, that the trial court had incorrectly determined that the hearing officer did not abuse his discretion in admitting the exhibit. The Appellate Court concluded that the inconsistencies and errors in the exhibit rendered it so unreliable that its admission violated principles of fundamental fairness. The Appellate Court reversed the trial court's judgment and remanded the case with direction to sustain the plaintiff's administrative appeal, reasoning that there was no other evidence in the record to support the hearing officer's findings. On the granting of certification, the commissioner appealed to this court. *Held* that the plaintiff failed to demonstrate that the hearing officer had abused his discretion in admitting and relying on the exhibit in support of his findings, and, accordingly, the Appellate Court's judgment was reversed, and the case was remanded with direction to reverse the trial court's judgment insofar as that court remanded the case and to order the trial court to deny the plaintiff's administrative appeal: the exhibit otherwise conformed to the statutory requirements for its admission, as it was submitted to the Department of Motor Vehicles within three business days, was subscribed and sworn to by B, set forth the grounds for B's belief that there was probable cause to arrest the plaintiff, and stated whether the plaintiff submitted to a blood test; moreover, the fact that B may have sworn to the accuracy of conflicting information in the A-44 form and the investigation report went to the weight to be accorded the exhibit rather than to its admissibility, and, therefore, the hearing officer properly considered the exhibit in its entirety despite any errors or inconsistencies; furthermore, the investigation report alone provided support for the hearing officer's findings, the hearing officer reasonably could have concluded that the inconsistencies in the exhibit did not negate its overall reliability, and, because the information in the exhibit constituted substantial evidence supporting the hearing officer's findings, there was no need for a remand to the hearing officer to resolve the factual issue regarding the make of the vehicle that the plaintiff was operating at the time of her arrest.

Argued December 20, 2017—officially released February 12, 2019

Procedural History

Appeal from the decision of the defendant suspending the plaintiff's motor vehicle operator's license, brought to the Superior Court in the judicial district of Ansonia-Milford and transferred to the judicial district of New Britain, where the case was tried to the court, *Schuman*, *J.*; judgment dismissing the appeal in part and remanding for the resolution of a disputed factual issue, and the plaintiff appealed to the Appellate Court, *Gruendel* and *Prescott*, *Js.*, with *Bear*, *J.*, dissenting, which reversed the trial court's judgment and remanded the case with direction to render judgment sustaining the plaintiff's appeal, and the defendant, on the granting of certification, appealed to this court. *Reversed*; *judgment directed*.

Drew S. Graham, assistant attorney general, with whom, on the brief, was *George Jepsen*, former attorney general, for the appellant (defendant).

Chet L. Jackson, for the appellee (plaintiff).

Opinion

PALMER, J. Under General Statutes § 14-227b (c),[1] anytime someone is arrested for operating a motor vehicle while under the influence of drugs or intoxicating liquor and refuses to submit to or fails a blood, breath or urine test, the arresting officer must, among other things, prepare a report of the incident for the Depart-

[1] General Statutes § 14-227b (c) provides in relevant part: "If [a] person arrested [for operating a motor vehicle under the influence of intoxicating liquor or drugs] refuses to submit to [a blood, breath or urine] test or analysis or submits to such test or analysis, commenced within two hours of the time of operation, and the results of such test or analysis indicate that such person has an elevated blood alcohol content, the police officer, acting on behalf of the Commissioner of Motor Vehicles, shall immediately revoke and take possession of the motor vehicle operator's license or, if such person is a nonresident, suspend the nonresident operating privilege of such person, for a twenty-four-hour period. The police officer shall prepare a report of the incident and shall mail or otherwise transmit in accordance with this subsection the report and a copy of the results of any chemical test or analysis to the Department of Motor Vehicles within three business days.

ment of Motor Vehicles (department), and, pursuant to § 14-227b-19 of the Regulations of Connecticut State Agencies,[2] that report is admissible at a hearing to suspend an operator's license conducted in accordance with § 14-227b (g),[3] as long as it conforms to the require-

The report shall contain such information as prescribed by the Commissioner of Motor Vehicles and shall be subscribed and sworn to under penalty of false statement as provided in section 53a-157b by the arresting officer. If the person arrested refused to submit to such test or analysis, the report shall be endorsed by a third person who witnessed such refusal. The report shall set forth the grounds for the officer's belief that there was probable cause to arrest such person for a violation of section 14-227a . . . and shall state that such person had refused to submit to such test or analysis when requested by such police officer to do so or that such person submitted to such test or analysis, commenced within two hours of the time of operation, and the results of such test or analysis indicated that such person had an elevated blood alcohol content. The Commissioner of Motor Vehicles may accept a police report under this subsection that is prepared and transmitted as an electronic record, including electronic signature or signatures, subject to such security procedures as the commissioner may specify and in accordance with the provisions of sections 1-266 to 1-286, inclusive. In any hearing conducted pursuant to the provisions of subsection (g) of this section, it shall not be a ground for objection to the admissibility of a police report that it is an electronic record prepared by electronic means."

Although § 14-227b has been the subject of amendments in 2016 and 2014; see Public Acts 2016, No. 16-126, § 17; Public Acts 2016, No. 16-55, §§ 6 and 7; Public Acts 2014, No. 14-228, § 6; those amendments have no bearing on the merits of the appeal. In the interest of simplicity, we refer to the current revision of § 14-227b throughout this opinion.

[2] Section 14-227b-19 of the Regulations of Connecticut State Agencies provides: "(a) The report filed or transmitted by the arresting officer shall be admissible into evidence at the hearing if it conforms to the requirements of subsection (c) of section 14-227b of the . . . General Statutes.

"(b) The chemical test results in the form of the tapes from a breath analyzer or other chemical testing device submitted contemporaneously with the report shall be admissible into evidence at the hearing if they conform to the requirements of subsection (c) of section 14-227b of the . . . General Statutes.

"(c) An electronic record that contains electronic signatures of persons required to sign in accordance with subsections (a), (b) and (c) of section 14-227b-10 of the Regulations of Connecticut State Agencies shall be admissible at a hearing to the same extent as a report containing written signatures, as provided in subsection (c) of section 14-227b of the . . . General Statutes."

[3] General Statutes § 14-227b (g) provides in relevant part: "If [a person whose license has been suspended pursuant to this section] contacts the department to schedule a hearing, the department shall assign a date, time

ments of § 14-227b (c). The defendant, the Commissioner of Motor Vehicles (commissioner), suspended the operator's license of the plaintiff, Angel Huang Do, for ninety days following a hearing at which the hearing officer relied on such a report, which consisted of an A-44 form,[4] a four page police investigation report, and the results of the plaintiff's breath analysis tests. The plaintiff appealed to the Superior Court from the decision of the commissioner, claiming, inter alia, that this report, which had been admitted into evidence by the hearing officer as a single exhibit,[5] was unreliable, even

and place for the hearing, which date shall be prior to the effective date of the suspension, except that, with respect to a person whose operator's license or nonresident operating privilege is suspended in accordance with subdivision (2) of subsection (e) of this section, such hearing shall be scheduled not later than thirty days after such person contacts the department. At the request of such person [or] the hearing officer . . . and upon a showing of good cause, the commissioner may grant one or more continuances. The hearing shall be limited to a determination of the following issues: (1) Did the police officer have probable cause to arrest the person for operating a motor vehicle while under the influence of intoxicating liquor or any drug or both; (2) was such person placed under arrest; (3) did such person refuse to submit to such test or analysis or did such person submit to such test or analysis, commenced within two hours of the time of operation, and the results of such test or analysis indicated that such person had an elevated blood alcohol content; and (4) was such person operating the motor vehicle. In the hearing, the results of the test or analysis shall be sufficient to indicate the ratio of alcohol in the blood of such person at the time of operation, provided such test was commenced within two hours of the time of operation. The fees of any witness summoned to appear at the hearing shall be the same as provided by the general statutes for witnesses in criminal cases. Notwithstanding the provisions of subsection (a) of section 52-143, any subpoena summoning a police officer as a witness shall be served not less than seventy-two hours prior to the designated time of the hearing."

[4] "The A-44 form is used by the police to report an arrest related to operating a motor vehicle under the influence and the results of any sobriety tests administered or the refusal to submit to such tests. . . . [S]ee General Statutes § 14-227b (c) (The [arresting] police officer shall prepare a report of the incident. . . . The report shall contain such information as prescribed by the Commissioner of Motor Vehicles . . . .)." (Citation omitted; internal quotation marks omitted.) *Do* v. *Commissioner of Motor Vehicles*, 164 Conn. App. 616, 618 n.1, 138 A.3d 359 (2016).

[5] We refer to the three documents comprising the police report as the exhibit and refer to each document in the exhibit—the A-44 form, the investi-

though it complied with § 14-227b (c), due to certain inconsistencies and errors contained therein. The plaintiff asserted, therefore, that the hearing officer had abused his discretion by admitting the exhibit into evidence. The trial court rejected the plaintiff's claim but remanded the case to the hearing officer for an articulation of the type of vehicle the plaintiff was driving at the time of her arrest. The plaintiff appealed from the trial court's judgment to the Appellate Court which, in a two to one decision, reversed, concluding that the inconsistencies and errors in the exhibit rendered it so unreliable that its admission violated principles of fundamental fairness. See *Do* v. *Commissioner of Motor Vehicles*, 164 Conn. App. 616, 618–19, 138 A.3d 359 (2016). Because there was no other evidence in the record to support the hearing officer's findings, the Appellate Court sustained the plaintiff's appeal. Id., 619. We granted the commissioner's petition for certification to appeal, limited to the issue of whether the Appellate Court properly determined that principles of fundamental fairness required the preclusion of the exhibit as unreliable even though it complied with § 14-227b (c). See *Do* v. *Commissioner of Motor Vehicles*, 322 Conn. 901, 138 A.3d 931 (2016). Because we agree with the commissioner that the hearing officer did not abuse his discretion in admitting and relying on the exhibit, we reverse the judgment of the Appellate Court.[6]

The record reveals the following facts and procedural history. On April 24, 2014, at approximately midnight, desk personnel notified State Trooper Troy M. Biggs that a 911 caller had described a white Mercedes-Benz

gation report, and the plaintiff's breath analysis tests—individually when discussing the specific information contained therein.

[6] As we explain more fully hereinafter, we also agree with the commissioner that, contrary to the determination of the trial court, there is no need for the case to be remanded to the hearing officer for an articulation because the hearing officer's findings were sufficient to support the commissioner's decision to suspend the plaintiff's license.

driving erratically on Route 63 near Round Hill Road in the town of Bethany. Shortly thereafter, Biggs spotted the Mercedes-Benz traveling northbound on Route 63 and proceeded to follow it. After Biggs observed the vehicle swerving and crossing the center line, he activated his emergency lights and pulled the driver over. Biggs identified the plaintiff as the driver of the vehicle from her Connecticut motor vehicle operator's license. While questioning the plaintiff, Biggs detected a strong odor of alcohol on her breath and inside the car. The plaintiff also admitted to having consumed two alcoholic beverages prior to leaving her home.

On the basis of this information, Biggs asked the plaintiff to exit the vehicle and to perform three standardized field sobriety tests, all of which the plaintiff failed.[7] At 12:30 a.m., Biggs placed the plaintiff under arrest for operating a motor vehicle under the influence of intoxicating liquor or drugs and transported her to the Bethany state police barracks, where she was advised of her *Miranda*[8] rights. She then agreed to submit to two breath analysis tests, the results of which indicated a blood alcohol content of 0.1184 and 0.1186 percent, respectively. The plaintiff subsequently was formally charged with operating a motor vehicle under the influence of intoxicating liquor or drugs in violation of General Statutes (Supp. 2014) § 14-227a (a).[9]

[7] During the horizontal gaze nystagmus test, the plaintiff exhibited in both eyes a "lack of smooth pursuit," "distinct jerkiness at maximum deviation," and an "onset of jerkiness prior to forty-five degrees . . . ." During the walk and turn, the plaintiff "lost her balance, performed no heel to toe, raised her arms for balance, took the incorrect number of steps and turned incorrectly." During the one leg stand, the plaintiff lifted her arms for balance, swayed while trying to balance, and put her foot down.

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

[9] General Statutes (Supp. 2014) § 14-227a (a) provides in relevant part: "No person shall operate a motor vehicle while under the influence of intoxicating liquor or any drug or both. A person commits the offense of operating a motor vehicle while under the influence of intoxicating liquor or any drug or both if such person operates a motor vehicle (1) while under the influence of intoxicating liquor or any drug or both, or (2) while such

On April 26, 2014, in accordance with § 14-227b (c), Biggs transmitted a copy of the exhibit, which, as we previously indicated, consisted of an A-44 form, a four page police investigation report, and the results of the plaintiff's breath analysis tests, to the department. Each page of the exhibit was subscribed and sworn to electronically by Biggs under penalty of false statement. Biggs' supervising officer, Ryan M. Hennessey, administered an oath to Biggs and signed the exhibit as well.

On May 14, 2014, the commissioner notified the plaintiff that her license was being suspended for a period of ninety days. See General Statutes § 14-227b (e) (1).[10] The plaintiff availed herself of her right to contest the suspension at a hearing before an administrative hearing officer designated by the commissioner. Under § 14-227b (g),[11] such hearings are strictly "limited to a determination of the following issues: (1) Did the police officer have probable cause to arrest the person for operating a motor vehicle while under the influence of

person has an elevated blood alcohol content. For the purposes of this section, 'elevated blood alcohol content' means a ratio of alcohol in the blood of such person that is eight-hundredths of one per cent or more of alcohol, by weight . . . ."

[10] General Statutes § 14-227b (e) (1) provides: "Except as provided in subdivision (2) of this subsection, upon receipt of [a] report [that conforms to subsection (c) of this section], the Commissioner of Motor Vehicles may suspend any operator's license or nonresident operating privilege of such person effective as of a date certain, which date shall be not later than thirty days after the date such person received notice of such person's arrest by the police officer. Any person whose operator's license or nonresident operating privilege has been suspended in accordance with this subdivision shall automatically be entitled to a hearing before the commissioner to be held in accordance with the provisions of chapter 54 and prior to the effective date of the suspension. The commissioner shall send a suspension notice to such person informing such person that such person's operator's license or nonresident operating privilege is suspended as of a date certain and that such person is entitled to a hearing prior to the effective date of the suspension and may schedule such hearing by contacting the Department of Motor Vehicles not later than seven days after the date of mailing of such suspension notice."

[11] See footnote 3 of this opinion.

intoxicating liquor or any drug or both; (2) was such person placed under arrest; (3) did such person . . . submit to [a] test or analysis, commenced within two hours of the time of operation, [which] . . . indicated that such person had an elevated blood alcohol content; and (4) was such person operating the motor vehicle." If the hearing officer finds affirmatively on all four issues, the hearing officer must uphold the commissioner's suspension of the person's license. See General Statutes § 14-227b (h).

Prior to the hearing, the commissioner notified the plaintiff that the exhibit would be offered in evidence pursuant to § 14-227b (c). At the hearing, the plaintiff objected to the admission of the exhibit on the ground that it was unreliable due to the following internal discrepancies: (1) the A-44 form states that, at the time of her arrest, the plaintiff was driving a 2007 Audi A4 with Massachusetts license plates whereas the investigation report states that the plaintiff was driving a 2006 Mercedes-Benz S28 with Connecticut license plates; (2) after Biggs had subscribed and sworn to the information contained in the A-44 form, Biggs' supervising officer, Hennessey, altered the first page of that form by crossing out "04/23/2014" as the date of the incident and writing in "04/24/14";[12] (3) Hennessy also crossed out the name "Helt, David" as a person who witnessed the plaintiff's refusal to perform a breath analysis test; and (4) page two of the investigation report, in the prearrest screening section, states that the plaintiff informed Biggs that she was wearing contact lenses whereas the summary of the plaintiff's horizontal gaze nystagmus test results in the same report states that the plaintiff performed that test "with and without her glasses on." On the basis of these alleged discrepancies, the plaintiff

[12] The changes that were made to the A-44 form bore the initials "RH," which the plaintiff acknowledges are those of Biggs' supervising officer, Hennessey, who administered the oath to Biggs.

argued that the exhibit did not meet the admissibility requirements of § 14-227b (c) because it could not be determined from the exhibit which vehicle the plaintiff was driving on the night of the incident and because the exhibit was not properly subscribed and sworn to because of the alterations made by Hennessey. In response, the department argued that the discrepancies identified by the plaintiff were mere scrivener's errors that went solely to the weight to be ascribed to the exhibit and not to its admissibility. The hearing officer agreed with the department and admitted the exhibit. The hearing officer advised the plaintiff, however, that he would take into account her arguments regarding the several errors and discrepancies in the exhibit in deciding whether the commissioner had satisfied each of the four requirements specified in § 14-227b (g) for suspending the plaintiff's operator's license. The plaintiff did not testify or otherwise present any evidence at the hearing.

