CONNECTICUT LAW JOURNAL

Published in Accordance with General Statutes Section 51-216a

VOL. LXXXIII No. 50 June 14, 2022 281 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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Tel. (860) 757-2250

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.

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CONNECTICUT REPORTS

Vol. 343

CASES ARGUED AND DETERMINED

IN THE

SUPREME COURT

OF THE

STATE OF CONNECTICUT

STATE OF CONNECTICUT *v.* RAFAEL ORTIZ
(SC 20348)

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

Syllabus

Convicted of the crime of murder in connection with the shooting death of the victim, the defendant appealed to this court, claiming, inter alia, that he was deprived of his due process right to a fair trial as a result of prosecutorial impropriety during the state's rebuttal argument. The

victim and his friend, L, who had been using phencyclidine (PCP), drove to an area in Hartford to purchase more PCP. After L parked the car, the victim exited the car while L remained in the car, and the victim approached the defendant. The victim and the defendant engaged in discussion concerning drugs, after which the victim returned to the car. The defendant then approached the car, aimed a gun at the victim, and shot the victim through the front passenger window. L and two other individuals, I and R, the latter of whom was spending time and smoking PCP with the defendant at and around the time of the shooting, witnessed the events as they unfolded. L, I, and R each identified the defendant in a photographic array as the perpetrator. R thereafter provided a written statement to investigators and testimony to a grand jury implicating the defendant in the murder. Prior to the defendant's trial, however, R indicated to defense counsel that she wanted to recant both her written statement and grand jury testimony. The state subsequently discovered that the defendant had sent text messages to R while he was incarcerated in an attempt to influence her testimony. Insofar as this evidence could have demonstrated the defendant's consciousness of guilt, both defense counsel and the state entered into an agreement pursuant to which the prosecutor, on direct examination of R, would question her about whom she was with and what she saw on the night of the murder but would not question her about her communications with the defendant while he was incarcerated. Pursuant further to that agreement, defense counsel would limit his cross-examination of R to whether R was using PCP on the night of the murder. The prosecutor and defense counsel proceeded to examine R consistent with the agreement. During closing argument, however, defense counsel stated that, if the jury felt that he made a tactical mistake by not cross-examining R, it should not hold that against the defendant. During his rebuttal argument, the prosecutor responded by stating that there was no question about who R was with and what she saw, and that defense counsel "didn't even [cross-examine] her on any of that." *Held*:

1. The defendant could not prevail on his claim that the prosecutor's rebuttal argument referencing defense counsel's failure to cross-examine R as to certain issues violated the intrinsic character of the parties' agreement regarding R's testimony and, therefore, constituted prosecutorial impropriety that deprived him of his right to a fair trial: this court could not conclude that, even if the prosecutor's argument was improper, that impropriety deprived the defendant of a fair trial, as the prosecutor's argument was brief, defense counsel did not object to it or ask the trial court to take any curative measures, and defense counsel invited the prosecutor's argument to some extent, as it was only after defense counsel raised the issue by arguing that the jury should not draw an adverse inference from his decision not to cross-examine R more thoroughly that the prosecutor commented on the issue; moreover, the alleged impropriety was relatively minor, as the jury likely would have

noticed defense counsel's unusually truncated cross-examination of R, even without the prosecutor's argument, and, although the alleged impropriety related to R's credibility, an important issue in the case, the state's case was not dependent on R's testimony, as L's and I's testimony was mostly consistent with R's testimony, and both L and I were also familiar with the defendant prior to the shooting; accordingly, the state's case was not so weak that there was a reasonable probability that the verdict would have been different in the absence of the alleged impropriety.

2. The trial court did not abuse its discretion in precluding defense counsel from impeaching L and I with evidence of certain prior felony convictions and in requiring two of I's prior convictions to be referred to only as unnamed felonies punishable by more than one year of imprisonment: the trial court properly excluded evidence of L's 2006 convictions of possession of narcotics and failure to appear in the first degree, and I's 2004 and 2005 convictions of sale of a controlled substance, as each of those convictions was at least thirteen years old at the time of trial, none was directly probative of the witnesses' veracity, and, therefore, the probative value of that evidence was diminished and outweighed by the remoteness of the convictions; moreover, the trial court properly allowed defense counsel to refer to I's 2017 convictions of second degree assault and violation of a protective order only as unnamed felonies, as neither conviction bore directly on I's veracity, and, therefore, the court's ruling avoided unwarranted prejudice to I that might have arisen if counsel referred to those convictions by their specific names.

3. The defendant could not prevail on his claim that the trial court improperly had declined to provide the jury with his requested instruction that he was not obligated to present any evidence and that the jury could not draw any unfavorable inference from his decision not to do so; it was not reasonably possible that the jury was misled by the trial court's failure to give such an instruction, as the substance of the requested instruction was subsumed within and implicit in the court's preliminary and final instructions on the defendant's option to testify, the presumption of innocence, and the state's burden of proof.

4. The trial court properly declined the defendant's request to include the word "conclusively" in its jury instruction on the use of evidence of the defendant's uncharged misconduct: although the defendant's request was based on language set forth in instruction 2.6-5 of the model criminal jury instructions on the Judicial Branch website, which provides that a jury may consider evidence of a defendant's uncharged misconduct only if it believes it and, then, only if it finds that the evidence "logically, rationally and conclusively" supports the issue or issues for which it was offered by the state, the model instruction was an incorrect statement of the law insofar as it required a jury to find that uncharged misconduct "conclusively" supports the issue for which it is offered; moreover, the court properly declined to instruct the jury that it could consider the defendant's prior misconduct evidence only if it found that it conclu-

sively supported the state's theory as to the defendant's motive, as motive is not an element of the crime of murder, and the court properly instructed the jury that, even if it credited certain testimony that the defendant was engaged in the sale of drugs on the night of the murder, the jury could consider that evidence only if it found that it logically and rationally supported the state's theory of motive.

Argued January 10—officially released June 14, 2022

Procedural History

Substitute information charging the defendant with the crime of murder, brought to the Superior Court in the judicial district of Hartford and tried to the jury before *Gold*, *J.*; verdict and judgment of guilty, from which the defendant appealed to this court. *Affirmed.*

Richard Emanuel, for the appellant (defendant).

Robert J. Scheinblum, senior assistant state's attorney, with whom, on the brief, were *Sharmese L. Walcott*, state's attorney, and *John F. Fahey*, supervisory assistant state's attorney, for the appellee (state).

Opinion

KELLER, J. The defendant, Rafael Ortiz, appeals[1] from the judgment of conviction, rendered following a jury trial, of murder in violation of General Statutes § 53a-54a (a).[2] The defendant claims that (1) prosecutorial impropriety deprived him of his right to a fair trial, (2) the trial court committed evidentiary and constitutional error by precluding defense counsel from using certain prior felony convictions to impeach two of the state's witnesses, and (3) the trial court erred in its charge to the jury. We disagree with each of these claims and, accordingly, affirm the judgment of the trial court.

[1] The defendant appealed directly to this court pursuant to General Statutes § 51-199 (b) (3).

[2] General Statutes § 53a-54a (a) provides in relevant part: "A person is guilty of murder when, with intent to cause the death of another person, he causes the death of such person . . . ."

The record reveals the following facts, which the jury reasonably could have found, and procedural history. On the evening of June 10, 2003, the victim, Benjamin Baez, Jr., and his friend, Enrique Lugo, were "hanging out" and smoking phencyclidine (PCP). Shortly before midnight, Lugo drove the two men in his car to Main Street in Hartford, near Salvin Shoes, to buy more PCP. Once there, the victim got out of the parked car while Lugo remained in it. Shortly after the victim returned to the car, Lugo saw the defendant, whom he had known for many years and considered a friend, approach the car, aim a gun at the victim, and shoot the victim through the front passenger side window. After the shooting, Lugo rushed the victim to Saint Francis Hospital and Medical Center, where he was later pronounced dead.

Wilbur Irizarry and Lisa Rosario also witnessed the shooting.[3] Irizarry and his cousin had gone to Main Street to "hang out" with friends in front of Bashner's Liquors, across the street from Salvin Shoes. When they arrived, Irizarry noticed that the defendant, whom he knew as "Felo," was there with a man who went by the name "Lu-Rock." Although Irizarry was aware that the defendant sold drugs, it was unusual to see him doing so at this location. Irizarry heard the defendant arguing with another man whom Irizarry did not know but who was later identified as the victim. Initially, he could not hear what the men were arguing about. As he got closer, however, he heard the victim ask the defendant, "[Felo], can you give me some work?" Irizarry, who previously had been involved in the sale of drugs, understood this to mean that the victim was

[3] We note that neither Lugo, Irizarry, nor Rosario came forward with information about the shooting until they were contacted by investigators from the cold case unit of the Office of the Chief State's Attorney, in late 2015 and early 2016. As discussed subsequently in this opinion, all three witnesses separately identified the defendant as the shooter in a double-blind, sequential photographic array procedure and gave statements implicating the defendant in the victim's murder.

asking the defendant to "give [him] some drugs so [that he could] make some money." In response, Irizarry heard the defendant say that "he wasn't going to give him [any]," to which the victim replied that he was "going to rob [the defendant] anyways." Irizarry then watched the victim walk toward a car that was double parked a short distance away and get in the front passenger seat.

Because the victim and the defendant were "not talking friendly," Irizarry "figure[d] something [was] going to happen" and decided to leave. While walking away, Irizarry looked over his right shoulder and saw the defendant rush over to his vehicle, open the front passenger door, and reach inside for something. He then saw the defendant walk to the front passenger side of the car in which the victim was seated, stop approximately three to four feet away, extend his arm, and shoot the victim.[4] After hearing the shot, Irizarry and his cousin jumped into their own vehicle and sped away. Irizarry did not report the shooting at the time because he was afraid that, if he contacted the police, then what "happened to [the victim] . . . [would] happen to [him]."

Rosario was with the defendant on the night of the murder. She, her sister, and her cousin had spent the evening driving around Hartford with the defendant—who was driving his friend "Lu-Rock's" vehicle—drinking, smoking PCP, and generally "having a good time." On Main Street, across from Salvin Shoes, the defendant exited the vehicle, while Rosario and the other women remained in it. Rosario later heard the defendant arguing loudly with the victim, whom she knew as "Benji." Subsequently, she saw the defendant fire a gun into the car in which the victim was seated. After the shooting,

[4] Irizarry testified that, although he could not see whether the defendant was holding a gun from where he was standing, he heard a gunshot approximately one second after the defendant extended his arm toward the victim.

the defendant got back into his own vehicle, and he and Rosario immediately left the scene. Rosario never reported the shooting to the Hartford police because she was afraid.

The day after the shooting, police officers searched Lugo's car, discovered a defect in the right front passenger seat, and thereafter found and seized a .40 caliber lead projectile from the seat cushion. In an effort to determine the trajectory that the bullet had traveled from the time it left the weapon until the time it came to its resting point or, in other words, to determine the angle from which the bullet had been fired into Lugo's car, the officers placed "trajectory rods" between two fixed points—namely, the location where the bullet entered the seat and the location where the bullet ultimately rested. On the basis of these points, coupled with the position of the entry and exit wounds found on the victim's body and the presence of gunpowder on the shirt that the victim had been wearing when he was killed, the officers and examiners from the state forensic science laboratory concluded that the bullet had been fired into the victim at close range—approximately two feet—and from an angle slightly over the car's door frame.

Despite their best efforts, the police were unable to develop any viable leads, and the case soon went cold. In 2015, however, investigators from the cold case unit of the Office of the Chief State's Attorney (cold case unit) learned that Lugo, Irizarry, and Rosario were all present when the shooting occurred. After all three witnesses identified the defendant in a double-blind, sequential photographic array procedure, an investigatory grand jury was convened pursuant to General Statutes § 54-47c.[5] Between December 2, 2015, and April

[5] General Statutes § 54-47c (a) provides: "Any judge of the Superior Court, Appellate Court or Supreme Court, the Chief State's Attorney or a state's attorney may make application to a panel of judges for an investigation into the commission of a crime or crimes whenever such applicant has reasonable

22, 2016, the appointed grand juror heard testimony and received exhibits. On May 24, 2016, the grand juror found probable cause to believe that the defendant had murdered the victim.

Following his arrest, the defendant pleaded not guilty and elected a trial by jury. A trial subsequently was held, after which the jury found the defendant guilty of murder. On September 16, 2019, the court sentenced the defendant to fifty years of imprisonment, and this appeal followed. Additional facts and procedural history will be set forth as necessary.

I

We begin with the defendant's claim that he was denied his due process right to a fair trial due to prosecutorial impropriety. Specifically, the defendant contends that the prosecutor engaged in impropriety during his rebuttal closing argument when he made reference to defense counsel's failure to cross-examine Rosario. The defendant argues that the prosecutor's argument violated the "intrinsic character" of an agreement between defense counsel, William F. Dow III, and the state, whereby Dow agreed to limit his cross-examination of Rosario to a single question in exchange for the state's promise not to introduce highly damaging consciousness of guilt evidence that had recently been revealed by Rosario. The defendant further contends, in the alternative, that, if the prosecutor's argument did not rise to the level of a due process violation, this court should grant the defendant a new trial pursuant to its inherent supervisory authority over the administration of justice. The state responds that, even assuming arguendo that the prosecutor's argument violated the parties' agreement, it did not deprive the defendant of a fair trial and

belief that the administration of justice requires an investigation to determine whether or not there is probable cause to believe that a crime or crimes have been committed."

that exercise of this court's supervisory authority is unwarranted under the circumstances of this case. We agree with the state.

The following additional facts are relevant to our resolution of this claim. As we previously indicated, although Rosario witnessed the victim's murder, she did not come forward until contacted by the cold case unit in December, 2015. Rosario was initially hesitant to speak with investigators but ultimately agreed to provide a written statement and testimony to the grand jury implicating the defendant in the victim's murder. On the day that she was scheduled to testify at trial, however, Dow informed the court that, in November, 2018, and again on February 4, 2019—just days before the start of the defendant's trial—Rosario had phoned his office indicating that she wanted to recant her prior statement and testimony. According to Dow, Rosario stated that investigators had pressured her into implicating the defendant in the victim's murder and that, contrary to what she previously had told them, she was not with the defendant on the night in question and did not see him shoot the victim. Dow provided the court with a copy of a recording and transcript he had prepared of Rosario's February 4th recantation, after which the court called a recess to allow the prosecution to investigate the circumstances surrounding the alleged recantation.