On May 30, 2014, the hearing officer issued the following findings: (1) "The police officer had probable cause to arrest the [plaintiff] for a violation specified in [§] 14-227b of the . . . General Statutes"; (2) "[t]he [plaintiff] was placed under arrest"; (3) "[t]he [plaintiff] submitted to the test or analysis and the results indicated a [blood alcohol content] of .08 [percent] or more"; and (4) "[the plaintiff] was operating the motor vehicle." Consistent with these findings, the commissioner ordered the suspension of the plaintiff's license for a period of ninety days.

The plaintiff thereafter filed a petition for reconsideration in which she argued that the hearing officer could not properly have found affirmatively on the fourth issue—namely, that the plaintiff was operating the motor vehicle—because the exhibit indicated that the plaintiff was driving two different vehicles at the time of the incident. The plaintiff further argued that the A-

44 form was inadmissible due to the alterations that Hennessey had made to it after Biggs had subscribed and sworn to the information contained therein. The commissioner denied the petition for reconsideration.

Pursuant to General Statutes § 4-183,[13] the plaintiff appealed from the commissioner's decision to the Superior Court, claiming that the hearing officer had abused his discretion in admitting the exhibit into evidence and that, even if the exhibit had been properly admitted, there was insufficient evidence to support the hearing officer's findings. The trial court rejected the plaintiff's claims, concluding that the exhibit was properly admitted because it complied with the requirements of § 14-227b (c) and, furthermore, that the contents of the exhibit supported the hearing officer's findings. Specifically, the trial court stated: "In this case, the A-44 [form] contains the April 26, 2014 electronic sworn signature under penalty of false statement of [Biggs] as the arresting officer. The signature box refers to the report itself and any attachments thereto. The attached investigation report contains the April 26, 2014 electronic sworn signature of [Biggs] as the investigator. These reports thus comply with the statute and provided sufficient reliability to justify their admission at the license suspension hearing in this case. See General Statutes § 14-227b (c) (the [c]ommissioner . . . may accept a police report under this subsection that is prepared and transmitted as an electronic record, including electronic signature or signatures).

"That reliability is not negated by the plaintiff's claims of discrepancies in the date of arrest and the identity of the motor vehicle that the plaintiff drove. The plaintiff

[13] General Statutes § 4-183 provides in relevant part: "(a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section. The filing of a petition for reconsideration is not a prerequisite to the filing of such an appeal."

raised both these claims before the hearing officer, thus giving the hearing officer an opportunity to consider them and exercise his discretion concerning the admissibility of the report.

"Under the applicable abuse of discretion standard, no abuse of discretion occurred here. . . . There is no dispute that the motor vehicle stop took place shortly after midnight on April 24, 2014. Page one of the A-44 [form] shows a typewritten but crossed out notation of the incident date as 04/23/2014. In handwriting, the date of 04/24/14 is added with initials that the commissioner concedes are those of . . . Hennessey, who . . . administered the oath but was not the sworn, arresting officer. The [exhibit], therefore, does contain this amount of unsworn information, which was improper. However, pages one and two of the A-44 [form] contain four references to the arrest and breath tests taking place in the early morning hours of 04/24/2014. The investigation report then makes six references to the incident and investigation taking place on April 24. Under these circumstances, the hearing officer could reasonably have concluded that the initial notation of 04/23/2014 was a scrivener's error due to fact that the arrest took place shortly after midnight and that this error did not negate the overall reliability of the [exhibit].

"The same is true of the discrepancy with regard to the motor vehicle in question. Page one of the A-44 [form] lists the motor vehicle as a 2007 Audi with a Massachusetts registration. In the Property section of the investigation report, however, the motor vehicle is identified as a white 2006 Mercedes-Benz with Connecticut registration 344-ZBO. [Likewise] [t]he narrative [portion] of the [investigation] report states: A 911 caller described the vehicle as a white Mercedes-Benz bearing CT registration 344-ZBO. I observed this vehicle traveling northbound . . . . I activated my overhead emer-

gency strobe lights, sirens and wig-wag headlights. The vehicle pulled over . . . . I never lost sight of the vehicle from my initial observation to the stop. Although the [exhibit] thus contain[s] conflicting evidence concerning the motor vehicle that the plaintiff operated, that conflict does not negate the overall reliability of the [exhibit], which otherwise meets the statutory and regulatory criteria. Rather, the conflict simply creates a fact or credibility issue for the hearing officer to resolve." (Citations omitted; internal quotation marks omitted.) Because the trial court also concluded, however, that the exhibit was ambiguous as to which vehicle the plaintiff was driving on the morning in question, the court remanded the case to the hearing officer for an articulation concerning that factual issue.

The plaintiff appealed to the Appellate Court, claiming, inter alia, that the trial court incorrectly had determined that the hearing officer did not abuse his discretion in admitting the exhibit into evidence. *Do* v. *Commissioner of Motor Vehicles*, supra, 164 Conn. App. 618. In support of this contention, the plaintiff argued, as she had before the trial court, that the discrepancies and errors contained in the exhibit rendered it unreliable and, therefore, inadmissible despite its compliance with § 14-227b (c). See id., 623. The plaintiff also argued, for the first time, that the exhibit likely contained information copied and pasted from the arrest report of another person. See id. The Appellate Court, with one judge dissenting, agreed with the plaintiff and sustained her appeal. See id., 634; see also id., 635 (*Bear*, *J.*, dissenting).

In reaching its determination, the Appellate Court acknowledged that, under § 14-227b-19 (a) of the Regulations of Connecticut State Agencies,[14] a police report that conforms to the requirements of § 14-227b (c) is

[14] See footnote 2 of this opinion.

deemed admissible at a license suspension hearing. Id., 624. The Appellate Court reasoned, however, that neither it nor this court "has ever held that technical compliance with [§ 14-227b] (c) must always result in the admission of an A-44 form. Although an A-44 form may technically comply with subsection (c), the information contained in the four corners of the document may still lead the hearing officer to conclude that the document is otherwise unreliable." Id., 626. "Because the reliability of the A-44 form is of the utmost importance, there may be instances in which an A-44 form contains so many significant internal discrepancies and errors that it is rendered unreliable, at least in the absence of testimony by the arresting officer or other evidence that supports its reliability." Id., 627. In the Appellate Court's view, Biggs' report was one such instance. Specifically, the court stated: "Portions of the exhibit in all likelihood pertain to the arrest of another individual, calling into question which portions of the exhibit actually pertain to the plaintiff. Furthermore, portions of the exhibit have been altered and initialed by an unknown person [namely, RH], and it is unclear whether this person had [personal] knowledge of the incident and swore under oath to the accuracy of the alterations. Additionally, there is no evidence as to when these alterations occurred." Id., 629–30.

"The extent of the errors and discrepancies far surpasses mere scrivener's errors. The exhibit does not merely state that the plaintiff operated two different vehicles—an Audi and a Mercedes–Benz—but it also lists different vehicle models, years, and state registrations. The statements that the plaintiff wore contact lenses and that the plaintiff participated in field sobriety tests with and without her glasses also cannot be dismissed as mere scrivener's errors. Additionally, the notation that 'Helt, David' witnessed the plaintiff's refusal to submit to chemical alcohol testing is not a

scrivener's error because the department admits that the plaintiff consented to the Breathalyzer test. Although the incident date on the A-44 form may be a scrivener's error, the alteration by an unknown person undermines its reliability." Id., 630.

Judge Bear dissented from the majority opinion. In particular, he disagreed that the internal discrepancies identified by the plaintiff rendered the entire exhibit unreliable. See id., 637 (*Bear*, *J.*, dissenting). In his view, the significant number of factual commonalities between the A-44 form and the attached investigation report, combined with the large and undisputed portion of the exhibit that clearly described the plaintiff and her actions on the night in question, rendered the exhibit sufficiently reliable for use at the hearing. See id., 637, 642–44 (*Bear*, *J.*, dissenting). In reaching his determination, Judge Bear noted, among other things, "that both [the A-44 form and the investigation report] give the same or fundamentally similar information for the following items: the police case number; the location and time of the traffic stop; the race, sex, birthday, and address of the plaintiff; that the plaintiff failed the same three field sobriety tests in virtually the same manner; that the plaintiff indicated that she had no physical injuries; and that [the plaintiff] was apprised of her *Miranda* rights at 12:43 a.m." (Footnotes omitted.) Id., 642–43 (*Bear*, *J.*, dissenting). Judge Bear noted that both documents also indicate that "the plaintiff [does not have] diabetes [and was not] on medication; the number and type of drinks that the plaintiff consumed [prior to her arrest]; the [fact] that the plaintiff was afforded the opportunity to contact an attorney [at 12:44 a.m.]; and the date, time, and results of [her] breath analysis tests." (Footnote omitted.) Id., 644 (*Bear*, *J.*, dissenting).

Judge Bear disagreed with the trial court, however, that the case must be remanded to the hearing officer

for an articulation of the type of vehicle the plaintiff was driving when she was stopped by Biggs. See id., 645 (*Bear*, *J.*, dissenting). According to Judge Bear, it was apparent from Biggs' investigation report "that the plaintiff was operating the 2006 Mercedes-Benz at the time of her arrest . . . and that the sole reference to the 2007 Audi [on the A-44 form] is in the nature of a scrivener's, typographical, or word processing error." Id. Judge Bear also noted that the plaintiff did not testify or make any claim to the hearing officer that the information contained in the investigation report was inaccurate, which, Judge Bear asserted, underscored the overall reliability of that report and the reasonableness of the hearing officer's reliance on it. See id., 646 (*Bear*, *J.*, dissenting).

On appeal, the commissioner urges us to conclude, consistent with the determinations of the trial court and Judge Bear, that the hearing officer did not abuse his discretion or otherwise act unreasonably, arbitrarily, or illegally by admitting the exhibit and then relying on it in determining whether the department had satisfied the requirements of § 14-227b (g). The plaintiff, in turn, argues that the Appellate Court correctly determined that the errors contained in the exhibit rendered it so unreliable as to be inadmissible. We agree with the commissioner.

We begin our analysis by setting forth the relevant standards of review and legal principles that guide our analysis. "[J]udicial review of the commissioner's action is governed by the Uniform Administrative Procedure Act . . . General Statutes §§ 4-166 through 4-189 . . . and the scope of that review is very restricted. . . . [R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable."

(Citation omitted; internal quotation marks omitted.) *Murphy* v. *Commissioner of Motor Vehicles*, 254 Conn. 333, 343, 757 A.2d 561 (2000). "Substantial evidence exists if the administrative record affords a substantial basis of fact from which the fact in issue can be reasonably inferred." (Intenal quotation marks omitted.) *Schallenkamp* v. *DelPonte*, 229 Conn. 31, 40, 639 A.2d 1018 (1994). "The substantial evidence rule imposes an important limitation on the power of the courts to overturn a decision of an administrative agency . . . and . . . provide[s] a more restrictive standard of review than standards embodying review of weight of the evidence or clearly erroneous action. . . . The United States Supreme Court, in defining substantial evidence in the directed verdict formulation, has said that it is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by sub-stantial evidence." (Internal quotation marks omitted.) *Cadlerock Properties Joint Venture, L.P.* v. *Commissioner of Environmental Protection*, 253 Conn. 661, 676–77, 757 A.2d 1 (2000), cert. denied, 531 U.S. 1148, 121 S. Ct. 1089, 148 L. Ed. 2d 963 (2001).

We previously have stated that "administrative tribunals are not strictly bound by the rules of evidence and . . . may consider exhibits [that] would normally be incompetent in a judicial proceeding, [as] long as the evidence is reliable and probative." *Lawrence* v. *Kozlowski*, 171 Conn. 705, 710, 372 A.2d 110 (1976), cert. denied, 431 U.S. 969, 97 S. Ct. 2930, 53 L. Ed. 2d 1066 (1977). It is axiomatic, moreover, that it is within the province of the administrative hearing officer to determine whether evidence is reliable; see *Murphy* v. *Commissioner of Motor Vehicles*, supra, 254 Conn. 346; and, on appeal, the plaintiff bears the burden of proving "that the commissioner, on the facts before him, acted

contrary to law and in abuse of his discretion . . . .'' *Demma* v. *Commissioner of Motor Vehicles*, 165 Conn. 15, 16–17, 327 A.2d 569 (1973). ''Neither this court nor the [Appellate Court] may retry the case or substitute its own judgment for that of the [hearing officer with respect to] the weight of the evidence or questions of fact. . . . Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion.'' (Internal quotation marks omitted.) *Murphy* v. *Commissioner of Motor Vehicles*, supra, 343.

Applying these principles to the present case, we agree with the commissioner that the plaintiff has failed to demonstrate that the hearing officer abused his discretion by admitting the exhibit into evidence and relying on it to support his findings under § 14-227b (g). As the Appellate Court acknowledged, § 14-227b-19 (a) of the Regulations of Connecticut State Agencies, which has ''the force and effect of a statute''; *Gianetti* v. *Norwalk Hospital*, 211 Conn. 51, 60, 557 A.2d 1249 (1989); provides in clear and straightforward terms that a police officer's report concerning the arrest of a drunk driving suspect ''*shall be admissible* into evidence at [a license suspension] hearing if it conforms to the requirements of subsection (c) of [§] 14-227b of the . . . General Statutes.'' (Emphasis added.) Subsection (c) of § 14-227b itself provides that the report, to be admissible, must be submitted to the department within three business days, be subscribed and sworn to by the arresting officer under penalty of false statement, set forth the grounds for the officer's belief that there was probable cause to arrest the driver, and state whether the driver refused to submit to or failed a blood, breath or urine test. We previously have stated that the admissibility requirements set forth in § 14-227b (c) ''provide sufficient indicia of reliability so that the [police] report

can be introduced in evidence as an exception to the hearsay rule, especially in license suspension proceedings, without the necessity of producing the arresting officer." *Volck* v. *Muzio*, 204 Conn. 507, 518, 529 A.2d 177 (1987). It is undisputed that the exhibit in the present case meets these requirements: it was submitted to the department within three business days; it was subscribed and sworn to by the arresting officer; it set forth the grounds for the officer's belief that there was probable cause to arrest the plaintiff; and it stated whether the plaintiff submitted to a blood test.

Neither this court nor the Appellate Court has ever recognized any basis for excluding a police report from evidence at a license suspension hearing other than the failure to comply with § 14-227b (c). Indeed, we consistently have rejected claims that a report should be excluded for any other reason. See, e.g., *Schallenkamp* v. *DelPonte*, supra, 229 Conn. 43 (fact that officer was not certified to administer breath analysis test was inconsequential because certification is not required under § 14-227b); *Volck* v. *Muzio*, supra, 204 Conn. 512, 518 (arresting officer's failure to comply with statutory dictates of § 14-227b [b] provided insufficient ground for overturning commissioner's suspension of operator's license, but absence of endorsement of third person to plaintiff's refusal to submit to breath analysis test as required by § 14-227b [c] would be ground for exclusion of police report); *Roy* v. *Commissioner of Motor Vehicles*, 67 Conn. App. 394, 398, 786 A.2d 1279 (2001) (arresting officer's failure to check box in A-44 form indicating that plaintiff was operating vehicle on public road did not render police report inadmissible because "[t]he report to be completed by police officers in accordance with § 14-227b [c] does not require the police to check a box setting forth that the person arrested was operating on a public road"); *Bialowas* v. *Commissioner of Motor Vehicles*, 44 Conn. App. 702,

711–12, 692 A.2d 834 (1997) (" 'multiple' " violations of § 14-227b were not grounds for excluding police report from evidence).

We have rejected such claims because, as we explained in *Fishbein* v. *Kozlowski*, 252 Conn. 38, 743 A.2d 1110 (1999), "the restriction of a license suspension hearing to the four issues specified in [what is now § 14-227b (g)] is indicative of the legislative view that the failure to comply precisely with the . . . requirements of [§ 14-227b (b)] should not prevent suspension of the license of a person, arrested with probable cause for believing he was operating under the influence or with impaired ability as a result of intoxicating liquor, who has refused to submit to [or has failed] the prescribed [blood alcohol] tests . . . . While the legislature has attached certain consequences to departures from the procedures specified in § 14-227b (b) and has provided a substantial incentive for the police to comply with those procedures in the context of criminal proceedings . . . the legislature has manifested its intention that noncompliance with subsection (b), not involving one of the four issues to be determined pursuant to subsection [what is now § 14-227b (g)], does not preclude the suspension of the license of a driver when the four enumerated elements have been demonstrated." (Citations omitted; internal quotation marks omitted.) Id., 47–48; see also *Volck* v. *Muzio*, supra, 204 Conn. 512, 518 (because hearing is limited to four enumerated issues, multiple failures by arresting officer to comply with statutory dictates of § 14-227b did not constitute grounds for overturning commissioner's decision to suspend operator's license); *Fitzgerald* v. *Commissioner of Motor Vehicles*, 142 Conn. App. 361, 364–65, 65 A.3d 533 (2013) ("the failure of the police to comply with subsection [b] of § 14-227b, which provides the right to telephone an attorney before being sub-

jected to a chemical test, is irrelevant in a license suspension hearing because the hearing specifically, by legislation, is limited to the four issues specified in § 14-227b [g]" [footnote omitted]); *Dalmaso* v. *Dept. of Motor Vehicles*, 47 Conn. App. 839, 844, 707 A.2d 1275 ("[w]ithout legislative action to enlarge the scope of a license suspension hearing beyond the four issues specified in subsection [g], we have no reason to modify the well established view that noncompliance with subsection [b] is irrelevant in such a proceeding"), appeal dismissed, 247 Conn. 273, 720 A.2d 885 (1998). The present case is no exception.

Contrary to the determination of the Appellate Court, therefore, the fact that Biggs may have sworn to the accuracy of conflicting information concerning the type of vehicle the plaintiff was driving, the date of the incident, or whether the plaintiff was wearing contact lenses when she performed the horizontal gaze nystagmus test goes to the weight to be accorded the exhibit by the hearing officer, not to its admissibility. See, e.g., *Schallenkamp* v. *DelPonte*, supra, 229 Conn. 41 (determination regarding reliability of evidence is strictly within province of administrative hearing officer, and "the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence" [internal quotation marks omitted]); *Lawrence* v. *Kozlowski*, supra, 171 Conn. 708 ("The [hearing officer's] function is that of an administrative agency, although he acts in a quasi-judicial capacity. To render a decision, he must weigh evidence and reach conclusions." [Internal quotation marks omitted.]). Thus, the hearing officer properly considered the exhibit in its entirety, despite any errors or inconsistencies. Moreover, we see no persuasive reason why the hearing officer was precluded from relying on the exhibit even

though it contained several mistakes and discrepancies.[15]

Indeed, as Judge Bear observed; see *Do* v. *Commissioner of Motor Vehicles*, supra, 164 Conn. App. 641 (*Bear*, *J.*, dissenting); the four page investigation report alone provides support for the hearing officer's findings that (1) the police had probable cause to arrest the plaintiff, (2) the plaintiff was in fact arrested, (3) the plaintiff submitted to a breath analysis test, which indicated an elevated blood alcohol content, and (4) the plaintiff was the person operating the vehicle. The investigation report states in relevant part: "On 04-24-14 at approximately 0018 [hours], I was informed . . . that there was a vehicle operating erratically traveling northbound on Route 63 in the area of Round Hill Road in Bethany. A 911 caller described the vehicle as a white Mercedes Benz bearing [Connecticut] registration 344-ZBO. I observed this vehicle traveling northbound, failing to maintain its proper lane, at the intersection of Route 63 and Munson, swerving over the solid double yellow line onto the southbound side of the roadway. I activated my overhead emergency strobe lights, sirens and wig-wag headlights. The vehicle pulled over onto the shoulder at the intersection of Route 63 and Litchfield Turnpike in Bethany. I never lost sight of the vehicle from my initial observation to the stop. [Another] [t]rooper . . . arrived on [the] scene to assist [me]. . . .

"Upon approaching the vehicle . . . I observed [an] Asian female seated in the operator's position with the vehicle engine at an idle. The operator, later identified by her [Connecticut] operator's license . . . as [the plaintiff] . . . was asked for her license, registration

[15] Of course, although a report that complies with General Statutes § 14-227b (c) is admissible, if the report is so confusing and ambiguous that it reasonably cannot be relied on, then it would be improper for a hearing officer to do so. That is not the case here.

and proof of insurance. . . . I then asked the [plaintiff] where she was coming from to which she stated, 'Milford.' I asked the [plaintiff] where in Milford . . . she [was] coming from to which she stated '[m]y house.' I asked the [plaintiff] where she was going to which she [responded] that she was on her way to her boyfriend's house in Bethany. I then asked the [plaintiff] if she had consumed any alcoholic beverages to which she stated '[y]es.' She went on to explain that she had [consumed] a [v]odka and [t]onic and a glass of [s]angria. It should be noted that I detected a strong odor of an alcoholic beverage emanating from the [plaintiff's] breath as well as the driver's side compartment of the vehicle. I observed that the [plaintiff's] eyes were bloodshot and [glassy]. The [plaintiff] appeared to have difficulty locating [her] . . . [v]ehicle registration and [i]nsurance [identification] card . . . .

"Based [on] the above stated facts and circumstances [the plaintiff] was asked to exit and step to the rear of her vehicle and asked to perform [s]tandardized [f]ield [s]obriety [t]ests. [The plaintiff] was then asked if she had any physical injuries and/or disabilities that would prevent her from performing the tests, to which she replied, '[n]o.' [The plaintiff then] stated she was wearing contact lenses . . . ."

The investigation report then details the plaintiff's substandard performance on the three field sobriety tests. It also describes her arrest and subsequent transport to the state police barracks, where she was administered her *Miranda* warnings and read the requisite implied consent advisory. The investigation report further provides that the plaintiff was allowed to call an attorney and that, after speaking with him, she submitted to two breath analysis tests, which indicated a blood alcohol content of 0.1184 and 0.1186, respectively. The investigation report also notes that "a [video] cassette tape of the [s]tandardized field [s]obriety [t]ests and

the [plaintiff's] arrest was removed from the [video recorder] in [Biggs'] assigned vehicle and entered into evidence. . . . The video portion of the arrest [was] functioning throughout this investigation." Finally, the investigation report concludes by providing that the plaintiff was issued a summons to appear on May 8, 2014, at 9:30 a.m. in New Haven Superior Court, that she was released on a $500 nonsurety bond, that her operator's license was revoked in accordance with § 14-227b (c), and that she was picked up by a friend at 2 a.m. As Judge Bear also noted, the plaintiff did not dispute any of these facts at the administrative hearing; see *Do* v. *Commissioner of Motor Vehicles*, supra, 164 Conn. App. 636, 646 (*Bear*, *J.*, dissenting); even though she had every opportunity to do so, and there is nothing in the record before this court to suggest that she disputes those facts now.

As for the four discrepancies in the exhibit, we agree with the trial court and Judge Bear that the hearing officer reasonably could have concluded that they did not negate the overall reliability of the exhibit as a whole. See id., 641 (*Bear*, *J.*, dissenting). Indeed, one of them—that the plaintiff performed the horizontal gaze nystagmus test with and without her glasses on even though she told Biggs prior to taking the test that she was wearing contact lenses—does not strike us as a discrepancy at all. The plaintiff could have told Biggs that she was wearing contacts but then removed them to perform the test, believing she would do better on the test without them. In light of her level of intoxication, the plaintiff also could have simply forgotten that she was not wearing her contact lenses when she told Biggs differently, which Biggs then noted in his report.

The other three discrepancies on the A-44 form, an electronic document that contains a series of questions the arresting officer answers by filling in the blank next to the question, also do not warrant exclusion of the

exhibit because none of them implicates the four findings prescribed by § 14-227b (g). See, e.g., *Fishbein* v. *Kozlowski*, supra, 252 Conn. 46 ("[w]e . . . have held repeatedly that the plain language of [what is now § 14-227b (g)] expressly and narrowly limits the scope of the license suspension hearing to the four issues enumerated in the statute"); *Volck* v. *Muzio*, supra, 204 Conn. 520 ("With respect to a license suspension hearing . . . whether an operator was warned of the consequences of refusing to submit to chemical tests is not made one of the issues to be adjudicated pursuant to [what is now § 14-227b (g)]. Although one of the four issues to be determined is whether a driver has refused to submit to chemical testing, his knowledge of the consequences is not an essential factor in deciding whether such a refusal has occurred."); *Buckley* v. *Muzio*, 200 Conn. 1, 7, 509 A.2d 489 (1986) (sole issue was whether hearing officer properly applied what is now § 14-227b [g] to facts of case, and "[h]aving nothing more to determine, it was inappropriate for [the reviewing court] to indulge in a microscopic search for technical infirmities in the [commissioner's] action" [internal quotation marks omitted]). It bears emphasis, moreover, as Judge Bear noted; see *Do* v. *Commissioner of Motor Vehicles*, supra, 164 Conn. App. 642–44 (*Bear*, *J.*, dissenting); that the vast majority of the information contained in the A-44 form—roughly 90 percent of Biggs' responses—mirrors precisely the information contained in the investigation report. Indeed, two of the discrepancies are actually corrections. As we previously indicated, after administering the oath to Biggs, Hennessey crossed out "04/23/2014" as the date of the incident and wrote in "04/24/14." He also crossed out "Helt, David" as the name of a person who witnessed the plaintiff's refusal to submit to a breath analysis test. We agree with Judge Bear that the hearing officer reasonably could have concluded that the original nota-

tions of "04/23/2014" and "Helt, David" were errors that Hennessey detected and corrected prior to transmitting the report to the department. See *Do* v. *Commissioner of Motor Vehicles*, supra, 644 and n.10 (*Bear*, *J.*, dissenting). Such a conclusion is warranted because it is undisputed that the plaintiff submitted to two breath analysis tests, the results of which were entered into evidence at the hearing. It is also undisputed that the incident occurred shortly after midnight on April 24, 2014, not on April 23, 2014. Indeed, as the trial court noted, the correct date of April 24, 2014, is mentioned ten different times in the exhibit—four times in the A-44 form and six times in the investigation report.

As for the single reference to a 2007 Audi, we also agree with Judge Bear that the hearing officer reasonably could have concluded that the plaintiff was driving the white Mercedes-Benz based on the narrative set forth in the investigation report, which indicates that both Biggs and the 911 caller observed a white Mercedes-Benz driving erratically on Route 63 and that Biggs, upon approaching this vehicle, identified the plaintiff as the driver on the basis of her Connecticut operator's license. See id., 645–46 (*Bear*, *J.*, dissenting). It does appear to us, however, as the Appellate Court itself surmised, that Biggs inadvertently transcribed information from another person's arrest report when completing the plaintiff's A-44 form and that, although Hennessey caught two of the mistakes resulting therefrom before the three submissions were transmitted to the department, one was not so identified. See id., 622–23, 629–30. That would explain why "04/23/2014" and the name "Helt, David" are crossed out whereas the reference to the 2007 Audi is not.

As the commissioner argues, however, § 14-227b (g) requires only a showing that the arresting officer had probable cause to arrest the plaintiff for operating *a* motor vehicle; it does not expressly require information

regarding the type of vehicle that was being driven. As we previously stated, under § 14-227b (g) (4), the hearing officer must determine whether the plaintiff was operating "the motor vehicle." In this subdivision, "the motor vehicle" refers to the vehicle referenced in subdivision (1) of § 14-227b (g), which asks whether the police officer had probable cause to arrest the plaintiff for operating "*a motor vehicle* while under the influence of intoxicating liquor . . . ." (Emphasis added.) As we explained, there is ample evidence in the record to support the hearing officer's finding that, on the night in question, the plaintiff was operating a motor vehicle while under the influence of intoxicating liquor. Indeed, the plaintiff has not challenged the hearing officer's finding that Biggs had probable cause to arrest her for that offense. An affirmative finding on the first statutory issue necessarily results in an affirmative finding on the fourth statutory issue.

We note, moreover, our disagreement with the Appellate Court that, "because the plaintiff objected to the admission of the exhibit and casted significant doubt [on] its reliability, the burden was on the department to offer additional evidence to prove the reliability of the exhibit," and that "[p]lacing this burden on the department is consistent with [this] [c]ourt's holding in *Carlson* v. *Kozlowski*, 172 Conn. 263, 267–68, 374 A.2d 207 (1977), that although hearsay evidence is generally admissible in administrative hearings, hearsay evidence must be sufficiently reliable to be admissible." *Do.* v. *Commissioner of Motor Vehicles*, supra, 164 Conn. App. 628. In *Carlson*, the commissioner suspended the operator's license of the plaintiff, Alan J. Carlson, after a hearing officer determined, on the basis of four eyewitness affidavits, that Carlson had caused a fatal accident. *Carlson* v. *Kozlowski*, supra, 265. On appeal, Carlson claimed that the commissioner's decision was not supported by substantial evidence because the hearsay con-

tained in the affidavits was unreliable. See id. As the Appellate Court explained in the present case, "[t]o determine whether hearsay evidence is sufficiently reliable in an administrative hearing, [this] court in *Carlson* adopted the test articulated in *Richardson* v. *Perales*, 402 U.S. 389, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971). In *Richardson*, the United States Supreme Court was asked to decide whether medical records were sufficiently reliable to be admissible in an administrative hearing without the testimony of the medical examiner. Id., 402. In holding that the medical records were reliable, the court looked to multiple factors, including whether there were inconsistencies on the face of the records, and whether the plaintiff had the ability to subpoena the author of the records. Id., 403–406." *Do* v. *Commissioner of Motor* Vehicles, supra, 164 Conn. App. 628–29.

The Appellate Court's reliance on *Carlson* is misplaced for two reasons. First, as we previously stated, this court has already determined, in accordance with the legislative directive contained in § 14-227b (c), that the admissibility requirements set forth in that provision "provide sufficient indicia of reliability so that the [police] report can be introduced in evidence as an exception to the hearsay rule, especially in license suspension proceedings, without the necessity of producing the arresting officer." *Volck* v. *Muzio*, supra, 204 Conn. 518. Second, even if the *Richardson* factors *were* applicable, this court stated in *Carlson* that, "[i]f hearsay evidence is insufficiently trustworthy to be considered 'substantial evidence' and it is the only evidence probative of the plaintiff's culpability, its use to support the agency decision would be prejudicial to the plaintiff, *absent a showing . . . that the appellant knew it would be used and failed to ask the commissioner to subpoena the declarants*." (Emphasis added.) *Carlson* v. *Kozlowski*, supra, 172 Conn. 267. In the present case, it is

undisputed that the plaintiff was informed prior to her hearing that the exhibit would be entered into evidence, but she failed to avail herself of her right to subpoena Biggs or any other witness to challenge the accuracy of the information contained in the exhibit. See Regs., Conn. State Agencies § 14-227b-18 (b) ("[a] person arrested for an enumerated offense may at such person's own expense and by such person's own solicitation summon to the [license suspension] hearing the arresting officer and any other witness to give oral testimony"). Although it is true, as the Appellate Court noted; see *Do* v. *Commissioner of Motor Vehicles*, supra, 164 Conn. App. 626–27; that a witness' failure to respond to such a subpoena is not a ground for dismissal or a continuance of the hearing, there is nothing in the regulation to suggest that the hearing officer cannot, if warranted, consider the nonappearance of a subpoenaed witness in making his or her decision.

We note, finally, that this court "[has] indicated repeatedly that a license suspension hearing is not a criminal proceeding and that the subject of such a hearing is not entitled to all of the procedural protections that would be available in a criminal proceeding." *Fishbein* v. *Kozlowski*, supra, 252 Conn. 49. "In *State* v. *Hickam*, 235 Conn. 614, 624, 668 A.2d 1321 (1995), cert. denied, 517 U.S. 1221, 116 S. Ct. 1851, 134 L. Ed. 2d 951 (1996), we [explained] that . . . the legislative history of § 14-227b reveals that a principal purpose [of] the enactment of the statute was to protect the public by removing potentially dangerous drivers from the state's roadways with all dispatch compatible with due process. This court in *Hickam* distinguished license suspension proceedings, the primary purpose of which is to promote public safety by removing those who have demonstrated a reckless disregard for the safety of others from the state's roadways, from criminal proceedings, the primary purpose of which is punishment."

(Footnote omitted; internal quotation marks omitted.) *Fishbein* v. *Kozlowski*, supra, 48–49. Even in the context of a criminal proceeding, however, in which procedural safeguards are at their zenith, this court has recognized that, as a general matter, "the constitution's safeguard against convictions based on unreliable or questionable evidence is not the exclusion of such evidence but an opportunity for the defense to persuade the jury that such evidence is untrustworthy." *State* v. *Dickson*, 322 Conn. 410, 478, 141 A.3d 810 (2016) (*Zarella*, *J.*, concurring in the judgment), cert. denied, U.S. , 137 S. Ct. 2263, 198 L. Ed. 2d 713 (2017). As Judge Bear aptly noted, the plaintiff in the present case had the opportunity at the license suspension hearing to present evidence to demonstrate the unreliability of the information contained in the exhibit but failed to do so. See *Do* v. *Commissioner of Motor Vehicles*, supra, 636, 646 (*Bear*, *J.*, dissenting).