Later, the court noted for the record that prosecutors had met with Rosario during the recess and elicited from her a wealth of information that they believed explained her phone calls to Dow. The court further noted that the parties had reached an agreement regarding Rosario's testimony. It then asked Andrew Reed Durham, one of two prosecutors assigned to the case, to "place on the record the type of information that [he was] intending to offer in [his] examination . . . of . . . Rosario, that [he] allege[d] bore on her attempted

recantation and that may have led to further incriminating information being elicited regarding the defendant in the nature of consciousness of guilt." Durham responded that, during the recess, Rosario had admitted to calling Dow and to recanting her prior statement and testimony. Durham stated that Rosario had told him that, in the fall of 2018, the defendant's close associate, Angel Rodriguez, also known as Lu-Rock, whom Rosario knew to be involved in gang activity and the sale of drugs, had contacted her via cell phone and asked that she download an encrypted cell phone application called "Wickr," which "allows people to text message back and forth with one another, and the text messages are automatically deleted, thus not leaving a trail of those conversations." Even though the defendant was incarcerated and should not have been in possession of a cell phone, Rodriguez informed Rosario that she would be receiving text messages from him through Wickr, and Rosario did in fact receive numerous messages from the defendant. Although the messages were not overtly threatening—most were of a sexual nature—they "repeatedly suggest[ed] to her that she should say that she wasn't [with the defendant on the night of the murder] . . . ." When Rosario expressed concern to the defendant and Rodriguez that she could be charged with perjury if she changed her grand jury testimony, they "assured her that they would take care of her" and that "[t]hey weren't going to hang her out to dry."

Durham further stated that the state was prepared to introduce evidence that prison officials had confiscated an illegal cell phone from the defendant in November, 2018, after which the defendant's text messages to Rosario stopped. Durham also advised the court that, if the defense were to introduce evidence of Rosario's attempted recantation, it would open the door for the state to introduce evidence "that [Rosario] was placed in witness protection at her request following her grand

jury testimony and that she was, with the state's assistance, moved out of state." The state would also introduce evidence that Rosario recently had contacted authorities and asked to return to witness protection in light of the defendant's and Rodriguez' efforts to influence her testimony. Finally, Durham stated that Rosario was prepared to take the witness stand that day and to testify, consistent with her prior written statement and grand jury testimony, that she was with the defendant on the night of the murder and that she saw him shoot the victim.

When Durham finished speaking, the court observed that the state's proffered evidence, if adduced at trial, "might also warrant a consciousness of guilt instruction, which would alert the jurors to the fact that, if they found [that] the defendant [had been messaging Rosario] and did so because of this case and his concerns of being convicted, they could view the defendant's actions as being evidence that the defendant himself is conscious of his own guilt, and that could be used by the jury [against the defendant]." The court further stated that, in light of these developments, Dow had sought to make a deal with the state. The court then asked Dow to state for the record the nature of that deal. Dow responded that, "[w]hile there were grounds [on] which to cross-examine . . . Rosario, principally based on her recantation," the proffered evidence concerning the defendant's attempts, via an illegal cell phone, to influence Rosario's testimony was "a significant piece of [new] information" that he viewed as "very damaging" to the defendant and that, if introduced at trial, would be "fatal or near fatal to [the defendant's] case, whether or not there was a consciousness of guilt [instruction] or a tampering charge brought [against him] at a later point in time." Dow further stated that, during the recess, after extensive discussions with the defendant, he asked the state if it would be willing to

forgo introducing evidence of the defendant's cell phone communications with Rosario if the defense were to limit its cross-examination of Rosario to a single question, namely, whether it was true that she was on PCP on the night of the murder.

When Dow finished speaking, the court confirmed that the parties had agreed that, on direct examination, the prosecutor would question Rosario about whom she was with and what she saw on the night of the murder but would not question her about her recent communications with the defendant, and Dow would limit his cross-examination to a single question regarding Rosario's PCP use, and "[t]hat will be it for . . . Rosario." The court then stated that it "thought it . . . important that, given these somewhat unique circumstances . . . the record be clear and not later examined without a clear reason for both sides' having chosen the course of action that they've chosen." When the trial resumed, consistent with the aforementioned agreement, the prosecutor questioned Rosario about who she was with and what she saw on the night of the murder, but did not elicit testimony from Rosario regarding the defendant's recent communications with her, and Dow limited his cross-examination to whether Rosario was on PCP on the night in question.

During his closing argument, Dow argued that "[o]ne of the big issues" at trial was the fact that two of the state's witnesses, Rosario and Lugo, were on PCP on the night of the shooting, thus potentially undermining their observations of what occurred that night. Dow further stated: "[*N*]*ow*, *if you feel that*, *tactically*, *I made a wrong decision by not examining* [*Rosario*] *or cross-examining her*, *don't hold that against* [*the defendant*]. But her memory, talk about details, she can't remember what was said in the car even before or afterward, can't remember what happened in the car afterward, that is, where they went, can't remember,

according to her, if there was a gun, can't remember anything, where there's a gun. And, significantly, listen to her testimony in comparison to Irizarry's. Irizarry [testified that] there's an argument. The shooter then goes back, pulls the gun out of the car, comes back, and does the shooting. Rosario, left the car, went over to the shooting." (Emphasis added.) The prosecutor responded in his rebuttal argument as follows: "Now, let's talk about . . . Rosario and PCP. Again, she was not asked about any level of intoxication at the time she witnessed the shooting of [the victim] by [the defendant]. She was in the car with the defendant the entire night. It wasn't like she showed up on Main Street and happen[ed] to see him. He was driving, except when he got out, went across the street, and she witnesses him shoot [the victim], and then return to the car with that semi-automatic weapon. *There's no question on who she was with, and what she saw. The defendant didn't even cross her on any of that.* He didn't talk about, again, with Lugo or her, levels of how [PCP] affects you individually or what you see, do you react poorly with it, none of that. He just wants you to discredit them because the word PCP was used." (Emphasis added.) At no point during or after the prosecutor's rebuttal argument did defense counsel object to any aspect of that argument.

On appeal, however, the defendant claims that two sentences of the prosecutor's rebuttal argument violated the parties' agreement regarding Rosario's testimony, namely, "[t]here's no question on who [Rosario] was with, and what she saw. The defendant didn't even cross her on any of that." Although the agreement itself related to the scope of the direct examination and cross-examination of Rosario and not to permissible inferences to be drawn from that evidence, and despite the fact that the trial court did not make a specific ruling or order prohibiting the state—or either party for

that matter—from making an adverse comment during closing argument on defense counsel's failure to cross-examine Rosario, the defendant contends that the prosecutor "knew or should have known that such a comment would violate the intrinsic character of the agreement." The defendant further contends that the prosecutor's rebuttal argument "unfairly suggested and implied that the reason [defense counsel] didn't . . . [cross-examine Rosario] on who she was with and what she saw was because [counsel] essentially accepted her testimony." (Emphasis omitted; internal quotation marks omitted.) We agree with the state that, even if we assume, for purposes of our analysis, that the prosecutor's argument violated the "intrinsic character" of the parties' agreement and, therefore, was improper, it did not deprive the defendant of a fair trial.

Although the defendant's claim is unpreserved, "under settled law, a defendant who fails to preserve claims of prosecutorial [impropriety] need not seek to prevail under the specific requirements of *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), and, similarly, it is unnecessary for a reviewing court to apply the four-pronged *Golding* test. . . .

"In analyzing claims of prosecutorial impropriety, we engage in a two step analytical process. . . . The two steps are separate and distinct. . . . We first examine whether prosecutorial impropriety occurred. . . . Second, if an impropriety exists, we then examine whether it deprived the defendant of his due process right to a fair trial. . . . In other words, an impropriety is an impropriety, regardless of its ultimate effect on the fairness of the trial. Whether that impropriety was harmful and thus caused or contributed to a due process violation involves a separate and distinct inquiry." (Citation omitted; internal quotation marks omitted.) *State* v. *Payne*, 303 Conn. 538, 560–61, 34 A.3d 370 (2012).

It is well established that prosecutorial impropriety can occur during final or rebuttal argument. See, e.g., *State* v. *Weatherspoon*, 332 Conn. 531, 551, 212 A.3d 208 (2019). "To prove prosecutorial [impropriety], the defendant must demonstrate substantial prejudice. . . . In order to demonstrate this, the defendant must establish that the trial as a whole was fundamentally unfair and that the [impropriety] so infected the trial with unfairness as to make the conviction a denial of due process. . . . In weighing the significance of an instance of prosecutorial impropriety, a reviewing court must consider the entire context of the trial, and [t]he question of whether the defendant has been prejudiced by prosecutorial [impropriety] . . . depends on whether there is a reasonable likelihood that the jury's verdict would have been different [in the absence of] the sum total of the improprieties." (Citation omitted; internal quotation marks omitted.) *State* v. *Long*, 293 Conn. 31, 37, 975 A.2d 660 (2009).

"[O]ur determination of whether any improper conduct by the [prosecutor] violated the defendant's fair trial rights is predicated on the factors set forth in *State* v. *Williams*, [204 Conn. 523, 540, 529 A.2d 653 (1987)], with due consideration of whether that [impropriety] was objected to at trial. . . . These factors include: the extent to which the [impropriety] was invited by defense conduct or argument . . . the severity of the [impropriety] . . . the frequency of the [impropriety] . . . the centrality of the [impropriety] to the critical issues in the case . . . the strength of the curative measures adopted . . . and the strength of the state's case." (Citation omitted; internal quotation marks omitted.) *State* v. *Payne*, supra, 303 Conn. 561.

Applying these principles to the present case,[6] we have no difficulty in concluding that the prosecutor's

[6] In its appellate brief, the state urges us, due to the "unique circumstances of the present case," to forgo deciding whether the prosecutor engaged in impropriety during his rebuttal argument and, instead, to assume, arguendo,

brief argument during his rebuttal argument referencing defense counsel's failure to cross-examine Rosario, even assuming it was improper because it violated the "intrinsic character" of the parties' agreement, did not deprive the defendant of a fair trial. First, the argument was clearly not perceived by Dow to have been so improper as to elicit an objection from him. See, e.g., *State* v. *Weatherspoon*, supra, 332 Conn. 558 (defense counsel's failure to object to allegedly improper comments is "a strong indication that they did not carry substantial weight in the course of the trial as a whole and were not so egregious that they caused the defendant harm"); *State* v. *Ceballos*, 266 Conn. 364, 414, 832 A.2d 14 (2003) (emphasizing that "[defense] counsel's failure to object at trial, [although] not by itself fatal to a defendant's claim, frequently will indicate on appellate review that the challenged comments do not rise to the magnitude of constitutional error" (emphasis omitted)). Second, although no curative measures were adopted, the absence of such measures is attributable to Dow's failure to object or request any curative instruction from the court. Thus, Dow "bears much of the responsibility for the fact that [the] claimed impropriet[y] went uncured." (Internal quotation marks omitted.) *State* v. *Angel T.*, 292 Conn. 262, 291, 973 A.2d 1207 (2009); see id. (emphasizing court's "continue[d] . . . adhere[nce] to the well established maxim that defense counsel's failure to object to the prosecutor's argument . . . when [it is] made suggests that defense counsel did not believe that [it was] unfair in light of the record of the case at the time" (internal quotation marks omitted)).

In terms of the extent to which the alleged impropriety was invited by defense counsel's conduct or argu-

that the prosecutor's argument was improper and to proceed directly to a due process analysis under the *Williams* factors. The state argues that such analysis compels the conclusion that "any brief, isolated impropriety could not have deprived the defendant of his due process right to a fair trial."

ment, we agree with the state that Dow bears at least partial responsibility for inviting the prosecutor's allegedly improper argument. As previously indicated, the prosecutor made no mention of Dow's failure to cross-examine Rosario during his initial closing argument. It was only after Dow raised the issue by arguing that the jury should draw no adverse inference from his decision not to cross-examine Rosario more thoroughly that the prosecutor likewise commented on the issue during his rebuttal argument. See, e.g., *State* v. *Jordan*, 314 Conn. 89, 114, 101 A.3d 179 (2014) (there was no due process violation when prosecutor's improper comment "was in direct response to a similar statement by defense counsel"); *State* v. *Northrop*, 213 Conn. 405, 421, 568 A.2d 439 (1990) (there was no impropriety or due process violation when state's closing argument "was in direct response to the defendant's prior argument"); *State* v. *Graham*, 200 Conn. 9, 13, 509 A.2d 493 (1986) (it is axiomatic that party who initiates discussion opens door to rebuttal by opposing party). In such circumstances, "the prejudicial impact [of the comment is] not as great as when [the] comment is totally unprovoked." *State* v. *Falcone*, 191 Conn. 12, 23–24, 463 A.2d 558 (1983).

With respect to the severity of the alleged impropriety, it is clear that the jury did not need the prosecutor to tell it about Dow's failure to cross-examine Rosario. Jurors likely would have noticed the unusually truncated nature of the cross-examination entirely on their own, irrespective of the prosecutor's argument, and drawn from it the logical inference that the defendant had little with which to challenge Rosario's testimony concerning who she was with and what she saw on the night of the murder, apart from assertions that her use of PCP had affected her perception and recollection of the details of that evening. In light of the foregoing, we conclude that the alleged impropriety was relatively minor.

We turn now to the final two *Williams* factors: the centrality of the impropriety to the critical issues in the case and the strength of the state's case. Although Rosario was an important state's witness whose credibility was undeniably important, the state's case was not dependent on her. Two other individuals, Lugo and Irizarry, also witnessed the murder, and their testimony was largely consistent with each other as well as with Rosario's testimony. Despite the passage of time, their testimony, like Rosario's, carried the added weight of coming from people who knew the defendant prior to the murder. See, e.g., *State* v. *Guilbert*, 306 Conn. 218, 259–60, 49 A.3d 705 (2012) ("identification of a person who is well known to the eyewitness generally does not give rise to the same risk of misidentification as does the identification of a person who is not well known to the eyewitness"); *State* v. *Outing*, 298 Conn. 34, 100 n.8, 3 A.3d 1 (2010) (*Palmer*, *J.*, concurring) (inherent dangers of eyewitness identifications "are generally limited to eyewitness identifications of strangers or persons with whom the eyewitness is not very familiar"), cert. denied, 562 U.S. 1225, 131 S. Ct. 1479, 179 L. Ed. 2d 316 (2011). At the time of the murder, Lugo had known the defendant for several years and considered him a friend, and, although Irizarry may not have known the defendant as well, he knew him well enough to know his name and to greet him when they passed on the street. He was also familiar enough with him to note that his presence at the crime scene on the night of the murder was out of the ordinary. In short, although the state's case may not have been overwhelming, it was not so weak as to think that there is a reasonable probability that the verdict would have been different in the absence of the alleged impropriety.[7] See

[7] Because we do not view the prosecutor's alleged impropriety as overtly offensive or egregious, we decline the defendant's request that we invoke our supervisory authority over the administration of justice to grant him a new trial. We previously have explained that "[w]e may invoke our inherent supervisory authority in cases in which prosecutorial [impropriety] is not

State v. *Thompson*, 266 Conn. 440, 483, 832 A.2d 626 (2003) ("[this court has] never stated that the state's evidence must have been overwhelming in order to support a conclusion that prosecutorial [impropriety] did not deprive the defendant of a fair trial"). Accordingly, the defendant cannot prevail on his claim that prosecutorial impropriety deprived him of his right to a fair trial.

II

The defendant next claims that the trial court committed both constitutional and evidentiary error in precluding defense counsel from impeaching Lugo and Irizarry with certain prior felony convictions and in requiring two of Irizarry's prior convictions to be referred to only as "unnamed" felonies punishable by more than one year of imprisonment. We disagree.

The following additional facts are relevant to our resolution of this claim. During jury selection, the state provided defense counsel with copies of Lugo's and Irizarry's criminal records. Lugo's record revealed that he had three prior felony convictions: a 2010 conviction of possession of marijuana, a 2006 conviction of failure to appear in the first degree, and a 2006 conviction of possession of narcotics. Irizarry's record included five prior felony convictions: a 2017 conviction of assault in the second degree, a 2017 conviction of violation of a protective order, a 2005 conviction of sale of a con-

so egregious as to implicate the defendant's . . . right to a fair trial . . . [but] when the prosecutor deliberately engages in conduct that he or she knows, or ought to know, is improper. . . . *We have cautioned, however, that* [*s*]*uch a sanction generally is appropriate . . . only when the* [*prosecutor's*] *conduct is so offensive to the sound administration of justice that only a new trial can effectively present such assaults on the integrity of the tribunal.* . . . Accordingly, in cases in which prosecutorial [impropriety] does not rise to the level of a constitutional violation, we will exercise our supervisory authority to reverse an otherwise lawful conviction only when the drastic remedy of a new trial is clearly necessary to deter the alleged prosecutorial [impropriety] in the future." (Emphasis added; internal quotation marks omitted.) *State* v. *Warholic*, 278 Conn. 354, 405–406, 897 A.2d 569 (2006).

trolled substance, a 2005 conviction of larceny in the second degree, and a 2004 conviction of sale of a controlled substance.

On the day that Lugo and Irizarry were scheduled to testify, the court ruled on the admissibility of each of their prior convictions. The court aptly noted that, pursuant to § 6-7 (a) of the Connecticut Code of Evidence and this court's caselaw, three factors determine whether a prior conviction may be admitted to impeach a witness' credibility: (1) the extent of the prejudice likely to arise from the evidence, (2) whether the conviction is indicative of the witness' untruthfulness, and (3) the conviction's remoteness in time. See, e.g., *State* v. *Skakel*, 276 Conn. 633, 738, 888 A.2d 985, cert. denied, 549 U.S. 1030, 127 S. Ct. 578, 166 L. Ed. 2d 428 (2006). Applying these factors, the court concluded that Lugo's 2006 convictions of possession of narcotics and failure to appear in the first degree were inadmissible because both were more than ten years old and neither was probative of Lugo's veracity. The court permitted Lugo's 2010 conviction of possession of marijuana to be used, but only as an unnamed felony, unless the state elicited the name of the felony first, as the state ultimately did in this case.[8]

With respect to Irizarry, the court allowed the defense to use his 2017 convictions of assault in the second degree and violation of a protective order but required defense counsel to refer to them only as unnamed felonies. Despite its remoteness in time, the court permitted the use of Irizarry's 2005 larceny conviction because larceny is a crime that bears directly on a person's general disposition toward untruthfulness. The court excluded Irizarry's 2004 and 2005 convictions of sale of a controlled substance, however, due to their remote-

[8] During his direct examination of Lugo, the prosecutor elicited from him the fact that the 2010 conviction was for possession of marijuana.

ness in time and because neither bore on Irizarry's veracity.

The following standard of review and legal principles guide our analysis of the defendant's claim. "It is axiomatic that [t]he trial court's ruling on the admissibility of evidence is entitled to great deference. . . . In this regard, the trial court is vested with wide discretion in determining the admissibility of evidence . . . . Accordingly, [t]he trial court's ruling on evidentiary matters will be overturned only upon a showing of a clear abuse of the court's discretion." (Citations omitted; internal quotation marks omitted.) *State* v. *Perkins*, 271 Conn. 218, 252, 856 A.2d 917 (2004).

"Generally, evidence that a witness has been convicted of a crime is admissible to impeach his credibility if the crime was punishable by imprisonment for more than one year. General Statutes § 52-145 (b); Conn. Code Evid. § 6-7 (a). . . . [I]n evaluating the separate [factors] to be weighed in the balancing process, there is no way to quantify them in mathematical terms. . . . Therefore, [t]he trial court has wide discretion in this balancing determination and every reasonable presumption should be given in favor of the correctness of the court's ruling . . . . Reversal is required only whe[n] an abuse of discretion is manifest or whe[n] injustice appears to have been done. . . . With respect to the remoteness prong of the balancing test, we have endorsed a general guideline of ten years from conviction or release from confinement for that conviction, whichever is later, as an appropriate limitation on the use of a witness' prior conviction. . . . [T]he ten year benchmark . . . [however] is not an absolute bar to the use of a conviction that is more than ten years old, but, rather, serves merely as a guide to assist the trial judge in evaluating the conviction's remoteness. . . . We have recognized, moreover, that convictions having some special significance [on] the issue of veracity sur-

mount the standard bar of ten years and qualify for the balancing of probative value against prejudice." (Citations omitted; internal quotation marks omitted.) *State* v. *Skakel*, supra, 276 Conn. 738–39.

"Not all felony crimes bear equally on a defendant's veracity. [This court] has recognized that crimes involving larcenous intent imply a general disposition toward dishonesty or a tendency to make false statements. . . . [I]n common human experience acts of deceit, fraud, cheating, or stealing . . . are universally regarded as conduct [reflecting] on a man's honesty . . . ." (Internal quotation marks omitted.) *State* v. *Tarasiuk*, 192 Conn. App. 207, 217, 217 A.3d 11 (2019). "Although drug addiction or drug use may be probative of a witness' credibility for other reasons, such as a witness' ability to accurately perceive and to remember events, this court has rejected the proposition that drug addiction is probative of veracity." *State* v. *Rivera*, 335 Conn. 720, 732, 240 A.3d 1039 (2020).

Applying these principles to the present case, we cannot conclude that the trial court abused its discretion in precluding defense counsel from (1) impeaching Lugo with his 2006 convictions of possession of narcotics and failure to appear in the first degree, and (2) impeaching Irizarry with his 2004 and 2005 convictions of sale of a controlled substance. As the trial court properly noted, each of these convictions was at least thirteen years old at the time of trial, and none was directly probative of the witnesses' veracity. See, e.g., *State* v. *Clark*, 314 Conn. 511, 515, 103 A.3d 507 (2014) ("it is rare for a felony conviction that is more than ten years old [to retain] the minimal probative value sufficient to overcome its prejudice" (internal quotation marks omitted)). Acknowledging that the convictions were remote in time and not probative of the witnesses' truthfulness, the defendant nevertheless contends that they should have been admitted because "[all] crimes

involving sentences of more than one year affect the credibility of a witness." (Internal quotation marks omitted.) He further contends that Lugo's conviction for failure to appear should have been admitted because it involved "willful disobedience of a court order" and, therefore, demonstrated "a lack of respect for the authority of the judicial process."

Although we recognize the possibility that any criminal conviction may reflect poorly on a person's character and suggest a lack of respect for the rule of law, we have long held that "only a conviction [of] perjury or some kind of fraud bears directly [on] untruthfulness." *State* v. *Nardini*, 187 Conn. 513, 523, 447 A.2d 396 (1982); see also *State* v. *Geyer*, 194 Conn. 1, 13, 480 A.2d 489 (1984) ("[a]lthough [narcotics] convictions reflect adversely on [a witness'] general character, they have no special or direct materiality to [a witness'] credibility"). We have also held that, for purposes of assessing a witness' credibility, the probative value of *any* conviction, even one involving dishonesty, is "greatly diminished by the extended period of time [that] ha[s] elapsed since [its] occurrence." *State* v. *Nardini*, supra, 187 Conn. 528. Thus, we repeatedly have held that, "unless a conviction ha[s] some special significance to untruthfulness, the fact that it [is] more than ten years old [will] most likely preclude its admission under our balancing test." (Emphasis omitted.) *Label Systems Corp.* v. *Aghamohammadi*, 270 Conn. 291, 309, 852 A.2d 703 (2004); see also id., 313–14 ("the fact that a prior conviction is more than ten years old should greatly increase the weight carried by the third prong in the balancing test set forth in § 6-7 of the Connecticut Code of Evidence, unless that prior conviction relates to the witness' veracity"). We can perceive no reason, and the defendant has proffered none, to deviate from these well established principles.

We also disagree with the defendant that the trial court abused its discretion by requiring defense counsel to refer to Irizarry's 2017 convictions for assault in the second degree and violation of a protective order as unnamed felonies, rather than by their proper names. We previously have stated that, "[t]o avoid unwarranted prejudice to the witness, when a party seeks to introduce evidence of a felony that does not directly bear on veracity, a trial court ordinarily should permit reference only to an unspecified crime carrying a penalty of greater than one year that occurred at a certain time and place." *State* v. *Pinnock*, 220 Conn. 765, 780, 601 A.2d 521 (1992). "Th[is] prudent course [of permitting evidence of unnamed felony convictions] allows the jury to draw an inference of dishonesty from the prior conviction without the extraordinary prejudice that may arise from naming the specific offense. . . . Ultimately, [t]he trial court, because of its intimate familiarity with the case, is in the best position to weigh the relative merits and dangers of any proffered evidence. . . . This principle applies with equal force to the admissibility of prior convictions." (Citations omitted; internal quotation marks omitted.) *State* v. *Muhammad*, 91 Conn. App. 392, 401, 881 A.2d 468, cert. denied, 276 Conn. 922, 888 A.2d 90 (2005).

Acknowledging that "the ultimate decision whether to allow the 'name' of a conviction is a discretionary one," the defendant argues nonetheless that the trial court should have allowed the names of Irizarry's 2017 convictions to be used because Irizarry was on probation for the assault conviction at the time of trial and because the violation of a protective order "reflects disrespect for the authority of a judicial officer." We disagree. "Whe[n] the name of a prior conviction is not probative of truthfulness, and may entice the trier of fact to view the witness negatively because of the prior bad act, the trial court has [wide] discretion to conclude

that it should not be admitted." *State* v. *Pinnock*, supra, 220 Conn. 781; see also *State* v. *Geyer*, supra, 194 Conn. 13 ("[C]onviction of a crime not directly reflecting on credibility clearly lacks the direct probative value of a criminal conviction indicating dishonesty or a tendency to make [a] false statement. Thus, the balance used to measure admissibility of prior convictions is *weighted less heavily toward admitting the prior conviction when it involves a crime related only indirectly to credibility*." (Emphasis added.)). So long as our trial courts adhere to the principles discussed herein governing the admission of prior conviction evidence, their decisions with respect to such matters will not be disturbed.

III

The defendant's final claim is that the trial court erred in relation to two portions of its charge to the jury. Specifically, the defendant claims that the court improperly declined to charge the jury that the defendant was not obliged to present any evidence and that the jury should draw no adverse inference from his decision not to present any. The defendant further claims that the court improperly declined to insert the word "conclusively" into its instruction on uncharged misconduct. Specifically, the defendant claims that the court committed reversible error by declining to instruct the jury, in accordance with the model criminal jury instructions on the Judicial Branch website, that it could consider evidence of his involvement in the sale of drugs only to the extent that the jury believed that the defendant was, in fact, involved in the sale of drugs and, then, only to the extent that the jury found that it " 'logically, rationally *and conclusively*' " supported the issue for which it was being offered—namely, to establish the defendant's motive for killing the victim. (Emphasis added.) We disagree with these claims.

The following additional facts are relevant to our analysis of these claims. On the third day of trial, the trial court e-mailed a copy of its proposed jury charge to the parties in preparation for the charge conference scheduled for later that week. The court indicated that the parties could e-mail any requests for changes to the court and that the court would discuss them with the parties at the upcoming charge conference. Prior to the charge conference, the defendant filed his requests to charge, seeking several modifications to the court's proposed instructions. Specifically, although the court's proposed instructions included an instruction on the "[d]efendant's [o]ption to [t]estify" and provided that the defendant "had no obligation to testify," that he "has a constitutional right not to testify," and that the jury "must draw no unfavorable inferences from the defendant's choice not to testify," defense counsel requested that the court add a complementary instruction stating: "Similarly, [the defendant] is not obliged to present any evidence, and you may not draw any unfavorable inference from that, either." The court ultimately declined to add that instruction, stating that it would adhere to its proposed instruction, which mirrored the model criminal jury instruction on the Judicial Branch website concerning the defendant's option to testify.[9]

The defendant also requested a change to the court's proposed instruction on uncharged misconduct evidence. At trial, the state presented uncharged misconduct evidence through Irizarry's testimony that the defendant had sold heroin and was doing so on the night of the murder. In his closing argument, the prosecutor

[9] The court's final instruction on the defendant's option to testify was as follows: "The defendant has not testified in this case. An accused person has the option to testify or not testify at the trial. The defendant here thus had no obligation to testify. He has a constitutional right not to testify. You must draw no unfavorable inferences from the defendant's choice not to testify."

argued that the defendant had killed the victim because of a dispute over the sale of drugs. At the conclusion of Irizarry's testimony, the court gave the jury a limiting instruction and indicated that it would explain the purpose for which the evidence could be used during its final charge to the jury. Subsequently, the court provided the parties with a copy of its proposed jury instructions. The instruction on uncharged misconduct was titled "Evidence Admitted for a Limited Purpose" and provided in relevant part: "You may recall that you heard testimony from . . . Irizarry regarding his understanding that the defendant had been engaged in the selling of illegal drugs in Hartford at and around the date of the charged offense. As I indicated to you shortly after this testimony was received, the defendant's involvement in such activity is relevant and may be considered by you in your deliberations only to the extent that you believe such testimony to be true and, then, only to the extent that it helps to put the events of June 11, 2003, into context and to provide evidence as to a motive for the defendant to have committed the crime with which he is here charged. Beyond that stated purpose, however, the fact that the defendant may have been engaged in such drug activities may not be considered by you as evidence that the defendant, simply by virtue of that activity, is a bad person or one who is, by nature, more likely to commit a crime." In his request to charge, the defendant requested that the court replace the word "understanding" with the word "belief" and add language to the effect that the misconduct evidence could be considered by the jury only if the jury believed it and, then, only if the jury found that it "logically, rationally and conclusively" supported the purpose for which it was offered.

At the charge conference, the court granted the defendant's request to replace the word "understanding" with the word "belief" and heard arguments from the parties

regarding the defendant's request to add that the jury could consider the prior misconduct evidence only if it found that the evidence "logically, rationally and conclusively" supported the purpose for which it was offered. Defense counsel argued that, in its present form, the court's proposed instruction "left out some of the meat of the standard" and lacked "the amount of oomph that's necessary on this particular subject matter." He further noted that the requested language was copied "verbatim" from or was "essentially equivalent" to instruction 2.6-5 of the model criminal jury instructions on the Judicial Branch website.[10] The prosecutor responded that the defendant's requested charge went "too far." The next morning, the court inquired whether the parties had received its updated jury instructions incorporating "some of the changes that were discussed [during the charge conference] and reflect[ed] the court's rulings in the areas where there was not full agreement." Defense counsel stated that, although the court had added that the jury could consider the uncharged misconduct only to the extent that it found that the evidence "logically and rationally" supported the state's theory as to motive, it had failed to include the word "conclusively," which defense counsel "felt strongly about

[10] Instruction 2.6-5 provides in relevant part: "The state has offered evidence of other acts of misconduct of the defendant. This is not being admitted to prove the bad character, propensity, or criminal tendencies of the defendant. Such evidence is being admitted solely to show or establish . . . a motive for the commission of the crimes alleged. . . . You may not consider such evidence as establishing a predisposition on the part of the defendant to commit any of the crimes charged or to demonstrate a criminal propensity. *You may consider such evidence if you believe it and further find that it logically, rationally and conclusively supports the issue*[*s*] *for which it is being offered by the state*, but only as it may bear on the issue[s] of [motive]. On the other hand, if you do not believe such evidence, or even if you do, if you find that it does not logically, rationally and conclusively support the issue[s] for which it is being offered by the state, namely [to establish a motive for the commission of the crimes alleged], then you may not consider that testimony for any purpose. . . ." (Emphasis added; footnotes omitted.) Connecticut Criminal Jury Instructions 2.6-5, available at https://www.jud.ct.gov/JI/Criminal/Criminal.pdf (last visited June 7, 2022).