We conclude, therefore, that the hearing officer properly admitted and relied on the hearsay information, sworn to by Biggs, that was submitted to the hearing officer by the commissioner. Because that information constituted substantial evidence to support the hearing officer's findings, there is no need for a remand of the case to the hearing officer, whose decision to reject the plaintiff's claim must stand.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to reverse the trial court's judgment insofar as that court remanded the case for further articulation and to order the trial court to deny the plaintiff's administrative appeal.

In this opinion the other justices concurred.

ORDERS

CONNECTICUT REPORTS

VOL. 330

U.S. BANK NATIONAL ASSOCIATION, TRUSTEE
v. ROGER W. WOLF ET AL.

The petition by the defendant Ruthann Wolf for certification to appeal from the Appellate Court, 186 Conn. App. 902 (AC 40326), is dismissed without prejudice to refiling on or before February 6, 2019, as the petition was filed prior to the final determination of the appeal in the Appellate Court.

Ruthann Wolf, self-represented, in support of the petition.

Tara L. Trifon and *Melanie Dykas*, in opposition.

Decided January 31, 2019

PETER P. GAUGHAN ET AL. *v.* PETER J. HIGGINS

The defendant's petition for certification to appeal from the Appellate Court, 186 Conn. App. 618 (AC 40556), is denied.

Edward Muska, in support of the petition.

Decided January 31, 2019

PETER P. GAUGHAN ET AL. *v.* PETER J. HIGGINS

The plaintiffs' cross petition for certification to appeal from the Appellate Court, 186 Conn. App. 618 (AC 40556), is denied.

Maria K. Tougas, in support of the petition.

Decided January 31, 2019

STATE OF CONNECTICUT *v.* MANUEL T.

The defendant's petition for certification to appeal from the Appellate Court, 186 Conn. App. 51 (AC 40656), is granted, limited to the following issues:

"1. Did the Appellate Court apply the proper standard in determining that, in a criminal prosecution for sexual abuse of a child, hearsay statements made during a forensic interview of the child complainant are admissible under § 8-3 (5) of the Connecticut Code of Evidence?

"2. Did the Appellate Court properly conclude that the trial court did not abuse its discretion by excluding from evidence certain screenshots of text messages?"

Trent A. LaLima, in support of the petition.

Ronald G. Weller, senior assistant state's attorney, in opposition.

Decided January 31, 2019

CITY OF NORWICH *v.* IRINA LOSKOUTOVA ET AL.

The named defendant's petition for certification to appeal from the Appellate Court, 186 Conn. App. 904 (AC 40821), is denied.

Irina Loskoutova, self-represented, in support of the petition.

Decided January 31, 2019

IN RE GABRIELLA C.-G. ET AL.

The petition by the respondent mother for certification to appeal from the Appellate Court, 186 Conn. App. 767 (AC 41742), is denied.

D'AURIA, J., did not participate in the consideration of or decision on this petition.

Kirsten F., self-represented, in support of the petition.

Stephen G. Vitelli, assistant attorney general, in opposition.

Decided January 31, 2019

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CONNECTICUT APPELLATE REPORTS

Vol. 187

CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

STATE OF CONNECTICUT *v.* ROBERT L. WALKER (AC 41114)

Alvord, Bright and Beach, Js.

Syllabus

The defendant, who had been convicted in 2001 of the crimes of aggravated sexual assault in the first degree, sexual assault in the first degree, kidnapping in the first degree with a firearm, kidnapping in the first degree, threatening, criminal possession of a weapon, credit card theft, illegal use of a credit card, fraudulent use of an automatic teller machine and larceny in the sixth degree, appealed to this court from the trial court's dismissal in part and denial in part of his motion to correct an illegal sentence. The defendant was sentenced for his 2001 convictions on the basis of a presentence investigation report that contained, inter alia, detailed information concerning his past criminal history, including facts underlying certain previous convictions in 1991. In his motion to correct an illegal sentence, the defendant claimed, inter alia, that the facts referenced in the 2001 presentence investigation report and in the supplemental material concerning his 1991 convictions were inaccurate and prejudicial. *Held*:

1. The trial court properly concluded that it lacked subject matter jurisdiction to consider the defendant's claim that his sentence was imposed in an illegal manner due to the failure of the sentencing court to canvass him or his counsel as to their review and the accuracy of the 2001 presentence investigation report; our Supreme Court has determined previously that our statutes and rules of practice do not require a court to make an affirmative inquiry as to the accuracy of the information contained in a presentence investigation report and that, consequently, such a claim does not invoke the jurisdiction of the trial court.

2. The trial court lacked subject matter jurisdiction to consider the merits of the defendant's claim that his sentence was imposed in an illegal manner due to the sentencing court's reliance on inaccurate facts regarding his 1991 convictions contained in the presentence investigation report, as it was not plausible that the defendant sought to challenge the manner in which his sentence was imposed, as opposed to the underlying convictions: because the defendant's challenge to his 2001 sentence was predicated on his claim that the presentence investigation report contained inaccurate facts regarding his 1991 convictions, which he alleged were unconstitutional due to the ineffective assistance of his then defense counsel in failing to point out to the court contradictions in the assertions of the complaining witness, failing to do an adequate investigation and advising the defendant to plead guilty, his claim clearly challenged his 1991 convictions and not the sentencing proceeding for

his 2001 convictions, and although the defendant's 2001 sentencing proceeding may have been different had his 1991 convictions been set aside, he could not use that theoretical possibility as the basis to launch a wholesale attack on the performance of his then defense counsel through a motion to correct an illegal sentence filed twenty-four years after he pleaded guilty and long after his sentence for the 1991 convictions had been served; accordingly, the trial court should have dismissed, rather than denied, the defendant's motion to correct an illegal sentence as to this claim.

Argued October 24, 2018—officially released February 12, 2019

Procedural History

Substitute information, in the first case, charging the defendant with three counts of the crime of fraudulent use of an automated teller machine, two counts of the crime of credit card theft, two counts of the crime of illegal use of a credit card and one count of the crime of larceny in the sixth degree, and substitute information, in the second case, charging the defendant with four counts each of the crimes of sexual assault in the first degree and kidnapping in the first degree, two counts each of the crimes of aggravated sexual assault in the first degree and kidnapping in the first degree with a firearm, and with the crimes of threatening and possession of a weapon, brought to the Superior Court in the judicial district of Middlesex and tried to the jury before *Clifford, J.*; thereafter, the court denied the defendant's motion for a mistrial; verdicts and judgments of guilty, from which the defendant appealed to this court, which affirmed the judgments; subsequently, the court, *Vitale, J.*, dismissed in part and denied in part the defendant's motion to correct an illegal sentence, and the defendant appealed to this court. *Improper form of judgment*; *affirmed in part*; *judgment directed in part.*

Temmy Ann Miller, assigned counsel, with whom was *Aimee Lynn Mahon*, assigned counsel, for the appellant (defendant).

Rocco A. Chiarenza, assistant state's attorney, with whom were *Russell C. Zentner*, senior assistant state's attorney, and, on the brief, *Peter A. McShane*, former state's attorney, and *Caitlyn S. Malcynsky*, certified legal intern, for the appellee (state).

Opinion

BRIGHT, J. The defendant, Robert L. Walker, appeals[1] from the judgment of the trial court dismissing in part and denying in part his motion to correct an illegal sentence. On appeal, the defendant claims that the court improperly (1) dismissed for lack of subject matter jurisdiction his claim that the sentencing court failed to canvass him or his counsel regarding their review and the accuracy of the presentence investigation report, and (2) denied on the merits, without first providing him with an adequate hearing before the sentencing court, his claim that the sentencing court relied on inaccurate facts contained in the presentence investigation report. We conclude that the court lacked subject matter jurisdiction to consider both of the defendant's claims raised by the motion to correct an illegal sentence. Accordingly, we affirm in part and reverse in part the judgment of the trial court.

The following facts and procedural history are relevant to our resolution of the defendant's claims. On February 14, 1991, the defendant entered a guilty plea pursuant to *North Carolina* v. *Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970),[2] to one count of

[1] The defendant originally appealed to this court. The appeal subsequently was transferred to our Supreme Court, which then transferred the appeal back to this court pursuant to Practice Book § 65-4.

[2] "Under *North Carolina* v. *Alford*, [supra, 400 U.S. 25], a criminal defendant is not required to admit his guilt . . . but consents to being punished as if he were guilty to avoid the risk of proceeding to trial. . . . A guilty plea under the *Alford* doctrine is a judicial oxymoron in that the defendant does not admit guilt but acknowledges that the state's evidence against him is so strong that he is prepared to accept the entry of a guilty plea nevertheless." (Internal quotation marks omitted.) *State* v. *Pentland*, 296 Conn. 305, 308 n.3, 994 A.2d 147 (2010).

robbery in the first degree in violation of General Statutes (Rev. to 1989) § 53a-134 (a) (4) and one count of sexual assault in the third degree in violation of General Statutes § 53a-72a (1991 convictions). The Office of Adult Probation then prepared a presentence investigation report. On March 22, 1991, pursuant to the parties' plea agreement, the court sentenced the defendant to a total effective term of fourteen years incarceration, execution suspended after nine years, with three years probation. On January 12, 1996, the defendant was discharged from the custody of the Department of Correction.

Between late 1999 and early 2000, the defendant engaged in further criminal misconduct. On January 23, 2001, the defendant was convicted in absentia,[3] following a jury trial, of two counts of aggravated sexual assault in the first degree in violation of General Statutes § 53a-70a (a) (1), four counts of sexual assault in the first degree in violation of General Statutes § 53a-70 (a) (1), two counts of kidnapping in the first degree with a firearm in violation of General Statutes § 53a-92a, four counts of kidnapping in the first degree in violation of General Statutes § 53a-92 (a) (2) (A), threatening in violation of General Statutes (Rev. to 1999) § 53a-62 (a) (2), criminal possession of a weapon in violation of General Statutes (Rev. to 1999) § 53a-217, two counts of credit card theft in violation of General Statutes § 53a-128c (a), three counts of fraudulent use of an automatic teller machine in violation of General Statutes § 53a-127b, two counts of illegal use of a credit card in violation of General Statutes § 53a-128d, and one count of larceny in the sixth degree in violation of General Statutes (Rev. to 1999) § 53a-125b (2001 convictions).

[3] The defendant fled the country after he testified but prior to the completion of trial, and, upon his return, he pleaded guilty in a separate proceeding to two counts of failure to appear in the first degree, and one count of failure to appear in the second degree.

Thereafter, the Office of Adult Probation prepared a presentence investigation report (2001 PSI report) in advance of the defendant's sentencing for the 2001 convictions. The 2001 PSI report contained detailed information concerning the defendant's past criminal history, including the facts underlying his 1991 convictions. Also attached to the 2001 PSI report was a "Synopsis of Facts" provided by the Office of the State's Attorney that detailed the facts underlying the 2001 convictions.

On April 27, 2001, the sentencing court conducted the defendant's sentencing hearing at which it heard statements from the state, the victim, the victim's mother, defense counsel, and the defendant.[4] At the conclusion of the hearing, the court sentenced the defendant to a total effective term of fifty years incarceration, execution suspended after thirty-two years, followed by twenty years probation. The defendant's 2001 convictions were affirmed on direct appeal by this court. See *State* v. *Walker*, 80 Conn. App. 542, 835 A.2d

[4] On April 27, 2001, prior to the sentencing hearing, defense counsel filed a "Motion for Order to Remove the State's Synopsis of the Facts from the Presentence Investigation." (Internal quotation marks omitted.) At the outset of the sentencing hearing, defense counsel argued in support of the motion that the state's synopsis detailing the facts underlying the 2001 convictions should be stricken because it contained numerous inaccuracies, including that the defendant never registered as a sex offender in connection with his 1991 convictions. The court afforded defense counsel the opportunity to go through all of the purported inaccuracies, but counsel declined to do so. The court then denied the defendant's motion and, in accordance with defense counsel's request, ordered that the motion, the transcript, and the court's order denying the motion be attached to the 2001 PSI report.

The state, during its remarks at the sentencing hearing, recited some of the facts that were the basis for the 1991 convictions. Defense counsel objected to those statements as being unnecessary and redundant because the events leading to those convictions were set forth in the 2001 PSI report. Defense counsel did not object on the ground that any of that information was inaccurate, and neither defense counsel nor the defendant during their sentencing remarks claimed that the information regarding the 1991 convictions contained in the 2001 PSI report was inaccurate.

1058 (2003), cert. denied, 268 Conn. 902, 845 A.2d 406 (2004).

On August 25, 2015, the defendant, pursuant to Practice Book § 43-22,[5] filed an amended motion to correct an illegal sentence.[6] Therein, the defendant alleged that the facts "referenced in [the 2001 PSI] report and in the supplemental materials concerning his 1991 conviction[s] . . . [were] inaccurate and prejudicial" because the 1991 convictions were unconstitutional in three ways: (1) "they were based on contradictory assertions of the complaining witness as to whether a sexual assault had ever taken place," (2) "counsel in the 1991 case failed to investigate possible connections between organized crime figures and the complaining witness that may have tainted the complainant's credibility," and (3) "counsel was ineffective for advising [the defendant] that he should plead guilty because his case would be a 'tough case to win.' " The defendant claimed that, as a result, his sentence "was imposed in an illegal manner" because the sentencing court: (1) "fail[ed] to specifically canvass the [defendant] or his counsel as to their review and the accuracy of the [2001 PSI] report . . . in violation of [Practice Book §] 43-10" and (2) "specifically rel[ied] upon unconstitutional and inaccurate information contained in the [2001 PSI report] . . . ."[7]

[5] Practice Book § 43-22 provides: "The judicial authority may at any time correct an illegal sentence or other illegal disposition, or it may correct a sentence imposed in an illegal manner or any other disposition made in an illegal manner."

[6] On August 26, 2014, the defendant, as a self-represented party, filed a motion to correct an illegal sentence that claimed that his sentence had been imposed in an illegal manner because the sentencing court "relied on false information and perjured statements—which influenced [its] sentencing decisions." The defendant then filed the amended motion to correct an illegal sentence after he had been appointed counsel.

[7] The defendant argues on appeal that the trial court misinterpreted his amended motion to correct as alleging two distinct claims. Rather, the defendant asserts that his sole claim was that "his sentence was imposed in an illegal manner due to the fact that the court failed to canvass either

On October 23, 2015, the state filed a motion to dismiss the defendant's motion to correct an illegal sentence on the ground that the court lacked subject matter jurisdiction to entertain it. In its memorandum of law in support of the motion, the state argued that the court lacked subject matter jurisdiction over the defendant's claim that the sentencing court failed to canvass him or his attorney because such a claim had been foreclosed by our Supreme Court in *State* v. *Parker*, 295 Conn. 825, 840–41, 992 A.2d 1103 (2010) (claims that defendant "had been deprived of an opportunity to review his presentence report and to address inaccuracies therein; and . . . [defense counsel] had failed to review the presentence report with him or to bring any inaccuracies in the report to the court's attention" did not provide jurisdictional basis for correcting sentence imposed in illegal manner). The state also argued that the court lacked subject matter jurisdiction over the defendant's claim that the sentencing court relied on inaccurate information in the 2001 PSI report because "[s]uch a claim falls outside the purview of Practice Book § 43-22" for the reason that it attacked an underlying conviction, not the sentence imposed. The defendant did not file a written opposition to the state's motion. On May 4, 2016, the court conducted a hearing on the motion to dismiss at which it heard arguments from both the state and defense counsel.

him or his counsel as to the accuracy of the information contained within the [2001 PSI report] (and supplemental materials provided by the state), which in turn caused the court to rely on inaccurate information about his prior conviction when imposing his sentence on the underlying conviction." We disagree with the defendant's interpretation and, thus, separately consider his two claims, as they were raised and decided before the trial court. See *State* v. *Evans*, 329 Conn. 770, 784–85, 189 A.3d 1184 (2018) (interpreting motion to correct illegal sentence to determine "specific legal claim raised therein"); *State* v. *Bozelko*, 154 Conn. App. 750, 763 n.16, 108 A.3d 262 (2015) (interpretation of claims raised in motion to correct illegal sentence is question of law).

On May 23, 2016, the court issued a memorandum of decision in which it dismissed in part and denied in part the defendant's motion to correct an illegal sentence. In particular, the court dismissed for lack of subject matter jurisdiction the defendant's first claim that the sentencing court failed to canvass the defendant or his counsel because "such a claim is untenable" pursuant to *State* v. *Parker*, supra, 295 Conn. 825. The court denied on the merits the defendant's second claim that the sentencing court relied on inaccurate information because it concluded that "the sentencing court did not rely on materially false or prejudicial information. The defendant was in fact convicted in 1991 of the crimes referenced in the [2001 PSI report]. . . . The record before this court does not support the defendant's claim that the information regarding the 1991 convictions was materially false." (Citations omitted; footnote omitted.) This appeal followed. Additional facts will be set forth as necessary.