. . . .” The court indicated that it was still considering whether to include the word. Ultimately, however, the court did not include it.[11]

Our standard of review for claims of instructional error is well settled. “To determine whether an error in the charge to the jury exists, we review the entire charge to determine if, taken as a whole, the charge adequately guided the jury to a correct verdict. . . . In appeals not involving a constitutional question [we] must determine whether it is reasonably probable that the jury [was] misled . . . .” (Citations omitted; internal quotation marks omitted.) *State* v. *Woods*, 234 Conn. 301, 307–308, 662 A.2d 732 (1995). “[I]n appeals involving a constitutional question, [however, the standard is] whether it is reasonably *possible* that the jury [was] misled.” (Emphasis added; internal question marks omitted.) Id., 308. “[Although] a request to charge that is relevant to the issues in a case and that accurately states the applicable law must be honored, a [trial] court need not tailor its charge to the precise letter of such a request. . . . If a requested charge is in substance given, the [trial] court’s failure to give a charge in exact

[11] The court’s final instruction on uncharged misconduct was as follows: “[Y]ou heard testimony from . . . Irizarry regarding his *belief* that the defendant had been engaged in the selling of illegal drugs in Hartford at and around the date of the charged offense. As I indicated to you shortly after this testimony was received, the defendant’s involvement in such activity is relevant and may be considered by you in your deliberations only to the extent that you believe that the defendant was, in fact, involved in drug selling and, if so, only to the extent that such activities of the defendant *logically and rationally* provide evidence as to a motive for him to have committed the crime with which he is charged.

“On the other hand, if you do not credit . . . Irizarry’s claim regarding the defendant’s drug selling activity, or, even if you do, if you find that it does not *logically and rationally* support the state’s theory of motive, then you may not consider that testimony to bear on motive nor for any other purpose. Beyond the issue of motive, however, the fact that the defendant may have been engaged in such drug activities may not be considered by you as evidence that the defendant simply by virtue of that activity is a bad person or one who is by nature more likely to commit a crime.” (Emphasis added.)

conformance with the words of the request will not constitute a ground for reversal. . . . As long as [the instructions] are correct in law, adapted to the issues and sufficient for the guidance of the jury . . . we will not view the instructions as improper." (Internal quotation marks omitted.) *State* v. *Cutler*, 293 Conn. 303, 317, 977 A.2d 209 (2009), overruled in part on other grounds by *State* v. *Elson*, 311 Conn. 726, 91 A.3d 862 (2014). Finally, "[a] challenge to the validity of jury instructions presents a question of law over which [we exercise] plenary review." (Internal quotation marks omitted.) *State* v. *Gomes*, 337 Conn. 826, 849–50, 256 A.3d 131 (2021). With these principles in mind, we turn to the defendant's claims.

A

We begin with the defendant's claim that the trial court improperly declined to instruct the jury that the defendant "is not obliged to present any evidence, and [the jury] may not draw any unfavorable inference from that . . . ." Because "[t]he presumption of innocence . . . is a basic component of a fair trial under our system of criminal justice"; (internal quotation marks omitted) *State* v. *Brawley*, 321 Conn. 583, 587, 137 A.3d 757 (2016); we must determine whether it is reasonably possible that the jury was misled by the trial court's failure to give the requested instruction. See *State* v. *Walton*, 227 Conn. 32, 64–65, 630 A.2d 990 (1993) ("[w]e have recognized . . . that . . . claimed instructional errors regarding the burden of proof or the presumption of innocence . . . are constitutional in nature" (citations omitted)).

Our review of the jury charge as a whole compels the conclusion that it is not reasonably possible that the jury was misled by the trial court's omission of the requested instruction because the substance of that instruction was clearly contained in the court's other

instructions. See, e.g., *State* v. *Cutler*, supra, 293 Conn. 317 ("[A] [trial] court need not tailor its charge to the precise letter of . . . a request. . . . If a requested charge is in substance given, the [trial] court's failure to give a charge in exact conformance with the words of the request will not constitute a ground for reversal." (Internal quotation marks omitted.)); see also *State* v. *Denby*, 235 Conn. 477, 485, 668 A.2d 682 (1995) ("[t]he test of a court's charge is not whether it is as accurate [on] legal principles as the opinions of a court of last resort but [rather] whether it fairly presents the case to the jury in such a way that injustice is not done to either party under the established rules of law" (internal quotation marks omitted)).

Specifically, as the state contends, the requested instruction, which sought to include language instructing the jury that the defendant was not obliged to present any evidence and that it must draw no adverse inference from his decision not to do so, was subsumed within the trial court's instructions that (1) the defendant is presumed to be innocent unless and until proven guilty beyond a reasonable doubt, and this presumption continues with him unless and until such time as all the evidence produced at trial satisfies the jury beyond a reasonable doubt that the defendant is guilty, (2) this presumption of innocence may be overcome only if the state introduces evidence that establishes the defendant's guilt beyond a reasonable doubt, (3) the burden to prove the defendant guilty of the crime with which he is charged is on the state, and "[*t*]*he defendant does not have to prove his innocence*," and (4) the defendant was under no obligation to testify, has a constitutional right not to testify, and the jury must draw no unfavorable inferences from the defendant's choice not to testify. (Emphasis added.) These instructions, taken together, clearly informed the jury that the defendant was under no obligation to present evidence or to other-

wise prove his innocence. Indeed, the court's instruction that "[t]he defendant does not have to prove his innocence" necessarily conveyed that the defendant did not have to *produce evidence to prove his innocence*. In addition, the record reflects that, during its preliminary jury instructions at the start of trial, the trial court did, in fact, instruct the jury that the defendant was not obliged to present evidence. Specifically, the court stated in relevant part: "Following the presentation of the state's evidence, the defendant may, if he wishes, present evidence on his own behalf. But remember, as I told you, the defendant is under no obligation to do so. The law does not require a defendant to prove his innocence or to present any evidence." Furthermore, the court emphasized the defendant's presumption of innocence, stating in relevant part: "[E]very defendant in a criminal case is presumed to be innocent, and this presumption remains with the defendant throughout the trial unless and until the defendant is proven guilty beyond a reasonable doubt. . . . The law does not require the defendant to prove his innocence."

We recognize that the defendant's requested instruction was an accurate statement of the law and relevant to the issues at hand. As this court repeatedly has stated, however, "[although] a request to charge that is relevant to the issues in a case and that accurately states the applicable law must be honored, a [trial] court need not tailor its charge to the precise letter of such a request." (Internal quotation marks omitted.) *State* v. *Aviles*, 277 Conn. 281, 309, 891 A.2d 935, cert. denied, 549 U.S. 840, 127 S. Ct. 108, 166 L. Ed. 2d 69 (2006); see also *State* v. *Berger*, 249 Conn. 218, 236, 733 A.2d 156 (1999) ("trial court was not obligated to provide the requested instruction to the jury because the substance of the requested instruction was implicit in the court's charge and did not require further explication"). Accordingly, because we conclude that the defendant's

requested instruction was subsumed within and implicit in the court's preliminary and final instructions on the defendant's option to testify, the presumption of innocence, and the state's burden of proof, the defendant cannot prevail on his first claim of instructional error.

B

We next consider the defendant's claim that the trial court erred in omitting the word "conclusively" in its instruction on uncharged misconduct. Specifically, the defendant argues that the trial court improperly declined to instruct the jury, in accordance with instruction 2.6-5 of the model criminal jury instructions on the Judicial Branch website; see footnote 10 of this opinion; that it could consider evidence of the defendant's uncharged misconduct only if the jury believed it and, then, only if it found that "it logically, rationally *and conclusively* supports the issue[s] for which it is being offered by the state . . . ." (Emphasis added.) We conclude that instruction 2.6-5, titled "Other Misconduct of Defendant," is an incorrect statement of the law insofar as it requires the jury to find that uncharged misconduct "conclusively" supports the issue for which it is offered. Accordingly, the defendant cannot prevail on his second claim of instructional error.

As we previously explained, the defendant asked the court to instruct the jury that it could consider the uncharged misconduct evidence only if the jury believed it and, then, only if it found the evidence "logically, rationally *and conclusively*" supported the purpose for which it was offered. (Emphasis added.) In its charge to the jury, however, the court omitted the word "conclusively," instructing the jury in relevant part that, "if you do not credit . . . Irizarry's claim regarding the defendant's drug selling activity or, even if you do, if you find that it does not logically and rationally support the state's theory of motive, then you may not consider that testimony to bear on motive nor for any other

purpose." On appeal, the defendant claims that the trial court committed reversible error by omitting the requested word.[12] We disagree.

We begin our analysis by noting that "[t]he language used in the model jury instructions, although instructive in considering the adequacy of a jury instruction . . . is not binding on this court. . . . [W]e previously have cautioned that the . . . jury instructions found on the Judicial Branch website are intended as a guide only, and that their publication is no guarantee of their adequacy. See, e.g., *State* v. *Reyes*, 325 Conn. 815, 821–22 n.3, 160 A.3d 323 (2017) (The Judicial Branch website expressly cautions that the jury instructions contained therein [are] intended as a guide for judges and attorneys in constructing charges and requests to charge. The use of these instructions is entirely discretionary and their publication by the Judicial Branch is not a guarantee of their legal sufficiency. . . .)." (Citation omitted; internal quotation marks omitted.) *State* v. *Gomes*, supra, 337 Conn. 853 n.19; see also *Snell* v. *Norwalk Yellow Cab, Inc.*, 332 Conn. 720, 775, 212 A.3d 646 (2019) (*Ecker*, *J.*, concurring) ("The [model jury] instructions are promulgated by a distinguished panel

[12] Citing only three cases, the defendant argues that "Connecticut criminal juries are routinely if not invariably instructed that they can consider evidence of uncharged misconduct if they 'believe it' and if they 'find that it logically, rationally and conclusively' supports the issue or issues for which it was offered by the state." We note, however, that our research uncovered many cases in which our juries were not instructed in this regard but, rather, were charged using the "logically and rationally" standard that the trial court utilized in the present case. See, e.g., *State* v. *Collins*, 299 Conn. 567, 581 n.15, 10 A.3d 1005, cert. denied, 565 U.S. 908, 132 S. Ct. 314, 181 L. Ed. 2d 193 (2011); *State* v. *Cutler*, supra, 293 Conn. 316; *State* v. *Beavers*, 290 Conn. 386, 407 n.21, 963 A.2d 956 (2009); *State* v. *Lopez*, 199 Conn. App. 56, 63 n.15, 234 A.3d 990, cert. denied, 335 Conn. 951, 238 A.3d 21 (2020); *State* v. *Morales*, 164 Conn. App. 143, 175, 136 A.3d 278, cert. denied, 321 Conn. 916, 136 A.3d 1275 (2016); *State* v. *Urbanowski*, 163 Conn. App. 377, 398 n.10, 136 A.3d 236 (2016), aff'd, 327 Conn. 169, 172 A.3d 201 (2017); *State* v. *Dougherty*, 123 Conn. App. 872, 884, 3 A.3d 208, cert. denied, 299 Conn. 901, 10 A.3d 521 (2010); *State* v. *Henry*, 41 Conn. App. 169, 180 n.5, 674 A.2d 862 (1996).

of . . . members [of the Criminal Jury Instruction Committee] who have undertaken the Sisyphean task of synthesizing and articulating the law governing a broad variety of . . . cases in a form readily understandable to a lay jury. They provide commendable guidance. But precisely because the task is so difficult—the law is not always certain, nor is it static, nor is it always produced or pronounced in 'one size fits all' formulations—it is fair to suggest that trial lawyers are well advised to 'trust but verify' these model instructions to ensure that they are correct, current, and properly crafted to fit the particular case at hand.").

This court previously has considered and rejected claims that a heightened standard of proof should apply to the admission and use of prior misconduct evidence. In *State* v. *Aaron L.*, 272 Conn. 798, 865 A.2d 1135 (2005), for example, we were required to determine "whether the trial court, before admitting prior misconduct evidence, must find by a heightened standard of proof that the prior misconduct in fact occurred . . . ." Id., 821. In considering this issue, we "examined the ways in which our Code of Evidence already protects parties against any unfair prejudice that might arise from the admission of prior misconduct evidence. In particular, we identified the sections of the Code of Evidence that provide this protection, including, but not limited to, § 4-5 (b), which requires that prior misconduct evidence be offered for a proper purpose, § 4-1, which requires that prior misconduct evidence be relevant to an element in issue, and § 4-3, which requires the trial court to determine whether the probative value of the evidence is outweighed by its potential for unfair prejudice. . . . We also found significant the limiting instructions the trial court is required to give the jury under § 1-4 [of the Connecticut Code of Evidence] that the evidence is to be considered only for the proper purpose for which it was admitted. . . . We concluded that following application of these requirements, what-

ever inferences should be drawn from the defendant's prior [mis]conduct are for the jury to determine. . . . Accordingly, we decline[d] to adopt a rule requiring that the trial court make a preliminary finding by clear and convincing evidence that prior misconduct occurred before submitting that evidence to the jury. . . .

"Thus, our conclusion . . . implicitly reject[ed] the notion that any particular standard of proof is necessary in a trial court's jury instructions regarding prior misconduct evidence, and [made] clear that prior misconduct evidence may be considered by the jury for a proper purpose if there [is] evidence from which the jury reasonably could . . . [conclude] that the prior act of misconduct occurred and that the defendant was the actor." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *State* v. *Cutler*, supra, 293 Conn. 320–21.

In *Cutler*, we relied on our reasoning in *Aaron L.* in concluding that the trial court was not required to instruct the jury that it must "find the existence of a prior act of misconduct by a preponderance of the evidence before considering it for a proper purpose." Id., 315. Although we recognized that the issue in *Aaron L.* was one of the admissibility of prior misconduct evidence, whereas, in *Cutler*, the issue before us was the propriety of jury instructions on the use of prior misconduct evidence, we concluded that such a distinction did not prevent us "from employing our well reasoned conclusion in *Aaron L.* as guidance in the present case." Id., 320. In so doing, we concluded that, "[when] the admission of prior misconduct evidence depends on the trial court's determination that there is sufficient evidence from which the jury reasonably could conclude that the prior acts of misconduct occurred and that the defendant was the actor . . . we see no reason to impose on trial courts a jury instruction that requires jurors to consider the properly admissible prior misconduct evidence at a higher standard. . . . Accordingly,

we conclude[d] that it is not necessary that a trial court instruct the jury that it must find, by a preponderance of the evidence, that prior acts of misconduct actually occurred at the hands of the defendant. Instead, a jury may consider prior misconduct evidence for the proper purpose for which it is admitted if there is evidence from which the jury reasonably could conclude that the defendant actually committed the misconduct." (Citations omitted; footnote omitted.) Id., 321–22. We concluded, therefore, that the trial court properly instructed the jury that "it could consider the state's prior misconduct evidence if it 'believe[d]' that evidence and found that it 'logically and rationally' supported the issue for which it was being offered."[13] Id., 322.

Guided by this prior case law, it is apparent that the trial court properly declined to instruct the jury that it could consider the prior misconduct evidence only if

[13] The defendant argues that *Aaron L.* and *Cutler* are inapplicable to the present case because those cases "involved the issue of whether a particular standard of proof is needed in order to establish that an act of misconduct has occurred," whereas, here, the issue involves the omission of the word "conclusively" in a jury charge, which "does not relate to the burden of proof for an act of misconduct [and] . . . serves an entirely different function." (Emphasis omitted; internal quotation marks omitted.) Specifically, the defendant argues that "[t]he state fails to recognize that the phrase 'logically, rationally and conclusively' . . . does not relate to whether an act of misconduct occurred; the phrase relates to whether the act of misconduct (if proved to the jury's satisfaction under the 'believe' standard) supports the proposition or issue for which the misconduct was offered . . . ." (Citation omitted; emphasis omitted.) We are not persuaded. Although we acknowledge that *Aaron L.* differs slightly insofar as it involved the question of whether the *trial court* was required to find, by a preponderance of the evidence, that the alleged prior misconduct had occurred, *Cutler* is wholly applicable to the present case as it, too, involved the question of whether a trial court was required to instruct a jury that it must find prior misconduct evidence to be proven by a heightened standard. Notably, and as we explained, this court expressly rejected that proposition and concluded that it saw "*no reason to impose on trial courts a jury instruction that requires jurors to consider the properly admissible prior misconduct evidence at a higher standard*." (Emphasis added.) *State* v. *Cutler*, supra, 293 Conn. 321–22.

it found that it "conclusively" supported the state's theory as to motive. It is axiomatic that motive is not an element of the crime of murder; see, e.g., *State* v. *Pinnock*, supra, 220 Conn. 792; and, therefore, the state was not required to prove it by a standard different from the reasonable and logical standard applicable to all other facts. "[Although] the jury must find every element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense, each of the basic and inferred facts underlying those conclusions need not be proved beyond a reasonable doubt. . . . *If it is reasonable and logical for the jury to conclude that a basic fact or an inferred fact is true, the jury is permitted to consider the fact proven and may consider it in combination with other proven facts in determining whether the cumulative effect of all the evidence proves the defendant guilty of all the elements of the crime charged beyond a reasonable doubt.*" (Citation omitted; emphasis added; internal quotation marks omitted.) *State* v. *Newsome*, 238 Conn. 588, 617, 682 A.2d 972 (1996).

In light of the foregoing, we conclude that the trial court properly declined the defendant's request to include the word "conclusively" in its instruction on the use of prior misconduct evidence. Rather, the court properly instructed the jury that, even if it credited Irizarry's testimony that the defendant was engaged in the sale of drugs on the night in question, the jury could consider that evidence only if it found that it "logically and rationally support[ed] the state's theory of motive . . . ."[14]

The judgment is affirmed.

In this opinion the other justices concurred.

[14] We note that our decision today is in no way intended to diminish the importance of a trial court's duty to safeguard against undue prejudice in cases involving uncharged misconduct evidence. Indeed, we emphasize that our trial courts are required to take great caution in admitting this evidence and in ensuring that our juries use it only for its proper purpose. In that

STATE OF CONNECTICUT *v.* NASIR R. HARGETT (SC 20517)

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

Syllabus

Convicted of the crime of murder in connection with the shooting death of the victim, the defendant appealed. The victim had approached the defendant's home, where the defendant and three other individuals, including M, were talking on the porch. The victim abruptly took a soda bottle from the porch and immediately left the area without any confrontation. After the victim left, M and two others left the porch and began walking toward M's home, in the direction that the victim was headed. Meanwhile, the defendant went into his home, retrieved a rifle, and then caught up with M and the others. Near M's home, the victim

regard, we previously have explained that such evidence is admissible only if (1) it is relevant and material to at least one of the circumstances encompassed by the exceptions enumerated under § 4-5 of the Connecticut Code of Evidence, and (2) its probative value outweighs its prejudicial effect; see *State* v. *DeJesus*, 288 Conn. 418, 440, 953 A.2d 45 (2008); and we also have required that the admission of such evidence be accompanied by an appropriate cautionary instruction to the jury to minimize the risk of undue prejudice to the defendant. See, e.g., *State* v. *Snelgrove*, 288 Conn. 742, 759, 954 A.2d 165 (2008); see also Conn. Code Evid. § 4-5 (b), commentary. We have done so because of the inherent risk of prejudice involved in the admission of this type of evidence. See, e.g., *State* v. *Braman*, 191 Conn. 670, 675, 469 A.2d 760 (1983) ("As a general rule, evidence of guilt of other crimes is inadmissible to prove that a defendant is guilty of the crime charged against him. . . . The rationale of this rule is to guard against its use merely to show an evil disposition of an accused, and especially the predisposition to commit the crime with which he is now charged." (Citations omitted; internal quotation marks omitted.)); see also *State* v. *Santiago*, 224 Conn. 325, 347, 618 A.2d 32 (1992) (*Berdon*, *J.*, concurring and dissenting) ("When the sole purpose of the other crimes evidence is to show some propensity to commit the crime at trial, there is no room for ad hoc balancing. The evidence is then unequivocally inadmissible—this is the meaning of the rule against other crimes evidence. . . . It is fundamental to American jurisprudence that a defendant must be tried for what he did, not for who he is." (Citations omitted; internal quotation marks omitted.)). Thus, although we conclude that our trial courts are not required to instruct that a jury find that prior misconduct evidence "conclusively" supports the issue for which it was offered, we emphasize and highlight that such evidence is nonetheless unique and should continue to be handled with great caution.

turned around and locked eyes and exchanged words with the defendant. The defendant then fired his rifle at the victim, and the victim sustained two gunshot wounds. During jury selection, which occurred approximately two and one-half years after the shooting, the prosecutor filed a supplemental notice of disclosure, in which she represented that she recently had become aware of the recovery of the rifle allegedly used by the defendant in the shooting and that she did not have that evidence in her case file until that morning. Although the rifle had been seized by the police in connection with an unrelated robbery that occurred two months after the shooting of the victim, the files in the unrelated robbery case and the defendant's murder case had not been cross-referenced. Although the trial court granted the defense a continuance, which the defense declined, the defendant requested, in light of the state's late disclosure, that the case be dismissed or that the rifle be excluded from evidence. The trial court declined to dismiss the case or to exclude the rifle from evidence. During the defendant's trial, the trial court excluded from evidence M's testimony that, as he was leaving the porch, an unidentified woman told him that the victim had assaulted or robbed her at knifepoint earlier in the day and a toxicology report showing that the victim had drugs in his system at the time of his death. The trial court also declined the defendant's request to charge the jury on his claim of self-defense. The Appellate Court upheld the trial court's rulings, rejected the defendant's claim that the trial court had abused its discretion in declining to dismiss the case or to exclude the rifle from evidence on the basis of the state's late disclosure, and affirmed the defendant's conviction. On the granting of certification, the defendant appealed to this court. *Held*:

1. The defendant could not prevail on his claim that the Appellate Court incorrectly concluded that the trial court had not abused its discretion in excluding as irrelevant and inadmissible hearsay M's testimony that an unidentified women told him prior to the shooting that the victim had assaulted or robbed her at knifepoint earlier that day: even if M's testimony was improperly excluded, any error in excluding that testimony was harmless beyond a reasonable doubt, as there was overwhelming circumstantial evidence demonstrating that the defendant had the specific intent to kill the victim, despite his assertion that he was merely trying to scare the victim into leaving the neighborhood rather than trying to kill him; moreover, although the jury may have inferred from M's testimony, if it had been admitted, that the defendant feared the victim, which would have been relevant to the defendant's motive, the probative value of the excluded testimony as to the defendant's specific intent was minimal, as evidence that the defendant feared the victim provided little to no context for why he shot at the victim multiple times; furthermore, there was no merit to the defendant's claim that the exclusion of M's testimony was harmful because it affected his

entitlement to an instruction on self-defense, as the defendant ultimately failed to establish that he was entitled to such an instruction.

2. The defendant's claim that the Appellate Court incorrectly concluded that the trial court had not abused its discretion in excluding a toxicology report showing that the victim had phencyclidine (PCP) in his system at the time of his death was unavailing; even if the trial court had improperly excluded the toxicology report insofar as it implicated his right to present a claim of self-defense, any error was harmless because, although the evidence would have allowed the jury to reasonably infer that the defendant reasonably feared the victim, the defendant failed to demonstrate that he reasonably believed that deadly force by the victim was imminent and that it was necessary to use deadly force to prevent the victim's use of such force.

3. The Appellate Court correctly concluded that the trial court had not violated the defendant's right to due process by declining to charge the jury on self-defense: although the jury reasonably could have concluded, on the basis of the evidence, that the defendant feared the victim and believed that he possessed a knife, there was no evidence from which the jury could have found that it was objectively reasonable for the defendant to have believed that the victim was using or was about to use deadly force against the defendant and that it was necessary for the defendant to use deadly force himself to prevent the victim from using such force, as there was nothing in the record to indicate that the victim threatened the defendant, acted aggressively, or reached for or brandished a weapon; moreover, the defendant's belief that the victim had a knife, by itself, did not suffice to show that the victim was imminently going to use it, and the victim's alleged possession of a knife, while he was standing still and not acting aggressively, did not demonstrate that the defendant reasonably believed that he needed to use a gun to prevent the victim from using the knife; furthermore, M's statement to the defendant while they were walking toward the victim that the defendant's "life was on the line" did not establish that the defendant would have suffered any harm or risk of harm if he had waited and not fired at the victim or had retreated, as there was no evidence in the record that would have allowed the jury to reasonably infer anything other than that the defendant acted preemptively, which the defense of self-defense did not encompass.

4. The Appellate Court correctly concluded that the trial court had not abused its discretion in declining the defendant's request to dismiss the case or to exclude the rifle as a sanction for the state's late disclosure of that evidence: this court had previously held that a trial court does not abuse its discretion by granting a continuance rather than excluding untimely disclosed evidence unless the defendant shows that his right to a speedy trial has been violated; in the present case, although the state's actions in failing to produce the rifle sooner resulted from a lack of due diligence, and although it was inappropriate for the trial court,

which granted the defendant a continuance during the course of jury selection, to expect the defense to prepare a response to the new evidence while jury selection was ongoing, the defendant failed to establish that his right to a speedy trial would have been violated if he had accepted an offer of a reasonable continuance of two weeks, even if jury selection had to be paused or to begin anew, and the defendant failed to establish that those two weeks would have been insufficient for the defense to respond to the new evidence; moreover, in light of the trial court's undisputed finding of a lack of bad faith on the part of the prosecution, the trial court's offer of both a continuance and the continuation of plea bargaining in light of the new evidence, and the possibility that the defendant could have received a reasonable continuance without any impact to his right to a speedy trial, the exclusion of the rifle or the dismissal of the case was not the only appropriate remedy for the state's late disclosure; nevertheless, this court observed that the state has a duty to defendants, the public, and the courts to act with diligence in the disclosure of evidence, that courts should in the first instance encourage compliance with this obligation and penalize noncompliance, and that, although the trial court did not abuse its discretion in declining to dismiss the case or to exclude the rifle, the trial court likely would have been well within its discretion to deny the admission of the rifle, especially in light of the fact that the state was apparently ready to proceed to trial without that piece of evidence.

Argued January 13—officially released June 14, 2022

Procedural History

Substitute information charging the defendant with the crime of murder, brought to the Superior Court in the judicial district of Fairfield, where the court, *Pavia*, *J.*, denied the defendant's motion for sanctions; thereafter, the case was tried to the jury before *Pavia*, *J.*; verdict and judgment of guilty, from which the defendant appealed to this court; thereafter, the appeal was transferred to the Appellate Court, *Lavine*, *Elgo* and *Moll*, *Js.*, which affirmed the trial court's judgment, and the defendant, on the granting of certification, appealed to this court. *Affirmed.*

Jennifer Bourn, chief of legal services, with whom, on the brief, were *Lauren Graham* and *Shannon Q. Lozier*, certified legal interns, for the appellant (defendant).

Robert J. Scheinblum, senior assistant state's attorney, with whom, on the brief, were *Joseph T. Corradino*, state's attorney, and *Ann F. Lawlor*, supervisory assistant state's attorney, for the appellee (state).

Opinion

D'AURIA, J. In this certified appeal, the defendant, Nasir R. Hargett, appeals from the judgment of the Appellate Court affirming the trial court's judgment of conviction, rendered after a jury trial, of one count of murder. On appeal, the defendant claims that the Appellate Court incorrectly determined that the trial court had not (1) violated his sixth amendment right to present a defense by excluding from evidence (a) a statement purportedly made by an unknown female bystander and (b) an autopsy toxicology report, (2) violated his right to due process by declining to give a jury instruction on self-defense, and (3) abused its discretion by declining to sanction the state for its late disclosure of the murder weapon and related expert reports by excluding this evidence or dismissing the murder charge. We affirm the Appellate Court's judgment but not without strongly cautioning the state regarding the late disclosure of evidence.

On October 13, 2014, Kaishon McAllister and his friends, Romy and Kahdeem,[1] walked to the defendant's house on East Main Street in Bridgeport. While McAllister, Romy, Kahdeem, and the defendant were talking on the porch of the defendant's home, the victim, Davon Robertson, walked up to the porch, although he did not step onto it, and slowly put his hands in his pockets. Without speaking, the victim grabbed a soda bottle off the porch and then left the area, walking toward Pearl Street.

After the victim moved on, McAllister, Romy, and Kahdeem left the porch and began walking toward McAllister's home on Pearl Street in the same direction

[1] The last names of Romy and Kahdeem are not apparent from the record.

as the victim. The defendant, however, went into his home and retrieved a sawed-off rifle. He subsequently caught up to McAllister, Romy, and Kahdeem, and a group of young men who were with them. The group of young men, including the defendant and McAllister, continued walking toward Pearl Street behind the victim. Near McAllister's home, the victim turned around.[2] The defendant and the victim "locked eyes" and exchanged unknown words. The defendant then fired the gun two or three times at the victim.[3] McAllister, Romy, and Kahdeem ran into McAllister's home. The defendant also ran from the scene but not into McAllister's home. The victim, who sustained gunshot wounds to his left upper chest and right lower leg, was taken to Bridgeport Hospital where he was pronounced dead. No weapon was found on his body.