We begin with our standard of review and relevant legal principles. "[I]t is axiomatic that [t]he judicial authority may at any time correct an illegal sentence or other illegal disposition, or it may correct a sentence imposed in an illegal manner . . . . Practice Book § 43-22. A motion to correct an illegal sentence constitutes a narrow exception to the [common-law] rule that, once a defendant's sentence has begun, the authority of the sentencing court to modify that sentence terminates. . . . Indeed, [i]n order for the court to have jurisdiction over a motion to correct an illegal sentence after the sentence has been executed, the sentencing proceeding [itself] . . . must be the subject of the attack." (Internal quotation marks omitted.) *State* v. *Francis*, 322 Conn. 247, 259, 140 A.3d 927 (2016).

"In Connecticut, [Practice Book] § 43-22 sets forth the procedural mechanism for correcting invalid sentences. . . . Because the judiciary cannot confer jurisdiction on itself through its own rule-making power,

§ 43-22 is limited by the common-law rule that a trial court may not modify a sentence if the sentence was valid and its execution has begun." (Internal quotation marks omitted.) *State* v. *Parker*, supra, 295 Conn. 836.

"Although [our Supreme Court] had not defined the parameters of an invalid sentence prior to the adoption of § 43-22, the rules of practice are consistent with the broader common-law meaning of illegality, permitting correction of both illegal sentences and sentences imposed in an illegal manner. . . . An illegal sentence is essentially one which either exceeds the relevant statutory maximum limits, violates a defendant's right against double jeopardy, is ambiguous, or is internally contradictory. . . . Sentences imposed in an illegal manner have been defined as being within the relevant statutory limits but . . . imposed in a way which violates [a] defendant's right . . . to be addressed personally at sentencing and to speak in mitigation of punishment . . . or his right to be sentenced by a judge relying on accurate information or considerations solely in the record, or his right that the government keep its plea agreement promises . . . . This latter category reflects the fundamental proposition that [t]he defendant has a legitimate interest in the character of the procedure which leads to the imposition of sentence even if he may have no right to object to a particular result of the sentencing process." (Citations omitted; footnote omitted; internal quotation marks omitted.) Id., 837–39.

"[T]he claims that may be raised in a motion to correct an illegal sentence are strictly limited to improprieties that may have occurred at the sentencing stage of the proceeding. . . . Thus . . . for the trial court to have jurisdiction to consider the defendant's claim of an illegal sentence, the claim must fall into one of [several specific] categories of claims that, under the common law, the court has jurisdiction to review." (Citation

omitted; internal quotation marks omitted.) *State* v. *Francis*, supra, 322 Conn. 264. A determination of whether a trial court has subject matter jurisdiction to consider a motion to correct an illegal sentence presents a question of law, and, therefore, our review is plenary. *State* v. *Evans*, 329 Conn. 770, 776–77, 189 A.3d 1184 (2018).

I

The defendant first claims that the court improperly dismissed for lack of subject matter jurisdiction his claim that his sentence was imposed in an illegal manner because the sentencing court failed to canvass him or his counsel "as to their review and the accuracy of the [2001 PSI] report . . . ." The state argues that the court properly determined that *State* v. *Parker*, supra, 295 Conn. 825, is dispositive of this claim.[8] We agree with the state.

In *Parker*, the defendant entered a plea under the *Alford* doctrine to the charge of murder. Id., 828. After the defendant unsuccessfully pursued an appeal challenging his conviction and plea, he filed a motion to correct an illegal sentence claiming that his sentence was imposed in an illegal manner. Id., 830–31. In his motion, the defendant asserted that his right not to be sentenced on the basis of inaccurate information was violated because "(1) he had been deprived of an opportunity to review his presentence report and to address inaccuracies therein; and (2) [defense counsel] had

[8] The defendant additionally argues on appeal to this court that if *State* v. *Parker*, supra, 295 Conn. 825, is determined to be controlling, that decision should be overruled. Notwithstanding the fact that this argument also was contained in his brief that originally was submitted to our Supreme Court; see footnote 1 of this opinion; we reject this argument because it is axiomatic that we cannot overrule Supreme Court precedent. See *Hadden* v. *Capitol Region Education Council*, 164 Conn. App. 41, 48–49, 137 A.3d 775 (2016) (Appellate Court is bound by and cannot overrule decisions of our Supreme Court).

failed to review the presentence report with him or to bring any inaccuracies in the report to the court's attention." Id., 840. After a hearing, the trial court dismissed the defendant's motion to correct an illegal sentence for lack of subject matter jurisdiction. Id., 833.

On appeal, our Supreme Court concluded that "the defendant's claims [did] not fall within the limited circumstances under which the trial court has jurisdiction to correct a sentence imposed in an illegal manner . . . ." Id., 828. It first outlined that our statutes and rules of practice, particularly General Statutes § 54-91b and Practice Book §§ 43-7 and 43-10 (1), protect a defendant's due process right not to be sentenced on the basis of untrue or unreliable information. Id., 843–46. It held, nonetheless, that these authorities did not provide a basis for jurisdiction because the defendant had not claimed that the sentencing court's actions violated any of the mandates therein contained. Id., 847–48. Rather, it rejected the premise of "[t]he defendant's claimed constitutional basis for jurisdiction . . . that the rules of practice and the statutes afford him a personal right to review, and an opportunity to seek corrections to, the presentence report" as unsupported by our statutes and rules of practice. (Footnote omitted.) Id., 849–50. Specifically, it held that "[a]lthough it may be the better practice, *neither our rules of practice nor our statutes require a sentencing court to make an affirmative inquiry about the accuracy of the information in the presentence report*." (Emphasis added.) Id., 849.

In the present case, the defendant's first claim is that his sentence was imposed in an illegal manner because the sentencing court, allegedly in violation of Practice Book § 43-10,[9] failed to canvass the defendant or his

[9] The defendant expressly relied on the provision of Practice Book § 43-10 (1) that provides in relevant part: "The judicial authority shall afford the parties an opportunity to be heard and . . . to explain or controvert the presentence investigation report . . . ."

counsel as to their review and the accuracy of the 2001 PSI report. Our Supreme Court, in *Parker*, explicitly held that our statutes and rules of practice, including Practice Book § 43-10, do not require a court to make an affirmative inquiry as to the accuracy of facts contained in a presentence investigation report, and that, consequently, such a claim does not invoke the jurisdiction of the trial court. Id. Therefore, because our Supreme Court's decision in *Parker* is definitively binding on this court; see footnote 8 of this opinion; we conclude that the trial court properly concluded that it lacked subject matter jurisdiction to consider this claim.[10]

II

The defendant also claims that the court improperly denied on the merits his claim that his sentence was imposed in an illegal manner because the sentencing court relied on inaccurate facts regarding his 1991 convictions that were contained in the 2001 PSI report. In particular, the defendant argues on appeal that the court improperly ruled on the merits of his amended motion to correct without first conducting an "adequate hearing," and that his motion to correct should have been heard and decided by the 2001 sentencing court. The state argues that the court lacked subject matter jurisdiction to consider this claim because "the defendant's attempt to use a motion to correct to challenge the legal validity of . . . his [1991] convictions did not constitute a challenge to the sentencing proceeding itself,

[10] It is worth noting that the 2001 sentencing court invited defense counsel to discuss any and all claimed inaccuracies in the 2001 PSI report in as much detail as he wanted. See footnote 4 of this opinion. Counsel declined to do so, even though he expressed his view that the synopsis attached to the report contained so many inaccuracies that going through them could take "all afternoon." Thus, the suggestion that the defendant and defense counsel were unaware of any alleged inaccuracies in the 2001 PSI report, or that they were unable to bring those inaccuracies to the attention of the court, is wholly inaccurate.

but instead, constituted a challenge to a long final prior conviction."[11] The defendant argues that the trial court had subject matter jurisdiction because his claim did "not attempt to attack the underlying conviction. By its very nature it is attacking the manner in which the sentence was imposed because of the court's actions, or lack thereof, during the sentencing proceeding." We agree with the state.

Our Supreme Court repeatedly has held that "a challenge to the legality of a sentence focuses not on what transpired during the trial or on the underlying conviction. In order for the court to have jurisdiction over a motion to correct an illegal sentence after the sentence has been executed, *the sentencing proceeding, and not the trial leading to the conviction*, must be the subject of the attack." (Emphasis in original; internal quotation marks omitted.) *State* v. *Evans*, supra, 329 Conn. 779; see *State* v. *Lawrence*, 281 Conn. 147, 158, 913 A.2d 428 (2007) (same); see also *State* v. *Francis*, supra, 322 Conn. 264 ("the claims that may be raised in a motion to correct an illegal sentence are strictly limited to improprieties that may have occurred at the sentencing stage of the proceeding"). "In determining whether it is plausible that the defendant's motion challenged the sentence, rather than the underlying trial or conviction, we consider the nature of the specific legal claim raised therein." *State* v. *Evans*, supra, 784–85; see *State* v. *Delgado*, 323 Conn. 801, 810, 816, 151 A.3d 345 (2016) (if defendant fails to allege claim that, if proven, would require resentencing, sentencing court has no jurisdiction to consider motion to correct).

[11] The state alternatively argues that we should decline to review this claim because it is raised for the first time on appeal, and, therefore, was not properly preserved. In light of our conclusion that the court lacked subject matter jurisdiction to consider the defendant's claim that the court relied on inaccurate information regarding his 1991 convictions, we need not reach the preservation issue.

In the present case, the defendant alleged in his motion to correct an illegal sentence that the facts "referenced in [the 2001 PSI] report and in the supplemental materials concerning his 1991 conviction[s] . . . [were] inaccurate and prejudicial" because the 1991 convictions were unconstitutional in three ways: (1) "they were based on contradictory assertions of the complaining witness as to whether a sexual assault had ever taken place," (2) "counsel in the 1991 case failed to investigate possible connections between organized crime figures and the complaining witness that may have tainted the complainant's credibility," and (3) "counsel was ineffective for advising [the defendant] that he should plead guilty because his case would be a 'tough case to win.' " The defendant claims that, as a result, his sentence was imposed in an illegal manner because the sentencing court "specifically rel[ied] upon unconstitutional and inaccurate information contained in the [2001 PSI report] . . . ."

In determining whether it is plausible that the defendant's second claim challenges the sentencing proceeding, as opposed to an underlying conviction, we first examine our decisions that have confronted the same issue. For example, in the relevant instances in which this court has concluded that the trial court had subject matter jurisdiction over a motion to correct an illegal sentence, the defendant claimed either that the sentencing proceeding violated our rules of practice, or that the presentence investigation report contained purported inaccuracies that did not stem from the underlying conviction. See *State* v. *Fairchild*, 155 Conn. App. 196, 202–203, 208–209, 108 A.3d 1162 (trial court had subject matter jurisdiction over defendant's motion to correct illegal sentence that claimed sentencing court, in violation of Practice Book § 43-10, "failed to give him adequate notice of the date of the sentencing hearing, and

thereby denied him a meaningful opportunity for allocution and violated his due process right to contest the evidence upon which the court relied for sentencing purposes"), cert. denied, 316 Conn. 902, 111 A.3d 470 (2015); *State* v. *Bozelko*, 154 Conn. App. 750, 752, 757–58, 108 A.3d 262 (2015) (trial court had subject matter jurisdiction over defendant's motion to correct illegal sentence that claimed that "the [presentence investigation report] utilized by the sentencing court had been prepared without her input, contrary to the relevant rules of practice, depriving her of the benefit of mitigating evidence she would otherwise have presented as a basis for imposing a lesser sentence . . . [and] that the incomplete [presentence investigation report] that was prepared by [the probation officer] and furnished to the court contained material and harmful misrepresentations about her, particularly concerning her purported refusal to participate in the presentence investigation interview"); *State* v. *Charles F.*, 133 Conn. App. 698, 701, 703–704, 36 A.3d 731 (trial court had subject matter jurisdiction over defendant's motion to correct illegal sentence that claimed that "he did not receive the [presentence investigation report] forty-eight hours before sentencing as required by Practice Book § 43-7 and that, as a result of this untimely receipt, he was unable to correct several inaccuracies, including (1) the statement in the report that the defendant did not want to include an 'offender's version,' (2) the statement in the report that the defendant's son was 'one of the victims in [the defendant's] pending case' and (3) the prosecution's statement that the defendant had committed thirty felonies" [footnote omitted]), cert. denied, 304 Conn. 929, 42 A.3d 390 (2012); *State* v. *Osuch*, 124 Conn. App. 572, 574, 576–77, 5 A.3d 976 (trial court had subject matter jurisdiction over motion to correct that claimed that sentencing court relied on presentence investigation report that contained incorrect information, including, that defendant received drug treatment and

admitted to police five burglaries instead of one), cert. denied, 299 Conn. 918, 10 A.3d 1052 (2010).

Consistent with the foregoing, in the relevant instances in which this court has concluded that the trial court lacked subject matter jurisdiction over a motion to correct an illegal sentence, the defendant challenged either the facts or the viability of the underlying conviction. See *State* v. *Meikle*, 146 Conn. App. 660, 662, 663, 79 A.3d 129 (2013) (trial court lacked subject matter jurisdiction over motion to correct illegal sentence that claimed that "the shotgun introduced at [his] trial was not in fact the murder weapon and . . . the state fraudulently concealed this fact from his trial counsel" because defendant "improperly [sought] to address a trial-related claim through a motion to correct an illegal sentence"); *State* v. *Mollo*, 63 Conn. App. 487, 489, 491, 776 A.2d 1176 (trial court lacked subject matter jurisdiction over motion to correct illegal sentence in that "a latent defect existed as to the factual basis for [the defendant's] guilty plea" because "[t]he purpose of Practice Book § 43-22 is not to attack the validity of a conviction by setting it aside but, rather to correct an illegal sentence or disposition, or one imposed or made in an illegal manner"), cert. denied, 257 Conn. 904, 777 A.2d 194 (2001).

Applying the foregoing principles to the present case, we conclude that the trial court lacked subject matter jurisdiction to consider the merits of the defendant's second claim because it is not plausible that he sought to challenge the manner in which his sentence was imposed, as opposed to an underlying conviction. The defendant's second claim, unlike that in *State* v. *Fairchild*, supra,155 Conn. App. 202–203, 208–209, does not challenge the sentencing proceeding for his 2001 convictions as violating our rules of practice.[12] Rather, the

[12] The defendant's first claim alleges that the sentencing court's failure to canvass him or his attorney as to their review and accuracy of the 2001 PSI report violated Practice Book § 43-10. We concluded in part I of this opinion

defendant claims that his sentence for the 2001 convictions was imposed illegally because the sentencing court relied on inaccurate facts contained in the 2001 PSI report regarding his 1991 convictions, which he alleged were unconstitutional because they were based on contradictory assertions of the complaining witness and because defense counsel rendered ineffective assistance. Thus, in essence, the defendant's challenge to his 2001 sentence is predicated on his claim that his 1991 convictions were unconstitutional. The trial court lacked jurisdiction to consider this claim on the merits because it blatantly challenges his 1991 convictions, not the sentencing proceeding for his 2001 convictions.

The basis for the defendant's claim that his 1991 convictions were unconstitutional—contradictory assertions of the complaining witness and defense counsel rendering ineffective assistance—further demonstrates that his challenge is to an underlying conviction. A challenge to whether his 1991 convictions were based on contradictory statements by the complaining witness does not provide a basis for jurisdiction because, as in *State* v. *Meikle*, supra, 146 Conn. App. 662–63, and *State* v. *Mollo*, supra, 63 Conn. App. 488–90, it seeks to dispute the factual basis of his prior convictions. Indeed, the defendant's claim in the present case transcends the claims asserted in *Meikle* and *Mollo* in that it calls into question the factual basis for his 1991 convictions to which he pleaded guilty under the *Alford* doctrine, as opposed to the 2001 convictions for which he was being sentenced. Unlike the claims of factual inaccuracies stemming from the presentence investigation reports at issue in *State* v. *Bozelko*, supra, 154 Conn. App. 750, 752, 757–58, *State* v. *Charles F.*, supra, 133 Conn. App. 700–701, and *State* v. *Osuch*, supra, 124

that the court lacked subject matter jurisdiction over this claim pursuant to *State* v. *Parker*, supra, 295 Conn. 844–47.

Conn. App. 576–77, the defendant's claim in the present case directly challenges his 1991 convictions.