Later that day, the police searched the crime scene and recovered two .22 caliber shell casings and a soda

[2] Although the Appellate Court's opinion states that the victim turned around in reaction to the defendant's calling out, "yo," the record is unclear whether the victim turned around of his own accord or in response to the defendant's speaking to him. McAllister testified that the defendant said "yo" to the victim, but it is not clear from his testimony whether this occurred while the defendant was on the porch of his home or on the street before the victim turned around and "locked eyes" with him.

[3] McAllister gave contradictory testimony as to whether the victim was facing or turned away from the defendant at the time of the first gunshot. Additionally, he gave contradictory testimony about the number of gunshots that were fired. He testified on direct examination that three gunshots were fired but that only two hit the victim. On cross-examination and redirect, he testified that the defendant fired three gunshots. Later, on recross-examination, he testified, "I don't remember," when asked if the defendant had fired only two gunshots. We note that the Appellate Court based its statement that the third gunshot was fired while the victim was on the ground on the testimony of the state's medical examiner, who inferred from the fact that the bullet to the victim's left upper chest traveled to the right and slightly downward, that the victim was lying down when he was shot in the chest. The defendant argues that, as there was no actual testimony that he shot the victim while the victim was on the ground, this inference is not drawn in the light most favorable to the defendant, as is required on appellate review of a self-defense claim. Because the state never argued the medical examiner's inference to the jury, we do not apply it in reviewing the evidence.

bottle. They also executed a search warrant at the defendant's home and seized a hacksaw and a file from his bedroom. The defendant was arrested the following day and charged with murder. The state subsequently filed a substitute information charging the defendant with murder and, pursuant to General Statutes § 53-202k, sought an enhancement of his sentence, if convicted, for having used a firearm in the commission of a class A, B or C felony.

At trial, the state relied primarily on the testimony of McAllister, the only eyewitness to testify. The jury subsequently found the defendant guilty of murder.[4] The defendant appealed, and the Appellate Court affirmed the judgment of conviction. See *State* v. *Hargett*, 196 Conn. App. 228, 230, 229 A.3d 1047 (2020). The defendant then sought certification to appeal to this court, which we granted.[5] We will discuss additional facts and procedural history of record as required.

I

The defendant claims that the Appellate Court incorrectly held that the trial court had not abused its discretion in excluding from evidence (a) a statement purport-

[4] In addition, the jury also found, pursuant to an interrogatory, that "the defendant employed the use of a firearm in the commission of a felony," and the court accordingly enhanced his sentence, ultimately imposing a total effective sentence of forty-five years of imprisonment. (Internal quotation marks omitted.) *State* v. *Hargett*, 196 Conn. App. 228, 230, 229 A.3d 1047 (2020).

[5] We limited our grant of certification to the following issues: (1) "Did the Appellate Court correctly conclude that the evidence was insufficient to entitle the defendant to a jury instruction on self-defense?" (2) "Did the Appellate Court correctly conclude that the trial court did not abuse its discretion in excluding as irrelevant evidence that the victim was under the influence of phencyclidine (PCP) at the time of the murder and that a woman had informed a group of individuals, including the defendant, that the victim had just robbed her at knifepoint?" And (3) "[d]id the Appellate Court correctly conclude that the trial court did not abuse its discretion in declining to sanction the state for its late disclosure of the murder weapon and related materials?" *State* v. *Hargett*, 335 Conn. 952, 952–53, 238 A.3d 730 (2020).

edly made by an unidentified female bystander and (b) the victim's autopsy toxicology report. He argues that this evidence was admissible and relevant and that its exclusion violated his sixth amendment right to present a defense. Even assuming that the trial court improperly excluded this evidence, and that its exclusion violated the defendant's constitutional right to present his claim of self-defense, we conclude that this error was harmless beyond a reasonable doubt.

"A [criminal] defendant has a constitutional right to present a defense, but he is [nonetheless] bound by the rules of evidence in presenting a defense. . . . Although exclusionary rules of evidence cannot be applied mechanistically to deprive a defendant of his rights, the constitution does not require that a defendant be permitted to present every piece of evidence he wishes. . . . Accordingly, [i]f the proffered evidence is not relevant [or is otherwise inadmissible], the defendant's right to [present a defense] is not affected, and the evidence was properly excluded." (Internal quotation marks omitted.) *State* v. *Mark T.*, 339 Conn. 225, 231–32, 260 A.3d 402 (2021). If, however, the trial court improperly excluded the evidence, thereby depriving the defendant of his constitutional right to present his claim of self-defense, the state bears the burden of proving that the error was harmless beyond a reasonable doubt. See *State* v.*Osimanti*, 299 Conn. 1, 16, 6 A.3d 790 (2010).

A

The defendant first claims that the Appellate Court incorrectly concluded that the trial court had not abused its discretion by excluding as irrelevant and inadmissible hearsay McAllister's testimony that an unidentified woman told him prior to the shooting that the victim had assaulted or robbed her at knifepoint earlier in the day. We conclude that any error was harmless.

At trial,[6] defense counsel elicited from McAllister on cross-examination that, after the victim left the porch of the defendant's house, as McAllister was leaving the porch, an African American woman with purple hair approached him and was yelling. Although defense counsel never asked McAllister if the defendant was present when this unknown woman approached, McAllister did testify that the defendant remained on the porch until McAllister left the porch, at which time the defendant went inside his house. Because McAllister testified that the woman spoke to him as he was leaving the porch, it is unclear whether the defendant heard what she said or whether he already had gone inside his house. When defense counsel asked McAllister what the woman said to him, the prosecutor, with no further specificity, stated: "I'm going to object, Your Honor." The trial court, likewise with no specificity, sustained the objection.[7] In

[6] Prior to the start of evidence, the state filed a motion in limine to preclude the defendant from offering any testimony about the unidentified woman. The state argued that such testimony would amount to hearsay and that it was irrelevant and prejudicial and would lead to unfair character evidence as to the victim. Defense counsel responded that he intended to offer the statement as an excited utterance. The trial court reserved ruling on the motion, explaining that either it would wait to see how the evidence came in or that one of the parties could ask for an evidentiary hearing if they believed one was needed. Specifically, the court stated: "[W]hat I'm going to say to both sides is that you have to tell me if either of you are asking for any type of a hearing with regard to this particular motion."

[7] After trial, the court articulated that it had sustained the state's objection because defense counsel did not ask to be heard outside the presence of the jury or to make an offer of proof, and did not advance any argument that the statement came within one of the exceptions to the rule against hearsay or articulate the basis of its relevancy. Although it is not critical to our resolution of this issue, we point out that it was the state that had sought to preclude this evidence by way of a pretrial motion in limine. See footnote 6 of this opinion. The trial court deferred ruling on the motion, stating instead, "let's make sure that we come back to that," and directing *both* parties to bring to the court's attention the issue of how to approach testimony regarding the unknown woman's statement when the appropriate witness testified. Nevertheless, when the defendant asked McAllister what the unknown woman had said, the state merely posed a one sentence objection, which was not followed by a request to excuse the jury. The trial court responded with a one word ruling without waiting to hear the basis for the

response, defense counsel argued that he was not offering the statement for its truth but "just [to show] that she said it." The trial court, however, explained that "[j]ust the fact that somebody said something certainly doesn't warrant an exception to the hearsay rule."

Even if we assume that the trial court improperly excluded McAllister's testimony as to what the woman said, and that its exclusion implicated the defendant's constitutional right to present his claim of self-defense, we conclude that this error was harmless beyond a reasonable doubt. The defendant first argues that excluding this evidence was harmful because it was relevant to his intent. He argues that, because he was charged with murder, and the court, at the state's request, had given the jury an instruction on the lesser included offense of manslaughter in the first degree with a firearm, McAllister's testimony could have affected the verdict because the jury reasonably could have inferred that the defendant acted out of fear and with the intent to ensure that the victim left the neighborhood, not to kill the victim. Even if this evidence had been admitted, however, there was overwhelming circumstantial evidence of the defendant's specific intent to kill the victim. Specifically, the defendant retrieved a firearm from his home and then followed the victim, who had been walking away from him and evidently was leaving the neighborhood of his own accord. Then, rather than allowing the victim to leave the neighborhood, while the victim was standing still, the defendant shot at him at least twice, based on the number of shell casings and bullets the police recovered from the scene of the crime. This evidence belies any argument that the defendant was merely trying to scare the victim into leaving the neighborhood. The jury could not have reasonably inferred from this evidence that the defendant was merely attempting to

objection. This is not a practice we encourage. See *State* v. *Mark T.*, supra, 339 Conn. 267 n.9 (*Kahn*, *J.*, concurring in part and dissenting in part).

scare the victim away from the neighborhood. Rather, in light of the defendant's pursuit of the victim with a firearm and the firing of multiple shots at him, the only reasonable inference the jury could have made was that the defendant intended to kill the victim. Moreover, although the jury may have inferred from this testimony, had it been admitted, that the defendant feared the victim, which would have been relevant to the defendant's motive,[8] its probative value as to the defendant's specific intent at the time of the shooting is minimal. See *State* v. *Miller*, 186 Conn. 654, 666, 443 A.2d 906 (1982) (jury must find that defendant had "specific intent to cause serious physical injury to the victim *at the time of the discharge* of the gun," and, therefore, evidence of "motive at the time [the defendant] took possession of the gun . . . is not the time the jury must focus [on] in finding specific intent" (emphasis added)). Evidence that the defendant feared the victim provides little to no context as to why he shot at the victim multiple times.

The defendant further claims that the exclusion of the evidence was harmful because it affected his entitlement to an instruction on self-defense. Specifically, he argues that this testimony showed that he reasonably feared the victim and reasonably believed the victim to be armed and dangerous, allowing the jury to reasonably infer that the defendant acted out of fear of imminent violence from the victim. We will discuss this argument in detail in part II of this opinion, in which we conclude that, even if this evidence had been admitted, when considered in the light most favorable to the

[8] To the extent the defendant argues that the exclusion of this testimony was harmful because it was relevant to motive, we note, as we will discuss in part II of this opinion, that there was some evidence in the record that the defendant feared the victim. Additionally, exclusion of this evidence of motive was harmless beyond a reasonable doubt because its admission would not have affected the jury's finding of specific intent or whether the defendant was entitled to a self-defense instruction.

defendant, it would not have affected the verdict because the defendant failed to establish that he was entitled to an instruction on self-defense.

B

The defendant also claims that the Appellate Court incorrectly concluded that the trial court had not abused its discretion in excluding as irrelevant the toxicology report showing that the victim had PCP[9] in his system at the time of his death. He argues that the exclusion of this evidence was not harmless beyond a reasonable doubt because it corroborated McAllister's testimony about the victim's "frightening" behavior, from which the jury could infer that the defendant reasonably feared the victim, thereby supporting his claim of entitlement to an instruction on self-defense.

In its case-in-chief,[10] the state offered the testimony of Susan Williams, an associate medical examiner with the Office of the Chief Medical Examiner, who performed an autopsy of the victim's body. On cross-examination, defense counsel elicited from Williams that, as part of the autopsy, she sent a toxicology specimen to a laboratory for testing and received back a report, which became part of her autopsy report. When defense counsel asked Williams if the victim's toxicology report was made in the ordinary course of business, the state objected on the ground that she did not create the toxicology report. Outside the jury's presence, Williams testified that she did not conduct the toxicology test and that the results of the toxicology report had no impact on

[9] "Phencyclidine, a hallucinogen, is commonly referred to as PCP." *State* v. *Hargett*, supra, 196 Conn. App. 234 n.3.

[10] Prior to the start of evidence, the state filed a motion in limine to preclude the toxicology report, which showed that the victim had PCP in his system at the time of his death, on the grounds of irrelevance and undue prejudice. The trial court reserved its ruling, explaining that its ruling would be based on how the evidence came in during trial and ordering that the parties initially seek to introduce the report outside the presence of the jury.

her conclusions regarding the cause and manner of the victim's death.

Although the trial court indicated that the business record exception to the rule against hearsay might apply; see Conn. Code Evid. § 8-4; it determined that the toxicology report was irrelevant, as the presence of PCP in the victim's system had no bearing on Williams' conclusions.[11] Defense counsel responded by arguing that there already was evidence in the record that made the results of the toxicology report relevant—namely, McAllister's testimony that the victim "was just out of it" and "looked like he was high off something."[12]

Even if we assume that the trial court improperly excluded the toxicology report and that its exclusion implicated the defendant's constitutional right to present his claim of self-defense, we conclude that this error was harmless beyond a reasonable doubt. Specifically, this evidence would not have affected the verdict, because, as we will discuss in detail in part II of this opinion, although this evidence would have allowed the jury reasonably to infer that the defendant reasonably feared the victim, he failed to lay a sufficient foundation to show that he reasonably believed both that deadly force on the part of the victim was imminent and that it was necessary for him to use deadly force to prevent the victim from using force.

II

The defendant also claims that the Appellate Court incorrectly determined that the trial court had not vio-

[11] The trial court also ruled that hearsay commentary about the effects of PCP contained in the toxicology report was inadmissible without additional evidence. The defendant does not challenge this portion of the trial court's ruling.

[12] The defendant requested and was allowed to make another proffer, during which Williams testified that, although she was familiar with the effects of PCP, she could not say how the victim in the present case was acting at the time of his death based on the toxicology results. Williams explained that she would consider toxicology results only to determine

lated his right to due process by refusing to charge the jury on self-defense. He argues that the trial court incorrectly concluded that there was insufficient evidence to entitle him to a self-defense instruction by "(1) drawing inferences against the defense, (2) ignoring reasonable inferences that could be drawn in the defendant's favor, and (3) focusing on what the court believed a reasonable juror would do instead of what a reasonable juror could find on this record." We disagree.

The following additional facts, viewed in the light most favorable to the defendant, are relevant to this claim. The jury could have credited McAllister's testimony that, while McAllister, Romy, Kahdeem, and the defendant were talking on the porch of the defendant's home, the victim walked up to the porch, appearing to be "high." Specifically, the victim seemed "out of it" and was not interacting with the young men on the porch. McAllister thought this behavior was odd, but it did not make him fearful of the victim.[13] The victim then slowly reached into his pockets, which made McAllister nervous because he did not know if the victim had a weapon and thought that "[the] porch could've got[ten] shot up." As a result, McAllister, Romy, and Kahdeem went inside the defendant's house and closed the door behind them. The defendant remained on the porch. At some point, the victim grabbed a soda bottle that McAllister had set down on the porch and then left the area, walking toward Pearl Street. At no point during this interaction did the victim speak, brandish a weapon, or step onto the porch.

After the victim walked away from the defendant's house, McAllister began walking home in the same direction, and the defendant went into his home. McAllister

whether the amount of a narcotic in a person's system was significant enough to be the cause of death.

[13] Specifically, McAllister was asked if "the fact that he had this—that [the victim] appeared to be high, did that add to your fear?" McAllister responded: "No."

believed that the defendant intended to call the police. Instead, the defendant retrieved a wooden, sawed-off rifle and, shortly thereafter, caught up to McAllister and the group of young men. While walking next to the defendant, McAllister said to him: "[W]hatever you do, don't do this . . . don't do this like your life is on the line." Near McAllister's home, the victim turned around and "locked eyes" with the defendant. Although the defendant and the victim exchanged unknown words, the victim did not make any threats, reach into his pockets, or brandish any weapon. The defendant then fired the gun two or three times at the victim, who was standing still. McAllister, who was "in shock" when he saw the victim lying on the ground, then ran into his apartment with Romy and Kahdeem. The defendant fled the scene. No weapon was found on the victim's body.