Likewise, his ineffective assistance of counsel claim also is directed at the viability of his 1991 convictions. In *Parker*, our Supreme Court concluded that the trial court lacked jurisdiction over the claim that defense counsel rendered ineffective assistance at the sentencing hearing because "[t]here is no specific rule authorizing a defendant to bring his ineffective assistance of counsel claim by way of a motion to correct . . . [and] the conduct by [defense counsel] of which the defendant complains cannot be construed as a violation by the *court* of the defendant's rights at sentencing." (Emphasis in original.) *State* v. *Parker*, supra, 295 Conn. 852; see *State* v. *Evans*, supra, 329 Conn. 781 ("the motion to correct is not another bite at the apple in place of challenges that are more properly brought on direct appeal or in a petition for a writ of habeas corpus").[13] In addition, as compared to the claim in *Parker*, the defendant's ineffective assistance claim in the present case is further attenuated from the sentencing proceeding because it is directed at the defense counsel who represented him in connection with his *Alford* plea leading to his 1991 convictions, not the defense counsel who represented him at the sentencing hearing stemming from his 2001 convictions.

We are unpersuaded by the defendant's attempt to repackage his attack on his 1991 convictions as a claim

[13] It appears that the defendant decided to attack his 1991 convictions through his motion to correct an illegal sentence because he cannot seek relief through a writ of habeas corpus. The defendant recognizes that he "was barred from seeking to overturn [the 1991 convictions] in the habeas court because he was not in custody on that sentence, and so the habeas court would be without jurisdiction to consider an ineffective assistance of counsel claim as it relates to that prior conviction." See *Richardson* v. *Commissioner of Correction*, 298 Conn. 690, 698, 6 A.3d 52 (2010) ("petitioner [must] be in custody on the conviction under attack at the time the habeas petition is filed" [emphasis omitted; internal quotation marks omitted]).

that the 2001 sentencing court relied on inaccurate information regarding those convictions. The defendant, in his motion or otherwise, has not identified a single fact that he alleges to be inaccurate.[14] Instead, a plain reading of the defendant's amended motion to correct makes clear that the defendant claimed that the 1991 *convictions* were unconstitutional due to the ineffective assistance of his then defense counsel in failing to point out to the court contradictions in the complaining witness' assertions,[15] failing to do an adequate investigation, and advising the defendant to plead guilty. Although the defendant's 2001 sentencing proceeding may have been different had his 1991 convictions been set aside, he may not use that theoretical possibility as the basis to launch a wholesale attack, through a motion to correct an illegal sentence filed twenty-four years after he pleaded guilty and long after his sentence for the 1991 convictions had been served, on his then defense counsel's performance. Our Supreme Court could not have been more clear when it held in *State* v. *Parker*, supra, 295 Conn. 852, that the trial court lacked jurisdiction to consider the defendant's substantially similar claim. Therefore, we conclude that the court lacked subject matter jurisdiction over the defendant's second claim because it is not plausible that he sought to challenge the manner in which his sentence for his 2001 convictions was imposed, as opposed to an underlying conviction.

[14] Most recently, at oral argument before this court, defense counsel was asked to identify any such inaccuracies and could not.

[15] The precise language used in the amended motion is that "the 1991 convictions were unconstitutional because they were based on contradictory assertions of the complaining witness as to whether a sexual assault had ever taken place." There is, of course, no rule, constitutional or otherwise, that requires that convictions can be based only on uncontroverted, completely consistent evidence. The only conceivable basis for the defendant's claim, therefore, is that his then counsel's performance was constitutionally deficient for failing to bring the purported contradictions to the court's attention.

The form of the judgment is improper, the judgment is reversed only with respect to the denial of the defendant's motion to correct an illegal sentence as to the claim that the sentencing court relied on inaccurate facts, and the case is remanded with direction to render judgment of dismissal; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

HECTOR G. MORERA *v.* STEPHENIE C. THURBER (AC 40176)

Elgo, Bright and Flynn, Js.

Syllabus

The plaintiff, whose marriage to the defendant previously had been dissolved, appealed to this court from the judgment of the trial court dismissing his motion for modification of the court's visitation orders and requesting court assistance in reunifying him with his teenaged daughter. On the day of a scheduled status conference regarding the motion for modification, the court and the parties received a report from a reunification therapist who had been appointed by the court. During the status conference, the plaintiff stated that he disagreed with the report and wanted to present his own evidence to dispute it, and complained that he was given only two hours to review the report before the status conference was scheduled to begin. The trial court stated that it had reviewed the report and, subsequently, dismissed the plaintiff's motion, determining that ordering the plaintiff and the daughter to take part in additional therapy would alienate the daughter further. On appeal, the plaintiff claimed that the court violated his right to due process of law by improperly dismissing his motion without an evidentiary hearing. *Held* that the trial court improperly denied the plaintiff the opportunity, at a properly noticed evidentiary hearing, to present his own evidence and to cross-examine the court-appointed reunification therapist; given that the plaintiff informed the court that he disputed the report and that he wanted to present evidence to support his position, and that he was given less than two hours to review the report on which the court relied in ruling on the motion for modification, the court did not offer the plaintiff an adequate opportunity to review the therapist's report and to present evidence in opposition to the report and in favor of the plaintiff's own position before the court ruled.

Argued October 11, 2018—officially released February 12, 2019

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Hartford and tried to the court, *Carbonneau, J.*; judgment dissolving the marriage in accordance with the parties' agreement and granting certain other relief; thereafter, the court, *Simón, J.*, granted the plaintiff's request for leave to file a motion to modify; subsequently, the court, *Simón, J.*, dismissed the plaintiff's motion to modify, and the plaintiff appealed to this court. *Reversed; further proceedings.*

Hector G. Morera, self-represented, the appellant (plaintiff).

Opinion

BRIGHT, J. The plaintiff, Hector G. Morera, appeals from the judgment of the trial court dismissing his motion for modification of the court's visitation orders, and requesting court assistance in reunifying him with the teenaged daughter he shares with his former wife, the defendant, Stephenie C. Thurber.[1] On appeal, the plaintiff claims that the court violated his right to due process of law by improperly dismissing his motion without giving him the benefit of an evidentiary hearing. We agree and, accordingly, reverse the judgment of the trial court.

The following facts and procedural history, which we have ascertained from the record, are relevant to this appeal. The court dissolved the marriage of the parties on June 18, 2012, ordered that the defendant would have sole legal and physical custody of the parties' two minor children, a son and a daughter, and entered detailed parental access orders. The court also ordered

[1] The defendant has not filed a brief in this appeal.

the defendant to consult with the plaintiff on all material issues concerning the children, and the parties were ordered to obtain the assistance of a parenting coordinator. On May 17, 2013, the defendant filed a motion to modify the orders contained in the dissolution judgment. Following an evidentiary hearing, the court, in an October 10, 2013 oral ruling, granted the defendant's motion for modification and ordered that "[a]ll access with the children by [the plaintiff] shall be as directed and supervised by the Klingberg Institute until written agreement of the parties with the input of Klingberg's experts or further order of the court." The court also ordered that "[n]either party shall file any motion with this court without first seeking and receiving the permission of the presiding judge." Later, the court further clarified that its order was meant to encompass a reunification program through the Klingberg Institute and that the matter was referred to Family Relations with direction to implement that order.[2]

On February 25, 2016, the plaintiff filed a request for leave to file a motion for modification, along with a motion for modification in which he sought an order for reunification therapy with his daughter. The defendant did not file an objection. On October 13, 2016, the court granted the plaintiff's request for leave, referred the matter to Family Services with specific direction, and continued the matter until November 30, 2016.

On November 30, 2016, the court ordered, inter alia, that the parties each submit the names of three reunification therapists for the court's consideration, which they did. The court, however, was dissatisfied with the

[2] Additional proceedings have taken place in this case, which, in part, resulted in the unification of the plaintiff and the parties' minor son. Because these proceedings are not relevant to the present case, they are not discussed herein. For further background information see *Morera* v. *Thurber*, 162 Conn. App. 261, 131 A.3d 155 (2016).

names submitted by the parties, and, on December 15, 2016, it appointed Dr. Bruce Freedman as the reunification therapist.

The parties again appeared before the court at a February 15, 2017 status conference.[3] The court and the parties each had received a copy of Dr. Freedman's report earlier that day. During the status conference, the court stated that it had reviewed the report, and that it did not know what more it could do to help with the plaintiff's reunification with his daughter, short of physically forcing the daughter to participate in counselling or visitation with the plaintiff. The plaintiff stated that he understood that there were consequences to his pursuing this matter further, but that he believed he needed to proceed because his "daughter deserves a father and that overweighs [any] negatives . . . ." The plaintiff also suggested to the court that it could order him and his daughter to participate in an intensive seminar with Linda J. Gottlieb, a licensed marriage and family therapist. The plaintiff then told the court that he disputed the contents of Dr. Freedman's report and that he had evidence he would like to present to the court. He also complained that he had been given only two hours to review Dr. Freedman's report before the status conference.

The court explained that it understood the loss felt by the plaintiff, but that it believed any further interference would alienate the daughter further. The court then ruled: "[h]aving said that, having taken this under care-

[3] There is a discrepancy between the date set forth on the front of the transcript, February 11, 2017, which was a Saturday, and the date set forth on the certification page of the transcript, February 15, 2017, which was a Wednesday. It does appear that the status conference was held on February 15, 2017, and that the date listed on the front page of the transcript is a scrivener's error.

ful consideration and having spent . . . the last two years pursuing avenues of redress regarding the relationships between [the plaintiff] and his children, the court sees no cure for the current status of the relationship between father and his daughter that this court can in any way heal. And, I'm going [to], at this time, dismiss the motion for modification as to the daughter."[4] This appeal followed.

On appeal, the plaintiff claims that the court violated his right to due process of law by improperly dismissing his motion without giving him the benefit of an evidentiary hearing. He argues that he had approximately two hours to review Dr. Freedman's report before the status conference, that he notified the court that he disagreed with the report, and that he told the court that he wanted to present his own evidence. He contends that the failure of the court to schedule and conduct an evidentiary hearing under such circumstances, constitutes a violation of his right to due process of law under the federal and state constitutions. We agree.

"A fundamental premise of due process is that a court cannot adjudicate any matter unless the parties have been given a reasonable opportunity to be heard on the issues involved. . . . Generally, when the exercise of the court's discretion depends on issues of fact which are disputed, due process requires that a trial-like hearing be held, in which an opportunity is provided to present evidence and to cross-examine adverse witnesses. . . . It is a fundamental tenet of due process of law as guaranteed by the fourteenth amendment to the United States constitution and article first, § 10, of the Connecticut constitution that persons whose . . . rights will be affected by a court's decision are entitled

[4] We note that the court's form of judgment also was improper. Because it ruled on the merits of the motion, the form of judgment should have been a denial rather than a dismissal.

to be heard at a meaningful time and in a meaningful manner. . . . Where a party is not afforded an opportunity to subject the factual determinations underlying the trial court's decision to the crucible of meaningful adversarial testing, an order cannot be sustained." (Internal quotation marks omitted.) *Bruno* v. *Bruno*, 132 Conn. App. 339, 350–51, 31 A.3d 860 (2011); see also *Kelly* v. *Kelly*, 54 Conn. App. 50, 58, 732 A.2d 808 (1999) (in protracted dissolution case, where parties were hostile toward each other, trial court's ruling ordering resumption of family therapy with particular therapist was improper because court failed to hold evidentiary hearing at which plaintiff could present evidence in opposition).

In the present case, the plaintiff was given less than two hours to review the report on which the court relied in ruling on his motion for modification. The plaintiff informed the court that he disputed the report and that he wanted to present evidence to support his own position. The court did not offer the plaintiff an adequate opportunity to review Dr. Freedman's report and to present evidence in opposition to the report and in favor of the plaintiff's own position before the court ruled. We conclude, therefore, that the plaintiff was denied the opportunity, at a properly noticed evidentiary hearing, to present his own evidence and to cross-examine Dr. Freedman.

The judgment is reversed and the case is remanded for further proceedings according to law.

In this opinion the other judges concurred.

IN RE ANGELINA M.*
(AC 41577)

Prescott, Elgo and Bear, Js.

Syllabus

The respondent mother appealed to this court from the judgment of the trial court terminating her parental rights with respect to her minor child. *Held:*

1. The respondent mother's claim that the trial court erred in concluding that she failed to achieve the requisite degree of personal rehabilitation required by statute (§ 17a-112) was unavailing; the cumulative effect of the evidence submitted at trial was sufficient to justify the court's determination that the mother had failed to achieve a sufficient degree of personal rehabilitation that would encourage the belief that, within a reasonable time frame, she could assume a responsible position in the life of the child.
2. The trial court's finding that the termination of the respondent mother's parental rights was in the best interest of the child was not clearly erroneous; that court made specific findings with respect to each of the seven factors delineated by statute (§ 17a-112 [k]), including findings that the minor child had no attachment to the mother and was attached fully with her foster parents, that the mother had not made an effective effort to improve her rehabilitative circumstances, that ongoing contact with the mother would be detrimental to the child, and that the mother could not provide a permanent, nurturing, emotionally and physically supportive and stable home to the minor child, and those findings were substantiated by ample evidence in the record.

Argued November 26, 2018—officially released February 1, 2019**

Procedural History

Petition by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor child, brought to the Superior Court in the judicial district of New London, Juvenile

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

** February 1, 2019, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Matters at Waterford, where the case was tried to the court, *Driscoll*, *J.*; judgment terminating the respondents' parental rights, from which the respondent mother appealed to this court. *Affirmed.*

Mary M., self-represented, the appellant (respondent mother).

Sara N. Swallen, assistant attorney general, with whom, on the brief, were *George Jepsen*, former attorney general, and *Benjamin Zivyon*, assistant attorney general, for the appellee (petitioner).

Jean Park, for the minor child.

Opinion

PER CURIAM. The self-represented respondent mother appeals from the judgment of the trial court terminating her parental rights as to Angelina M., her minor child.[1] She contends that the court improperly concluded that (1) she failed to achieve the requisite degree of personal rehabilitation required by General Statutes § 17a-112 and (2) termination of her parental rights was in the best interest of the child.[2] We affirm the judgment of the trial court.

To prevail on a nonconsensual termination of parental rights, the petitioner, the Commissioner of Children

[1] The court also terminated the parental rights of Angelina's father, whom we refer to by that designation. As the court noted in its memorandum of decision, the father was defaulted due to his failure to appear at trial. Because he has not appealed from the judgment of the trial court, we refer in this opinion to the respondent mother as the respondent.

We also note that pursuant to Practice Book § 67-13, the attorney for the minor child filed a statement adopting the brief of the petitioner in this appeal.

[2] The respondent also alleges that the court misapplied Connecticut law, claiming that "[i]n making its decision terminating her rights [the] court did not properly follow the applicable provisions of General Statutes §§ 17a-112 (j) (3) (B) (i) and 17a-112 (j) (3) (E)." That claim is belied by the record and, thus, is without merit.

and Families, must prove, by clear and convincing evidence, one of the seven statutory grounds for termination. See General Statutes § 17a-112 (j) (3). In the present case, the petitioner principally alleged, and the court ultimately concluded, that the respondent failed to achieve a sufficient degree of personal rehabilitation pursuant to § 17a-112 (j) (3) (B).[3] On appeal, that ultimate conclusion presents a question of evidentiary sufficiency. See *In re Shane M.*, 318 Conn. 569, 587–88, 122 A.3d 1247 (2015). On our careful review of the record, construing the evidence submitted at trial in a manner most favorable to sustaining the judgment; see id., 588; we conclude that the cumulative effect of that evidence was sufficient to justify the court's determination that the respondent had failed to achieve a sufficient degree of personal rehabilitation that would encourage the belief that, within a reasonable time frame, she could assume a responsible position in the life of the child.

We further conclude that the court's finding that termination of the respondent's parental rights was in the best interest of the child is not clearly erroneous. See *In re Brayden E.-H.*, 309 Conn. 642, 657, 72 A.3d 1083 (2013). The court expressly considered and made specific findings with respect to each of the seven factors delineated in § 17a-112 (k). Of particular significance, the court found that Angelina "has no attachment" to the respondent and "is attached fully with her foster parents," that the respondent had not made an "effective effort to improve [her] rehabilitative circumstances," that "ongoing contact [with the respondent] would be detrimental to and confusing to the child,"

[3] We note that the petitioner also alleged and proved the statutory ground set forth in § 17a-112 (j) (3) (E), which is implicated when a respondent who fails to achieve rehabilitation previously had her "parental rights in another child . . . terminated pursuant to a petition filed by the Commissioner of Children and Families . . . ."

and that the respondent cannot provide "a permanent, nurturing, emotionally and physically supportive and stable home" to Angelina. Those findings are substantiated by evidence in the record before us, including the testimony of the respondent's individual therapist, Trinette Conover, the respondent's "parenting education/supervised visitation provider," Sarah Laisi Lavoie, and Kelly Rogers, an expert in clinical and forensic psychology. Because there is ample supporting evidence in the record, and this court is not left with a definite and firm conviction that a mistake has been made; see *In re Elijah G.-R.*, 167 Conn. App. 1, 29–30, 142 A.3d 482 (2016); the court's finding that termination of the respondent's parental rights was in the best interest of the child is not clearly erroneous.

The judgment is affirmed.

IN RE TRESIN J.*
(AC 41829)

DiPentima, C. J., and Alvord and Beach, Js.

Syllabus

The respondent father appealed to this court from the judgment of the trial court terminating his parental rights with respect to his minor child. The trial court had determined, pursuant to statute (§ 17a-112 [j] [3] [D]), that the father had no ongoing parent-child relationship with the child. The father, who had last spoken to the child when the child was less than two years old, was incarcerated for the next three years, after which the child was placed into the custody of the petitioner, the Commissioner of Children and Families. The trial court determined that the child did not know who his father was and had no positive parental memories of him. On appeal, the father claimed that the trial court improperly determined that he had no ongoing parent-child relationship with the child. He alleged that the petitioner had interfered with his

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

relationship with the child by, inter alia, failing to allow him any contact with the child despite his requests for phone calls while he was incarcerated. *Held* that the trial court properly applied the law, and its legal conclusion that the petitioner established the elements of § 17a-112 (j) (3) (D) was supported by clear and convincing evidence; the respondent father presented no evidence that he sought visitation with or attempted to call the child during the three years that he was incarcerated, the petitioner presented undisputed evidence that when the child was placed into the petitioner's custody and before any alleged interference took place, the child did not know who the father was, and, thus, the father did not present evidence that the petitioner's alleged interference led to the lack of an ongoing parent-child relationship between him and the child, and there was no legal support for the father's contention that the court should have considered his feelings toward the child when he was incarcerated and the child was less than two years old, as it was the age of the child when the alleged interference began that was significant, and that alleged interference did not begin until the child was five years old.

Argued January 2—officially released February 6, 2019**

Procedural History

Petition by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor child, brought to the Superior Court in the judicial district of Hartford, Juvenile Matters, and tried to the court, *C. Taylor*, *J.*; judgment terminating the respondents' parental rights, from which the respondent father appealed to this court. *Affirmed.*

David J. Reich, for the appellant (respondent father).

Hannah F. Kalichman, certified legal intern, with whom were *Benjamin Zivyon*, assistant attorney general, and, on the brief, *Michael J. Besso*, assistant attorney general, and *George Jepsen*, former attorney general, for the appellee (petitioner).

Opinion

ALVORD, J. The respondent father, Aceion B., appeals from the judgment of the trial court terminating

** February 6, 2019, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

his parental rights with respect to his minor child, Tresin J.[1] On appeal, the respondent claims that the trial court erred when it determined, pursuant to General Statutes § 17a-112 (j) (3) (D), that no ongoing parent-child relationship exists between the respondent and Tresin. We affirm the judgment of the trial court.

The following facts, as found by the trial court, and procedural history are relevant to our resolution of the respondent's claim. Tresin was born in June, 2011. The respondent last spoke to Tresin in April, 2013, when Tresin was less than two years old. In May, 2013, the respondent was convicted of possession of marijuana, his probation was revoked,[2] and he was sentenced to a term of incarceration. The respondent subsequently was taken into custody by federal authorities and detained for immigration violations. The respondent remained in federal custody until the fall of 2017.

In July, 2016, the petitioner, the Commissioner of Children and Families, filed a neglect petition with respect to Tresin and his two half-siblings, who were in the care of Tresin's mother. In addition, the petitioner obtained an order of temporary custody with respect to all three children.

In August, 2017, the petitioner filed a petition to terminate the parental rights of the respondent. The petitioner alleged that, pursuant to § 17a-112 (j) (3) (D), the respondent had no ongoing parent-child relationship with Tresin. The termination of parental rights trial was held on February 5 and March 9, 2018.

In a thoughtful memorandum of decision, issued on May 22, 2018, the court found that the petitioner had

[1] The parental rights of Tresin's mother also were terminated, and she has not appealed.

[2] The respondent previously had been convicted of drug related offenses. In 2008, the respondent was convicted of possession of marijuana, and in 2011, he was convicted of possession of marijuana with intent to sell.

proved by clear and convincing evidence that there was no ongoing parent-child relationship with respect to the respondent and Tresin. In reaching its conclusion, the court found that "Tresin does not know who his father is and has no positive parental memories of his biological father."[3] Additional facts and procedural history will be set forth as necessary.

We begin by setting forth the standard of review and legal principles that guide our analysis of the respondent's claim. "Although the trial court's subordinate factual findings are reviewable only for clear error, the court's ultimate conclusion that a ground for termination of parental rights has been proven presents a question of evidentiary sufficiency. . . . That conclusion is drawn from both the court's factual findings and its weighing of the facts in considering whether the statutory ground has been satisfied. . . . On review, we must determine whether the trial court could have reasonably concluded, upon the facts established and the reasonable inferences drawn therefrom, that the cumulative effect of the evidence was sufficient to justify its [ultimate conclusion]. . . . When applying this standard, we construe the evidence in a manner most favorable to sustaining the judgment of the trial court. . . . To the extent we are required to construe the terms of § 17a-112 (j) (3) [(D)] or its applicability to the facts of this case, however, our review is plenary. . . .

"Proceedings to terminate parental rights are governed by § 17a-112. . . . Under [that provision], a hearing on a petition to terminate parental rights consists of two phases: the adjudicatory phase and the dispositional phase. During the adjudicatory phase, the trial court must determine whether one or more of the . . .

[3] The court also determined that it would be detrimental to Tresin's best interests to allow further time for a relationship with the respondent to develop. The respondent does not challenge this determination.

grounds for termination of parental rights set forth in § 17a-112 [(j)(3)] exists by clear and convincing evidence. The [petitioner] . . . in petitioning to terminate those rights, must allege and prove one or more of the statutory grounds." (Citation omitted; internal quotation marks omitted.) *In re Lilyana L.*, 186 Conn. App. 96, 104–105, A.3d (2018).

The statutory ground set forth in § 17a-112 (j) (3) (D) provides that a trial court may grant a petition for termination of parental rights if it finds by clear and convincing evidence that "there is no ongoing parent-child relationship, which means the relationship that ordinarily develops as a result of a parent having met on a day-to-day basis the physical, emotional, moral and educational needs of the child and to allow further time for the establishment or reestablishment of such parent-child relationship would be detrimental to the best interest of the child . . . ."

"Because [t]he statute's definition of an ongoing parent-child relationship . . . is inherently ambiguous when applied to noncustodial parents who must maintain their relationships with their children through visitation . . . [t]he evidence regarding the nature of the respondent's relationship with [the] child at the time of the termination hearing must be reviewed in the light of the circumstances under which visitation has been permitted. . . .

"In determining whether such a relationship exists, generally, the ultimate question is whether the child has no present [positive] memories or feelings for the natural parent." (Internal quotation marks omitted.) *In re Jacob W.*, 178 Conn. App. 195, 208, 172 A.3d 1274 (2017), cert. granted on other grounds, 328 Conn. 902, 177 A.3d 563 (2018).

On appeal, the respondent claims that the trial court erred when it determined, pursuant to § 17a-112 (j) (3)

(D), that no ongoing parent-child relationship exists between the respondent and Tresin. Specifically, the respondent argues that the court failed to apply the law set forth in this court's decision in *In re Carla C.*, 167 Conn. App. 248, 143 A.3d 677 (2016).[4] He argues that, in accordance with *In re Carla C.*, the trial court should have considered (1) the petitioner's interference with the development of the parent-child relationship between himself and Tresin, and (2) Tresin's young age, in light of which the respondent's feelings toward Tresin are significant. We disagree.

The trial court did consider this court's decision in *In re Carla C.* During closing arguments, the court, sua sponte, raised the question of whether the guidance set forth in *In re Carla C.* applied to the circumstances of the present case. The petitioner argued that *In re Carla C.* did not apply because neither a parent nor the petitioner had interfered with the respondent's relationship with Tresin.[5] The respondent, in his subsequent closing

[4] In *In re Carla C.*, supra, 167 Conn. App. 272, this court recognized that there are "two relevant variables on which the inquiry into whether an ongoing parent-child relationship exists may turn: (1) a child's very young age, in light of which the parent's positive feelings toward the child are significant; and (2) another party's interference with the development of the relationship, in light of which the parent's efforts to maintain a relationship, even if unsuccessful, may demonstrate positive feelings toward the child."

[5] The trial court and the petitioner's counsel engaged in the following colloquy:

"The Court: . . . I seem to recall *In re Carla C.* and Judge Mullins—now Justice Mullins'—position concerning that similar type of argument. How do you separate that case from this one?

"[The Petitioner's Counsel]: Well, Your Honor . . . while the child [is] alive . . . [the respondent's] already on probation. He goes out and continues the same activity. It's not the mere fact that he's incarcerated and kept away from Tresin. That's not what in of itself matters. *And it's not as if someone from outside were—a parent, a grandparent, another parent, for example—were attempting to keep him. It's his own actions in this case. So, it's not as if he didn't have this relationship because* [*the petitioner*] *removed the child from him. It's not as if it was an outside state agency or a parent who created the conditions of interference.*" (Emphasis added.)

argument, did not indicate any disagreement with the petitioner's argument with respect to the inapplicability of *In re Carla C.*

The facts in the present case are not aligned with the facts of *In re Carla C.* In *In re Carla C.*, supra, 167 Conn. App. 251–52, the respondent was arrested and incarcerated when his child was less than one month old. On at least ten different occasions, the child's mother, the petitioner, took the child to visit the respondent in prison. Beginning when the child was two years old, however, the petitioner began limiting the respondent's access to the child by refusing to facilitate visits or permit other contact.[6] Id., 273. She then filed a petition to terminate the respondent's parental rights on the basis of no ongoing parent-child relationship. On appeal, this court concluded that "the petitioner may not establish the lack of an ongoing parent-child relationship on the basis of her own interference with the respondent's efforts to maintain contact with [the child] . . . ." Id., 280–81.

In the present case, the respondent claims that, as in *In re Carla C.*, the petitioner interfered with his relationship with Tresin. He argues that "[the petitioner] failed to allow any contact between [the respondent] and Tresin, despite the fact that [the respondent]

[6] The petitioner stopped taking the child to visit the respondent because she "unilaterally decided that visits with the respondent were no longer in [the child's] best interest." *In re Carla C.*, supra, 167 Conn. App. 252. The petitioner "obtained an order from the correctional facility that barred the respondent from initiating any contact with her or [the child], on pain of disciplinary action. Subsequently, she sought and obtained sole custody of [the child], stipulating that the respondent would have bimonthly visits with [the child] at the prison. She nevertheless neither facilitated those visits nor moved to modify visitation. Additionally, the petitioner has not told [the child] that the respondent is her father or shown her pictures of the respondent; indeed, she has discarded the respondent's cards and letters to [the child]. Short of 'extraordinary and heroic efforts' by the respondent . . . the petitioner was able completely to deny him access to [the child]." (Citation omitted; footnote omitted.) Id., 273.

requested phone calls when he was incarcerated . . . . The written record shows that [the respondent] reached out to [the petitioner] and requested possible phone calls with the child and expressed his hope that a paternal relative could care for the child."[7]

First, we note that Tresin was not placed in the custody of the petitioner until July, 2016.[8] As previously stated, the respondent last had contact with Tresin in April, 2013, before he was incarcerated. Accordingly, the respondent was incarcerated for more than three years, from April, 2013 to July, 2016, before Tresin was placed into the petitioner's custody. The respondent presented no evidence that he sought visitation or attempted to call Tresin during those three years. The respondent does not allege any interference by the child's mother, who had custody of Tresin during that time.

Moreover, the petitioner presented undisputed evidence that, in July, 2016, when Tresin was placed into the petitioner's custody and before any alleged interference took place, Tresin did not know who his father was. Therefore, unlike in *In re Carla C.*, the respondent did not present evidence that the petitioner's alleged

[7] The respondent also argues that the petitioner interfered with his relationship with Tresin because "[o]nce he was released, he requested visits through counsel, which [were] effectively opposed by [the petitioner]." The respondent, however, did not file the requests for visitation until November, 2017. The petition for termination of parental rights was filed in August, 2017, three months earlier. Practice Book § 35a-7 (a) provides in relevant part: "In the adjudicatory phase, the judicial authority is limited to evidence of events preceding the filing of the petition . . . ." Accordingly, because the court could not have considered the respondent's belated requests for visitation in its analysis of whether there was an ongoing parent-child relationship between the respondent and Tresin, any alleged interference with respect to those requests similarly was irrelevant to the court's analysis.

[8] On July 11, 2016, the petitioner was granted temporary custody of Tresin. Accordingly, any alleged interference by the petitioner, as Tresin's custodian, could only have occurred after that date.

interference *led to* the lack of an ongoing parent-child relationship between the respondent and Tresin.[9]

The respondent also argues that, in accordance with *In re Carla C.*, the trial court should have taken into consideration his positive feelings toward Tresin because Tresin was less than two years old when the respondent was incarcerated. This court, however, in *In re Carla C.*, did not look to the child's age at the time that the respondent was incarcerated. Rather, the age of the child when the petitioner began interfering was significant. This court noted that "[the child] was . . . *only two years old* when the petitioner began denying the respondent visitation and otherwise severed contact," and determined that, "[i]n light of the petitioner's denial of visitation beginning when [the child] was still *in the earliest stages of life*, [this court] also must be mindful of the positive feelings of the respondent toward the child." (Emphasis added; internal quotation marks omitted.) *In re Carla C.*, supra, 167 Conn. App. 274.

In the present case, the petitioner's alleged interference did not begin until, at the earliest, July, 2016,[10] when Tresin was five years old. Therefore, *In re Carla C.* is markedly distinct from the present case, and there is no legal support for the respondent's contention that the court should have considered the respondent's positive feelings toward Tresin. See id., 266 ("[w]e recognize that the child's positive feelings for the noncustodial parent generally are determinative . . . except where the child is *too young to have any discernible feelings*"

[9] See *In re Carla C.*, supra, 167 Conn. App. 262 ("a parent whose conduct inevitably has led to the lack of an ongoing parent-child relationship may not terminate parental rights on this ground"); see also *In re Jacob W.*, supra, 178 Conn. App. 215 ("interference exists only if a custodian's unreasonable interference with a noncustodial parent's efforts to maintain an ongoing parent-child relationship leads inevitably to the lack of such relationship").

[10] See footnote 8 of this opinion.

[citation omitted; emphasis added]); see also *In re Valerie D.*, 223 Conn. 492, 532, 613 A.2d 748 (1992) ("where the child involved is *virtually a newborn infant* whose present feelings can hardly be discerned with any reasonable degree of confidence . . . the inquiry must focus, not on the feelings of the infant, but on the positive feelings of the natural parent" [emphasis added]).

On the basis of the foregoing, we conclude that the trial court properly applied the law, and that its legal conclusion that the petitioner established the elements of § 17a-112 (j) (3) (D) is supported by clear and convincing evidence.

The judgment is affirmed.

In this opinion the other judges concurred.

MEMORANDUM DECISIONS

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MARGARITA O. *v.* FERNANDO G. IRAZU
(AC 41455)

Lavine, Alvord and Elgo, Js.

Argued January 22—officially released February 12, 2019

Defendant's appeal from the Superior Court in the judicial district of Stamford-Norwalk, *Heller*, *J.*; *Genuario*, *J.*; *Truglia*, *J.*

Per Curiam. The judgments are affirmed.

STATE OF CONNECTICUT *v.* JASON A. ROMAN
(AC 40786)

Lavine, Alvord and Elgo, Js.

Argued January 22—officially released February 12, 2019

Defendant's appeal from the Superior Court in the judicial district of New Britain, *Keegan, J.*

Per Curiam. The judgment is affirmed.

KERI FIELDS *v.* MICHAEL A. SKEEN
(AC 40944)

Alvord, Sheldon and Pellegrino, Js.

Argued January 17—officially released February 12, 2019

Plaintiff's appeal from the Superior Court in the judicial district of Hartford, *Hon. Gerard I. Adelman*, judge trial referee.

Per Curiam. The judgment is affirmed.