As discussed previously, to bolster McAllister's testimony that the victim was "high," the defendant unsuccessfully sought to admit into evidence the toxicology report attached to the medical examiner's autopsy report, which showed that the victim had PCP in his system at the time of his death. See part I B of this opinion. Additionally, defense counsel unsuccessfully attempted to elicit testimony from McAllister that, as he was leaving the defendant's porch, he heard an unidentified woman state that the victim had robbed or assaulted her at knifepoint earlier that day. See part I A of this opinion.

Following evidence, defense counsel, via e-mail, requested that the trial court charge the jury on the defense of self-defense, although he provided no specific language.[14] Subsequently, on the record, defense

[14] After trial, defense counsel moved to rectify the trial court record to include a copy of his request to charge on self-defense. The trial court initially denied the motion, as the defendant never filed a request to charge. Subsequently, the defendant moved for review of the trial court's denial of his motion for rectification, which the Appellate Court granted. As a result, the record was rectified to include the e-mail defense counsel had sent to the trial court, in which he generally requested a charge on self-defense.

counsel contended that there was sufficient evidence to warrant a self-defense instruction, arguing that "there was evidence from . . . McAllister that [the defendant and the victim] locked eyes, and there appear[ed] to be some sort of exchange between the two and then, per [McAllister's] testimony, [the defendant] fired gunshots." The state objected, arguing that there was no evidence to warrant an instruction on self-defense. The trial court again agreed with the state and declined to issue the instruction, explaining that, "just the idea of locking eyes, without more, is not enough to at least make some level of a finding that self-defense has now become part of this case."

A review of the principles related to a defendant's claimed right to a self-defense instruction is useful at the outset of our discussion. Whether the defendant was entitled to a self-defense instruction is an issue of law, subject to plenary review. See, e.g., *State* v. *Lewis*, 245 Conn. 779, 809, 717 A.2d 1140 (1998). A defendant's due process right to a fair opportunity to establish a defense "includes proper jury instructions on the elements of self-defense so that the jury may ascertain whether the state has met its burden of proving beyond a reasonable doubt that the assault was not justified. See General Statutes § 53a-12 (a). . . . Thus, [i]f the defendant asserts [self-defense] and the evidence indicates the availability of that defense, such a charge is obligatory and the defendant is entitled, as a matter of law, to [an] . . . instruction [on self-defense]. . . .

"Under our Penal Code[15] . . . a defendant has no burden of persuasion for a claim of self-defense; he

[15] "The [defense] of self-defense . . . [is] codified [at General Statutes] § 53a-19 (a), which provides in relevant part: [A] person is justified in using reasonable physical force upon another person to defend himself . . . from what he reasonably believes to be the use or imminent use of physical force, and he may use such degree of force which he reasonably believes to be necessary for such purpose; except that deadly physical force may not be used unless the actor reasonably believes that such other person is (1) using or about to use deadly physical force, or (2) inflicting or about to inflict

has only a burden of production. That is, he merely is required to introduce sufficient evidence . . . [if credited by the jury] to raise a reasonable doubt in the mind of a rational juror as to whether the defendant acted in self-defense. . . . This burden is slight, however, and may be satisfied if there is any foundation in the evidence [for the defendant's claim], no matter how weak or incredible . . . .

"An instruction on a legally recognized theory of defense, however, is warranted only if the evidence indicates the availability of that defense. . . . The trial court should not submit an issue to the jury that is unsupported by the facts in evidence. . . .

"[T]o submit a [self-defense] defense to the jury, a defendant must introduce evidence that the defendant reasonably believed [the attacker's] unlawful violence to be imminent or immediate. . . . Under [General Statutes] § 53a-19 (a), a person can, under appropriate circumstances, justifiably exercise repeated deadly force if he reasonably believes both that [the] attacker is using or about to use deadly force against [himself] and that deadly force is necessary to repel such attack. . . . The Connecticut test for the degree of force in self-defense . . . is a subjective-objective one. The jury must view the situation from the perspective of the defendant. Section 53a-19 (a) requires, however, that the defendant's belief ultimately must be found to be reasonable. . . . [I]n reviewing the trial court's rejection of [a] defendant's request for a jury charge on [self-defense], we . . . adopt the version of the facts most favorable to the defendant which the evidence would reasonably support." (Citations omitted; footnote added; footnote omitted; internal quotation marks omitted.) *State* v. *Bryan*, 307 Conn. 823, 832–36, 60 A.3d 246 (2013).

great bodily harm." (Internal quotation marks omitted.) *State* v. *Bryan*, 307 Conn. 823, 832, 60 A.3d 246 (2013).

As to whether the defendant had a reasonable belief that the attacker was using or was about to use deadly force, it is not enough for a defendant to fear the victim to entitle him to an instruction on self-defense. Rather, "a defendant must introduce evidence that the defendant reasonably believed his adversary's unlawful violence to be 'imminent' . . . ." *State* v. *Carter*, 232 Conn. 537, 545–46, 656 A.2d 657 (1995). Evidence of imminent violence "must be such that the jury must not have to resort to speculation in order to find that the defendant acted in justifiable self-defense." *State* v. *Lewis*, supra, 245 Conn. 811.

As to the whether the defendant had a reasonable belief that deadly force was necessary to repel the attacker's use of deadly force, there are "two essential parts [to this] necessity requirement," which are that "force should be permitted only (1) when necessary and (2) to the extent necessary. The actor should not be permitted to use force when such force would be equally as effective at a later time and the actor suffers no harm or risk by waiting." (Internal quotation marks omitted.) *State* v. *Bryan*, supra, 307 Conn. 833. For example, if the only evidence in the record shows that the victim was fleeing at the time the defendant used deadly force, then a self-defense instruction is unnecessary because the record could not support a finding that it was objectively reasonable for the defendant to have believed both that the victim was about to use deadly physical force and that it was necessary for the defendant to use deadly force to prevent such conduct. See *State* v. *Erickson*, 297 Conn. 164, 197, 997 A.2d 480 (2010); *State* v. *Anderson*, 201 Conn. App. 21, 36–38, 241 A.3d 517, cert. denied, 335 Conn. 984, 242 A.3d 105 (2020). "[T]he defense of self-defense does not encompass a preemptive strike . . . ." (Citation omitted; internal quotation marks omitted.) *State* v. *Jones*, 320 Conn. 22, 54, 128 A.3d 431 (2015).

In several cases, this court has upheld the trial court's refusal to give a self-defense instruction when, despite evidence of the defendant's fear of the victim, the record contained no evidence that deadly force by the victim was imminent or that deadly force was necessary to repel an imminent attack by the victim. For example, in *State* v. *Lewis*, 220 Conn. 602, 617–20, 600 A.2d 1330 (1991), the defendant shot and killed the victim and posited a defense of self-defense. At trial, there was testimony that the defendant feared the victim, whom he believed to be a dangerous drug dealer, and that he killed the victim because he thought the victim would have killed him at some future point. Id., 619–20. This court explained that this "evidence, if credited, would have allowed the jury to believe that the defendant feared for his life." Id., 620. This evidence, however, did not establish that, at the time of the shooting, it was reasonable for the defendant "to believe that the victim was about to use deadly physical force or inflict great bodily harm, and that it was necessary to kill the victim to prevent such conduct." Id. Rather, this court described the defendant's actions as "a preemptive strike," which the defense of self-defense does not encompass. Id.

Similarly, in *State* v. *Bryan*, supra, 307 Conn. 832–39, the defendant stabbed the victim and claimed self-defense and defense of others, the latter of which is governed by the same legal principles as those applicable to a claim of self-defense.[16] Construing the facts in the light most favorable to the defendant, we determined that the jury reasonably could have concluded that the victim was a violent person who previously had threatened the defendant. See id., 836. The defendant was aware of this violent history, feared the victim, and believed that he was a threat. Id. However, there

[16] The defendant in the present case did not raise the defense of defense of others.

was no evidence in the record that, "at the time [the defendant] stabbed the victim, it was objectively reasonable for him to believe that it was necessary to do so in order to defend" his girlfriend, who was with him. (Emphasis omitted.) Id., 836–37. Specifically, the evidence showed that, although there was a brief struggle between the defendant, his girlfriend and the victim, at the time of the shooting, the victim was running away, in the opposite direction from the defendant and his girlfriend. Id., 837–38. Based on the record, this court concluded that no evidence permitted a reasonable jury to infer, without resorting to speculation, that the victim was "using or about to use deadly physical force" against the defendant's girlfriend. (Internal quotation marks omitted.) Id., 838. As a result, we held that the trial court properly declined to instruct the jury on defense of others. See id., 839.

We now turn to the present case. We conclude that the trial court properly declined to instruct the jury on self-defense. Adopting the version of the facts most favorable to the defendant, including evidence the trial court arguably excluded erroneously, we have little trouble determining that the record evidence, if credited, would have sufficed for a reasonable jury to conclude that he feared the victim and believed he was armed with a knife.[17]

[17] We agree with the defendant that there was more evidence in the record from which the jury could infer that he feared the victim than the fact that he and the victim "locked" eyes. Specifically, the jury could have credited McAllister's testimony that, when the victim approached the defendant's porch, the victim's act of putting his hands into his pockets as he acted "out of it" and "looked like he was high" made McAllister nervous. From this testimony, which would have been corroborated by the results of the toxicology report, assuming the report had been admitted, the jury could have inferred that the defendant likewise was fearful of the victim at that moment based on his demeanor and conduct. Although the jury could have inferred that the defendant did not fear the victim when the victim approached the porch because the defendant remained on the porch and did not flee inside the house, as McAllister did, considering this testimony in the light most favorable to the defendant, the jury also could have inferred

Evidence of fear alone, however, is insufficient to entitle the defendant to an instruction on self-defense because there was no evidence from which a reasonable jury could find that it was objectively reasonable for him to have believed both that the victim was using or about to use deadly force and that it was necessary for the defendant to use deadly force to prevent the victim from using that force. In the moments leading up to the shooting, the victim was walking away from the defendant. Although it is not clear why the victim eventually turned around, "lock[ing] eyes" with the defendant and exchanging unknown words, there is no evidence that the victim threatened the defendant, acted aggressively, reached for a weapon, or brandished a weapon. Rather, the evidence in the record shows only that the victim stood still as the defendant shot at him. The fact that the defendant believed that the victim had a knife by itself does not suffice to show that the victim was imminently going to use it. Nor does the victim's alleged possession of a knife, while standing still and not acting aggressively, provide any foundation to show that the defendant reasonably believed that he needed to use a gun to prevent the victim from using the knife.

The defendant contends, however, that McAllister's testimony that he told the defendant, "your life is on the line," was evidence of the defendant's belief that the victim posed an imminent threat to his life. Although the jury could have inferred this testimony to mean that the defendant and McAllister subjectively believed that

from this same evidence that the defendant was fearful. This favorable inference is supported by McAllister's testimony that, after the victim walked away from the porch, the defendant went into his house and then came out with a firearm, from which the jury could have inferred that the defendant believed the victim presented a threat. The jury also could have credited McAllister's testimony, if it had been admitted, that an unknown woman told him that the victim had robbed or assaulted her at knifepoint earlier in the day. Even if we assume that the defendant likewise heard this statement, the jury reasonably could have inferred that it bolstered the defendant's fear of the victim and led him to believe that the victim had a knife.

the victim presented an imminent threat,[18] to be entitled to an instruction on self-defense, the defendant had to provide a foundation that the defendant also *reasonably believed* that the victim presented an *imminent threat* of deadly physical force. As discussed, at the time of the shooting, there was no such evidence. McAllister's statement to the defendant does not establish even the slightest possibility that, had the defendant waited and not fired at the victim or, more appropriately, decided not to follow the victim or retreated, he would have suffered any harm or risk of harm. No evidence in the record would allow the jury to reasonably infer anything other than that the defendant acted preemptively, which the defense of self-defense does not encompass. Accordingly, reviewing the facts in the light most favorable to the defendant and even assuming that the trial court should have admitted the unidentified woman's statement and the results of the toxicology report, we conclude that the defendant failed to meet his burden of production to establish a foundation for the jury to infer that it was objectively reasonable for him to believe it was necessary to shoot the victim to defend himself from imminent deadly force. Therefore, the Appellate Court correctly held that the defendant was not entitled to an instruction on self-defense.

III

Finally, the defendant challenges the Appellate Court's conclusion that the trial court did not abuse its discretion in declining to sanction the state for its late disclosure of the murder weapon and related expert reports. He argues that the late disclosure was caused by the state's "egregious lack of diligence" and deprived him of his right to adequately prepare his defense. Specifi-

[18] The jury, however, also reasonably could have inferred this testimony to mean that McAllister was warning the defendant that his intention to shoot the victim could ruin the defendant's life if he were arrested and charged with murder.

cally, the defendant contends that, because he had invoked his right to a speedy trial; see U.S. Const., amend. VI; General Statutes § 54-82m; the only appropriate remedy was either exclusion of the evidence or dismissal of the murder charge, and the trial court's offer of a continuance to temper any prejudice improperly forced him to choose between his constitutional right to a speedy trial and his constitutional right to prepare his defense.

On the record before us, we cannot agree that the trial court abused its discretion. But, the issue is a close one. In our view, the trial court did the best it could with a situation created by governmental mistake, indifference, or ineptitude, and we caution the state that it must be more diligent in complying with its obligation to disclose evidence timely, and we admonish trial courts to enforce this obligation.

The following facts are relevant to the defendant's claim. At the defendant's arraignment on October 14, 2014, the court appointed a public defender to represent him. On March 11, 2015, the defendant requested that the state disclose any tangible objects, documents, and reports or statements of experts, including the results of physical examinations or scientific tests that the state intended to offer into evidence during its case-in-chief or that were material to the defendant's case. The court placed the case on the trial list on September 29, 2015. New counsel appeared for the defendant on October 24, 2016, and filed a motion for a speedy trial on February 21, 2017. The court granted the speedy trial motion, and jury selection began on February 27, 2017. Jurors were informed that evidence would begin on March 20, 2017.

When jury selection began, the state already had timely disclosed Marshall Robinson, a firearms expert whom it intended to call as a witness at trial. At that time, the state disclosed only that Robinson would tes-

tify regarding a report he created in which he concluded that both .22 caliber shell casings recovered from the crime scene in the present case had been fired by the same gun.[19] At the time Robinson created the report in October, 2014, the murder weapon had not yet been discovered and, thus, was not examined by Robinson.