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Falsely reporting incident in second degree; whether evidence was sufficient to sustain defendant's conviction of falsely reporting incident in second degree; reviewability of claim that verdict returned by jury was legally inconsistent; claim that search warrant for cell phone records and arrest warrant were obtained without probable; reviewability of unpreserved claims that trial court improperly permitted witness to make in-court identification in absence of prior nonsuggestive out-of-court identification, and that trial court erred by admitting testimony of eyewitness and defendant's out-of-court statements; whether unpreserved claims were evidentiary in nature; claim that prosecutor improperly withheld testimony of eyewitness to evading incident in violation of Brady *v.* Maryland *(373 U.S. 83); whether evidence was suppressed within meaning of* Brady.

State *v.* Bumgarner-Ramos 725

Assault in first degree; aggravated sexual assault of minor; risk of injury to child; manslaughter in first degree; claim that there was insufficient evidence to support defendant's conviction of aggravated sexual assault of minor; whether state proved that defendant engaged in sexual intercourse with minor victim; whether there was evidence defendant penetrated victim's vaginal opening; whether trial court's finding that victim's injuries were inflicted by application of physical force on subject areas of victim's body by defendant was sufficient to support conviction of aggravated sexual assault of minor; claim that conviction of both assault in first degree and manslaughter in first degree as charged violated defendant's constitutional guarantee against double jeopardy; whether assault charge was lesser included offense of manslaughter charge; whether defendant could have caused death of victim in manner described in operative information without first having caused serious physical injury to victim; whether error was harmless.

State *v.* Carey 438

Murder; whether trial court erred in admitting certain testimony to explain victim's fear of defendant and to rebut defendant's claim of self-defense; claim that testimony was inadmissible hearsay; harmless error; whether state engaged in prosecutorial impropriety that deprived defendant of fair trial when, during direct examination of defendant, prosecutor stated that defense counsel was cheating; claim that prosecutor improperly impugned credibility of defense counsel; claim that prosecutor directed jury to disregard trial court's charge as to affirmative defense of extreme emotional disturbance; whether prosecutor improperly argued facts not in evidence or expressed personal opinion regarding defendant's credibility; whether trial court abused its discretion by giving jury falsus in uno instruction.

State *v.* Hanisko 237

Possession of child pornography in second degree; claim that trial court improperly denied motion to suppress evidence seized from property where defendant resided because information in search and seizure warrant affidavit was stale at time that search warrant was issued; whether trial court correctly determined that probable cause existed to support issuance of search and seizure warrant; whether trial court properly denied motion to suppress evidence seized pursuant to search and seizure warrant; reviewability of claim that defendant was entitled to judgment of acquittal on ground that trial court's failure to recognize that oppressive delay between execution of search and seizure warrant in 2009 and issuance of arrest warrant in 2014 resulted in violation of his right to due process; failure of defendant to file pretrial motion to dismiss.

State *v.* Jerrell R. 537

Risk of injury to child; unlawful restraint in second degree; double jeopardy; prosecutorial impropriety; claim that defendant's conviction of two counts of risk of injury to child under different subdivisions of statute (§ 53-21 [a] [1] and [2]) violated constitutional prohibition against double jeopardy; whether defendant established that charged offenses arose out of same act or transaction; credibility of witnesses; claim that defendant was denied fair trial as result of prosecutorial

improprieties; whether prosecutor misstated law with respect to subdivision (2) of § 53-21 (a) during closing argument by referring to evidence relating to risk of injury charge under § 53-21 (a) (1); failure of defendant to object to challenged remarks of prosecutor; whether prosecutor improperly offered personal opinion regarding credibility of witness; whether prosecutor's use of phrase "in my opinion" raised concern of improper unsworn testimony.

State *v.* Jones 752

Murder; carrying pistol without permit; criminal possession of firearm; whether trial court properly declined to give special credibility instruction regarding jailhouse informants as to testimony of witness; whether jailhouse informant exception applied; claim that trial court erred with respect to its jury instruction on eyewitness identification; claim that jury was misled by court's instructions; whether trial court properly tailored instructions to adapt to issues of case.

State *v.* Joseph B. 106

Sexual assault in first degree; sexual assault in third degree; risk of injury to child; whether trial court abused its discretion in denying motion for bill of particulars; whether defendant was prejudiced by trial court's denial of motion for bill of particulars; claim that trial court improperly admitted evidence that victim tested positive for sexually transmitted disease; whether evidence pertaining to victim's diagnosis was unduly prejudicial; claim that trial court abused its discretion in denying motion to preclude evidence of text messages from defendant to victim's mother; claim that evidence of text messages should have been precluded as untimely because state knew or should have known of text messages prior to disclosure at start of trial; claim that evidence of text messages should have been precluded as sanction under applicable rule of practice (§ 40-5).

State *v.* Peluso 498

Sexual assault in first degree; sexual assault in fourth degree; risk of injury to child; whether state lacked good cause to amend information during trial; whether trial court abused its discretion in permitting state to amend information to conform to victim's testimony as to when offenses allegedly occurred; claim that trial court erred in concluding that defendant's substantive rights were not prejudiced by state's amendment to information during trial; whether trial court abused its discretion in deciding that one week continuance was sufficient time for defendant to augment his defense in response to amended information; whether defendant was prejudiced by amendment to information.

State *v.* Roman (Memorandum Decision) 903

State *v.* Santiago 350

Murder; whether trial court abused its discretion in admitting certain written statement to police by witness as prior consistent statement; whether introduction of witness' prior consistent written statement was solely to rehabilitate credibility of witness; whether trial court abused its discretion in admitting, as relevant evidence, testimony of witness concerning uncharged misconduct by defendant; whether probative value of uncharged misconduct testimony was outweighed by unfair prejudice; claim that defendant was deprived of due process right to fair trial as result of prosecutorial improprieties; whether prosecutor's questions were intended to elicit inadmissible responses from witness; whether prosecutor relied exclusively on evidence admitted during trial during rebuttal closing argument; reviewability of unpreserved evidentiary claim that prosecutor improperly failed to redact certain portions of witness' statement to police; claim that Appellate Court should exercise its supervisory authority to order new trial.

State *v.* Stephenson 20

Burglary in third degree; attempt to commit tampering with physical evidence; attempt to commit arson in second degree; claim that evidence presented at trial was insufficient to support defendant's conviction of charged offenses; whether there was evidence presented at trial that defendant touched case files in courthouse with intent to tamper with physical evidence.

State *v.* Williams 333

Attempt to commit home invasion; manslaughter in first degree; whether evidence was sufficient to support conviction of attempt to commit home invasion; whether evidence was sufficient to show defendant had specific intent to commit felony assault against individual inside dwelling if defendant and his cohorts were successful in entering dwelling; whether evidence was sufficient to show that defendant took substantial step toward unlawfully entering dwelling; whether proof that defendant or one of his cohorts intended to commit felony against individual in

dwelling was legally sufficient where state charged defendant as principal and not as accessory.

Truskauskas *v.* Zoning Board of Appeals. 150
Zoning appeal; whether trial court properly found plaintiff in contempt for wilfull violation of stipulated judgments that prohibited him from conducting commercial activities at his residential property and using dump truck there as part of contracting business or for other commercial purposes; claim that trial court erroneously interpreted stipulation to encompass total prohibition against use of dump truck for any commercial purposes, including those that occurred off of plaintiff's property.

Villages, LLC *v.* Longhi 132
Fraud; intentional tortious interference with business expectancy; whether trial court properly denied motion for summary judgment as to liability; whether trial court properly granted motion for summary judgment; claim that trial court improperly determined defendant was not collaterally estopped from disputing liability because she was not party to prior action or in privity with planning and zoning commission; whether defendant and planning and zoning commission had identity of interest so as to share same legal right; whether trial court properly determined that plaintiff failed to present evidence that would sufficiently support essential elements of claim for fraudulent misrepresentation; whether trial court properly determined that no business relationship existed between plaintiff and planning and zoning commission.

State *v.* Walker. 776
Aggravated sexual assault in first degree; sexual assault in first degree; kidnapping in first degree with firearm; kidnapping in first degree; threatening; criminal possession of weapon; credit card theft; illegal use of credit card; fraudulent use of automatic teller machine; larceny in sixth degree; motion to correct illegal sentence; motion to dismiss; subject matter jurisdiction; whether trial court properly concluded that it lacked subject matter jurisdiction to consider defendant's claim that sentence was imposed in illegal manner due to sentencing court's failure to canvass defendant or defense counsel as to review and accuracy of presentence investigation report; whether our statutes and rules of practice require trial court to make affirmative inquiry as to accuracy of facts contained in presentence investigation report; whether trial court lacked subject matter jurisdiction to consider merits of defendant's claim that sentence was imposed in illegal manner due to sentencing court's reliance on inaccurate facts regarding previous convictions contained in presentence investigation report; whether it was plausible that defendant sought to challenge manner in which sentence was imposed instead of underlying convictions.

Watson Real Estate, LLC *v.* Woodland Ridge, LLC 282
Contracts; claim that trial court improperly failed to find that there was meeting of minds between parties as to number of layers of pavement to be applied to common driveway; claim that trial court should have drawn adverse inference against defendant for failing to call certain witness to rebut certain parol evidence presented by plaintiff; whether drawing of adverse inference is permissive rather than mandatory; whether trial court's failure to draw adverse inference was improper; reviewability of claim that trial court improperly failed to find that defendant breached escrow agreement by not reimbursing plaintiff for costs it had incurred; failure to allege claim in revised complaint or at trial; claim that trial court improperly denied request for leave to amend revised complaint to add claim of unjust enrichment.

Wethersfield *v.* PR Arrow, LLC 604
Zoning; whether trial court lacked subject matter jurisdiction as to issue of whether parking and storage of commercial vehicles on defendant's property constituted valid accessory use within zoning regulations; whether claim that plaintiff zoning enforcement officer lacked standing to bring action on behalf of himself or plaintiff town was moot; claim that trial court improperly retained jurisdiction as to accessory use issue; whether trial court properly determined that defendant failed to exhaust administrative remedies as to special defense that zoning enforcement officer exceeded authority in issuing cease and desist order to defendant; claim that zoning regulations vested exclusive authority in town Planning and Zoning Commission to interpret words in zoning regulations that were undefined; claim that appeal to Zoning Board of Appeals would have been futile; claim that zoning regulation (§ 5.2.H.5) was impermissibly vague; whether § 5.2.H.5 provided adequate notice to defendant of standards utilized to evaluate

special permit request for parking and storage of commercial vehicles; claim that trial court improperly interpreted term trucking operations in zoning regulations; claim that trial court substituted its interpretation of term trucking operations in zoning regulations for that of commission; whether trial court improperly exercised discretion in fashioning permanent injunctive relief in favor of plaintiffs; claim that trial court's injunction lacked sufficient clarity and definiteness; claim that trial court abused its discretion by imposing daily fine against defendant pursuant to statute (§ 8-12); claim that plaintiffs failed to prove that storage of commercial vehicles on defendant's property was public nuisance; claim that trial court abused its discretion in awarding costs and attorney's fees to plaintiffs pursuant to § 8-12; claim that trial court lacked subject matter jurisdiction over plaintiffs' postjudgment motion for contempt; claim that postjudgment motion for contempt was filed prematurely; claim that trial court improperly granted postjudgment motion for contempt; whether defendant waived objection to allegedly improper service of process of contempt motion by submitting to jurisdiction of court; whether defendant's noncompliance with trial court's order was wilful.

Wood *v.* Rutherford 61

Battery; negligent infliction of emotional distress; informed consent; claim that although defendant physician obtained informed consent of plaintiff to perform laser ablation of her vulva and, as part of that course of treatment, to perform postoperative examination, substantial change in circumstances occurred when defendant discovered complication during postoperative examination that required medical intervention, which in turn obligated him to obtain her informed consent before proceeding further; whether trial court improperly granted motion to dismiss battery and negligent infliction of emotional distress counts due to plaintiff's noncompliance with statute (§ 52-190a); whether plaintiff's battery and negligent infliction of emotional distress counts were claims of medical negligence subject to requirements of § 52-190a; whether trial court improperly rendered summary judgment in favor of defendant physician on plaintiff's revised complaint; whether genuine issues of material fact existed regarding defendant's discovery of medical complication during postoperative examination; whether defendant physician's failure to obtain informed consent may be excused because exception applied, such as when patient has authorized physician to remedy complications that arise during course of medical treatment.

NOTICES

STATE OF CONNECTICUT
DIVISION OF CRIMINAL JUSTICE

JOB OPPORTUNITY

DCJ Deputy Assistant State's Attorney
Ansonia/Milford Judicial District
G.A. 22 in Milford

PLEASE FOLLOW THE SPECIFIC APPLICATION FILING INSTRUCTIONS ON THE LAST PAGE

LOCATION: 14 West River Street, Milford, CT 06460

HOURS: 8:00 a.m. – 5:00 p.m.

SALARY RANGE: $67,641.02 - $141,217.18 Yearly

PCN: 4882

CLOSING DATE: March 1, 2019

In the Division of Criminal Justice, this class is accountable for receiving training and representing the interests of the state in prosecution of assigned criminal and motor vehicle cases and infractions.

Examples of Duties

Reviews all documentation relative to assigned criminal cases and infractions and directs supplemental or further investigation; prepares cases for arraignment, selecting appropriate charges, preparing original statement of facts; reviews outstanding defense motions and prepares responses or objections as appropriate; interviews witnesses and victims; evaluates strengths and weaknesses of case in light of above findings; initiates and completes related legal research; responsible for plea negotiation with defense attorneys; conducts pre-trial conferences; conducts jury selection; tries cases before juries, three-judge panels, single judge or magistrate; may prepare appellate material for submission to Chief State's Attorney's Office after conviction; reviews applications for arrest warrants and - upon approval - signs and presents to presiding judge for final review and signature; may review applications for search and seizure warrants; maintains liaison with and functions as resource to state and local police; advises victims of crimes as to their rights and directs them to the appropriate supportive agencies; defends petitions of habeas corpus including preparation of pleadings, argument of motions, and trial of action; if a member of the Appellate Unit, defends appeals brought by convicted defendants before the Appellate Court and Supreme Court; performs related duties as required.

Knowledge, Skill and Ability

Knowledge of criminal law and legal process, legal principles and practice; knowledge of and ability to interpret and apply relevant State and federal criminal law; knowledge of the statutory authority, operation and administration of the Division of Criminal Justice; considerable interpersonal skill; considerable negotiating skill, considerable trial and counseling skills; considerable oral and written communication skill; considerable ability to analyze legal problems, present statements of fact, law and argument; ability to write legal briefs and supporting documentation.

Minimum Qualifications – General Experience

Membership in the Connecticut Bar and residency in the State of Connecticut.

Application Procedure

In addition to meeting the above requirements, candidates must submit the following information in order to be considered for this position.

1. Cover letter

2. Division of Criminal Justice Application for Employment - available online at **www.ct.gov/csao**

3. Resume

4. Copy of law school transcript

5. The names and contact information for three (3) professional references to:

By e-mail to: DCJ.HR@ct.gov, cc: DCJ.AnsoniaMilford@ct.gov.

All documents must be combined into a single pdf

(This is the Preferred Method)

Or
Office of the Chief State's Attorney
300 Corporate Place
Rocky Hill, CT 06067
Attn: Human Resources

Application packages must be received or postal stamped no later than **March 1, 2019**

Applications received by facsimile will not be accepted

A complete job specification for DCJ Deputy Assistant State's Attorney is available here.

STATE OF CONNECTICUT
DIVISION OF CRIMINAL JUSTICE

JOB OPPORTUNITY

DCJ Deputy Assistant State's Attorney
Tolland Judicial District
G.A. 19 in Rockville

PLEASE FOLLOW THE SPECIFIC APPLICATION FILING INSTRUCTIONS ON THE LAST PAGE

LOCATION: 131 North Main Street, Bristol, CT 06010

HOURS: 8:00 a.m. – 5:00 p.m.

SALARY RANGE: $67,641.02 - $141,217.18 Yearly

PCN: 4984/5260/5261

CLOSING DATE: March 1, 2019

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Examples of Duties

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Notice of Certification as Authorized House Counsel

Upon recommendation of the Bar Examining Committee, in accordance with § 2-15A of the Connecticut Practice Book, notice is hereby given that the following individuals have been certified by the Superior Court as Authorized House Counsel for the organization named:

Certified as of January 24, 2019:

Michael J. Daher	Franchise World Headquarters, LLC

Certified as of January 25, 2019:

Jeffrey A. Arnold	General Electric
Stephanie R. DiFazio	Purdue Pharma, L.P.
Jennifer L. Dudanowicz	Charter Communications, Inc.
Raquel James	Charter Communications, Inc.
Gretchen A. Johanns	Xerox Corp.
Jennifer Y. Meschewski	Nielsen
Brian S. Theodore	COFCO Americas Resources Corp.
Kathleen E. White	World Wrestling Entertainment, Inc.

Hon. Patrick L. Carroll III
Chief Court Administrator