On March 7, 2017, in the midst of jury selection, the state filed a supplemental notice of disclosure regarding what it claimed was newly discovered evidence: namely, the murder weapon, a sawed-off rifle that recently had been recovered. In fact, the Bridgeport police had seized the gun in connection with an unrelated robbery that occurred in December, 2014. Robinson examined the weapon from that robbery in December, 2014, and realized that it might be associated with the present case, leading him to also examine the weapon in relation to this case. The defendant in the robbery case pleaded guilty to the charge against him and was sentenced in 2015. Although that case and the defendant's case were not handled by the same prosecutor, both were handled by the same state's attorney's office. Therefore, presumably, that state's attorney's office had knowledge of the information concerning the weapon, but the defendant's file and the other file had not been in any way cross-referenced.

In addition to disclosing the murder weapon, the state also supplemented its March 7, 2017 disclosure with two reports generated as a result of Robinson's exami-

[19] In his original report, Robinson stated that the shell casings recovered at the scene of the crime were nine millimeter casings. He amended his report on the eve of trial to state that they were .22 caliber casings. Robinson testified that his field notes indicated that the casings recovered from the crime scene were .22 caliber casings and that the error in his report was a scrivener's error. The trial court ruled that the amendment to Robinson's original report did not constitute a late disclosure of evidence but, rather, an amendment to correct a scrivener's error and that defense counsel could address the timing of this amendment on cross-examination of Robinson, which he did.

nation of the murder weapon in December, 2014. Despite Robinson's having realized the connection between the weapon and the present case, and his creation of these reports in December, 2014, the reports never were included in the defendant's file, and the prosecutor in the present case was not personally aware of them until March 7, 2017.[20] In these untimely disclosed supplemental reports, Robinson classified the recovered gun as a Marlin model 980 caliber .22 long rifle and concluded that the two .22 caliber shell casings recovered from the crime scene had been fired from this rifle. On March 9, 2017, Robinson further supplemented the untimely disclosed reports by including his conclusions that one of the bullets recovered from the victim's body was fired from the rifle but that he was unable to determine if another bullet fragment recovered from the victim's body had been fired from this rifle.

Defense counsel objected to the late disclosure, stating that he had not had sufficient time to review the new evidence and had concerns regarding prejudice to the defendant, especially as he alleged that the police had possession of the gun for more than two years. The prosecutor clarified that she did not have this evidence in her file regarding the defendant until that morning and disclosed it as soon as she was aware of it. Defense counsel requested time to review everything and to be heard at a later date. The trial court ordered the state to make Robinson available to the defense in an "expedited fashion" and to make the weapon available for review by the defense.

On March 13, 2017, the defendant filed a motion for sanctions, arguing that, regardless of the prosecutor's personal knowledge, the state was aware of the gun's existence for more than two years and that the late disclosure prejudiced him by preventing him from inspect-

[20] The record does not reveal where these untimely disclosed reports were kept prior to March 7, 2017.

ing and/or testing the gun during pretrial discussions and by denying him adequate time to properly prepare his defense by the March 20, 2017 trial date. He further argued that a continuance was not a proper remedy because it would force him to choose between his constitutional right to a speedy trial and his constitutional right to prepare a defense. Thus, the defendant requested either dismissal of the murder charge or the exclusion of the gun and associated reports from evidence. The state responded that the defendant had suffered no prejudice from the late disclosure because, in the ten days since the disclosure, he had taken no steps to prepare his defense, including consulting with Robinson, attempting to retain and consult with his own expert, or inspecting the gun.

The court ruled that, although the state's disclosure of the gun was clearly late and that the state's attorney's office and the Bridgeport Police Department clearly had not employed the "best practice" to ensure compliance with discovery requirements in both files, the court found "no evidence of bad faith." Addressing the appropriate remedy for the late disclosure, the court also did not find sufficient prejudice to justify either dismissal of the murder charge or exclusion of the evidence.[21] Specifically, the court noted that it had been ten days since the untimely disclosure and that it had offered the defendant the opportunity to speak with Robinson, inspect the gun, request a continuance, and retain its own firearms expert. The court found that the defendant chose not to avail himself of any of these options.[22]

[21] The court explained that it considered "the prejudice that has resulted by way of this late disclosure to the defense, the amount that it would affect the . . . ability [of the defense] to form a proper defense to participate in the plea negotiations, to acquire expert testimony, to have any examination of their own with regard to any of these items and the extent to which it would affect the . . . ability [of the defense] to really decide a strategy and a defense for the trial itself."

[22] The prosecutor represented that defense counsel had responded, "what's the point," when the state offered to have Robinson speak with him.

The court found that, "at this juncture, there is no evidence that the late disclosure has provided such prejudice to the defense or to the accumulation of [its] ability to try this case or form a proper defense for purposes of trial such as to warrant a granting of a motion to dismiss or a granting of a motion to exclude, in total, the evidence." However, because the gun and associated reports were not disclosed at the time of plea negotiations, the trial court found that the late disclosure had prejudiced the defendant with respect to plea negotiations, stating that it would allow him to "go back and participate in any plea negotiations," if he so requested.

At trial, Robinson testified that both .22 caliber shell casings the police found at the crime scene were fired from the Marlin .22 caliber sawed-off rifle that the state entered into evidence. He also testified that the bullet recovered from the victim's body was fired from this same rifle but that the bullet fragment recovered from the victim's body was too damaged for him to conclude that it also was fired from this rifle. He further testified that portions of the firearm, including the barrel, buttstock, and forearm, had been altered and/or sawed off. He testified that the tool marks on the barrel of the gun could have been made by the file found in the defendant's bedroom or "another one like it."

Following the verdict, the defendant moved for a new trial on the ground that the state's late disclosure and the court's failure to exclude the gun and associated reports deprived him of his right to prepare a defense. The court denied the motion.

Recently, in *State* v. *Jackson*, 334 Conn. 793, 224 A.3d 886 (2020), this court detailed the relevant standard of review and legal principles applicable in determining whether the trial court had imposed an appropriate sanction for the state's late disclosure of evidence: "Practice Book § 40-11 (a) (3) [requires that] upon writ-

ten request by a defendant, the state shall disclose any reports or statements of experts made in connection with the offense charged including results of . . . scientific tests, experiments or comparisons which are material to the preparation of the defense or are intended for use by the prosecuting authority as evidence in chief at the trial . . . . The state has a continuing duty to disclose such documents, and, if there is a failure to comply with disclosure, the trial court must take appropriate action, including the imposition of an appropriate sanction. . . .

"Practice Book § 40-5 [grants] broad discretion to the trial judge to fashion an appropriate remedy for noncompliance with discovery. . . . The court may enter such orders as it deems appropriate, including . . . (2) [g]ranting the moving party additional time or a continuance . . . (4) [p]rohibiting the noncomplying party from introducing specified evidence . . . (5) [d]eclaring a mistrial . . . [or] (8) [e]ntering such other order as it deems proper. Practice Book § 40-5. [T]he primary purpose of a sanction for violation of a discovery order is to ensure that the defendant's rights are protected, not to exact punishment on the state for its allegedly improper conduct. As we have indicated, the formulation of an appropriate sanction is a matter within the sound discretion of the trial court. . . . In determining what sanction is appropriate for failure to comply with [court-ordered] discovery, the trial court should consider the reason why disclosure was not made, the extent of prejudice, if any, to the opposing party, the feasibility of rectifying that prejudice by a continuance, and any other relevant circumstances. . . . As with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue is whether the trial court could reasonably conclude as it did. . . . In general, abuse of discretion exists when a court could have chosen different alternatives but has decided the matter

so arbitrarily as to vitiate logic, or has decided it based on improper or irrelevant factors." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *State* v. *Jackson*, supra, 334 Conn. 810–11.

In *Jackson*, the state untimely disclosed an expert in cell site location information seven days before the start of evidence, despite knowing for at least two months that it anticipated calling the expert to testify. Id., 812–13. Although it found the delay avoidable, the trial court denied the defendant's request for a six week continuance, without considering a shorter continuance. Id., 809, 813. On appeal, this court agreed with the trial court that the delay was avoidable: "The state's failure to prepare for trial in a timely fashion is not a valid reason for a late disclosure of an expert witness to the defense." Id., 813. We concluded that the trial court abused its discretion, however, in failing to afford the defendant a reasonable continuance to obtain his own expert, although not necessarily six weeks long. See id., 816. In so holding, we noted that "[a] continuance is ordinarily the proper method for dealing with a late disclosure. . . . A continuance serves to minimize the possibly prejudicial effect of a late disclosure . . . ." (Internal quotation marks omitted.) Id., 815. By comparison, we have classified a defendant's request for suppression of the evidence, dismissal of all charges, or a mistrial as "severe sanction[s] which should not be invoked lightly." (Internal quotation marks omitted.) *State* v. *Festo*, 181 Conn. 254, 265, 435 A.2d 38 (1980).

Consistent with these principles, in prior cases involving untimely disclosed evidence, if the trial court offered the defendant a continuance but denied a request for suppression and/or dismissal, our appellate courts have concluded that the trial court did not abuse its discretion "by affording the defendants more time to examine and analyze the evidence in lieu of granting their motions for a mistrial and motions for suppression of evidence,"

especially if the state did not act in bad faith. Id., 266; see also *State* v. *Troupe*, 237 Conn. 284, 312, 677 A.2d 917 (1996) (trial court did not abuse its discretion when it denied suppression of untimely disclosed evidence but granted continuance); *State* v. *Beaulieu*, 118 Conn. App. 1, 7–9, 982 A.2d 245 (defendant did not demonstrate prejudice when he did not accept court's offer of additional time to investigate two witnesses), cert. denied, 294 Conn. 921, 984 A.2d 68 (2009). Although a continuance may not always be a sufficient remedy for the untimely disclosure of evidence, suppression of the evidence, dismissal of all charges, or a mistrial is a severe sanction that courts should invoke only when absolutely necessary.

In the present case, however, the defendant argues primarily that, although the trial court offered him a continuance and he declined, he nonetheless suffered significant prejudice because he had filed a speedy trial motion, which the court granted. The trial court's offer, he contends, required him to choose between his right to a speedy trial, which a continuance would have delayed, and his right to present a defense, which would have been hindered without a continuance. As a result, he argues, the only proper remedy for the untimely disclosure was either suppression of the gun, expert reports, and expert testimony or dismissal of the murder charge.

We have recognized that "[a] defendant in a criminal proceeding is entitled to certain rights and protections [that] derive from a variety of sources. He is entitled to all of them; he cannot be forced to barter one for another. When the exercise of one right is made contingent [on] the forbearance of another, both rights are corrupted." (Internal quotation marks omitted.) *State* v. *Francis*, 317 Conn. 450, 466, 118 A.3d 529 (2015). When two separate constitutional rights "are not mutually exclusive and vindicate different interests, we find it intolerable that one constitutional right should have

to be surrendered in order to assert another." (Internal quotation marks omitted.) *State* v. *Wang*, 312 Conn. 222, 239, 92 A.3d 220 (2014).

We are aware of no case law from this court or any federal courts holding that the fundamental protections of due process and the right to a speedy trial are mutually exclusive. Rather, in the context of late disclosure of evidence, this court has held that a trial court does not abuse its discretion by granting a continuance rather than excluding the untimely disclosed evidence unless the defendant shows that his federal constitutional right to a speedy trial was actually violated.[23] See, e.g., *State*

[23] The defendant cites four cases from other states to support his argument that untimely disclosure of evidence after the trial court has granted a defendant's motion for a speedy trial necessarily requires suppression of the evidence or a mistrial because the offer of a continuance improperly forces the defendant to choose between his right to a speedy trial and his right to present a defense. Two of these cases, however, do not stand for that proposition. Rather, these cases hold that a defendant does not waive his right to a speedy trial if he consents to or requests a continuance as a result of the state's untimely disclosure of evidence. See *Feast* v. *State*, 126 So. 3d 1168, 1169–70 (Fla. App. 2012); *Dillard* v. *State*, 102 N.E.3d 310, 312–13 (Ind. App. 2018). In those cases, the applicable rules of practice required the defendant's trial to begin within a certain time frame, otherwise the defendant would waive his right to a speedy trial, and the issue before the appellate courts was whether the defendant's agreement to or request for a continuance as a remedy for the state's late disclosure of evidence tolled the waiver of this right. These courts answered this question in the affirmative.

As to the third case, *State* v. *Brooks*, 149 Wn. App. 373, 392–93, 203 P.3d 397 (2009), the court did hold that a continuance was not an adequate remedy based on the specific facts of that case, in which the court described the state's actions as "a total failure to provide [any] discovery in a timely fashion . . . ." (Internal quotation marks omitted.) Id., 388. That case, however, does not hold that any time a defendant has invoked his right to a speedy trial, a continuance is an inadequate remedy for the state's late disclosure of evidence.

As to the fourth case, *Jimenez* v. *Chavez*, 234 Ariz. 448, 453, 323 P.3d 731 (App. 2014), the court held that a continuance was not an appropriate remedy when the continuance would have meant that the defendant was required to waive his right to a speedy trial under Arizona's rules of practice, which required a defendant in custody to be tried within 150 days of arraignment. As we discuss in this opinion, the defendant in the present case could have

v. *Troupe*, supra, 237 Conn. 313 ("[T]he defendant has not demonstrated any prejudice flowing from the late disclosure of the report, with respect to either his speedy trial rights or his ability to present a defense. Accordingly, the defendant has not satisfied his burden of establishing that the trial court improperly failed to prohibit the state from introducing the test results." (Footnote omitted.)). In the present case, because the defendant declined the trial court's offer of a continuance, we must determine whether a reasonable continuance, if accepted by the defendant, would have violated his right to a speedy trial.

"In *Barker* v. *Wingo*, [407 U.S. 514, 530, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972)], the United States Supreme Court adopted a four factor balancing test to determine whether a defendant's speedy trial right has been violated." *State* v. *Smith*, 289 Conn. 598, 612 n.17, 960 A.2d 993 (2008). The court explained that "the determination of whether such rights have been violated requires a case-by-case approach in which the court examines the [relevant] factual circumstances [including] . . . [the] [l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." (Internal quotation marks omitted.) Id., 613. "[T]he question of whether the defendant's claims of injury to his defense constitute sufficient prejudice to establish a denial of the right to a speedy trial can only be answered after examining the other factors in the case. Greater specificity and harm must be shown [when] the other factors weigh in the state's favor, while a lesser showing will constitute sufficient prejudice when the other facts support a defendant's argument." *State* v. *L'Heureux*, 166 Conn. 312, 319, 348 A.2d 578 (1974).

The defendant's argument in the present case implicates the third *Barker* factor, the defendant's assertion

received a continuance without waiving his right to a speedy trial under our court rules.

of his right to a speedy trial. Our appellate courts have analyzed this factor in light of a defendant's statutory right to a speedy trial. Specifically, a defendant's claim that his right to a speedy trial has been violated is weaker if he failed to assert his statutory right to a speedy trial. See *State* v. *Lacks*, 58 Conn. App. 412, 419, 755 A.2d 254, cert. denied, 254 Conn. 919, 759 A.2d 1026 (2000); see also *State* v. *Rosario*, 118 Conn. App. 389, 399–400, 984 A.2d 98 (2009), cert. denied, 295 Conn. 903, 988 A.2d 879 (2010). Even if a defendant asserts this right, however, such assertion "is afforded little weight in the *Barker* balancing test" if trial commences within the statutorily provided time period. Id. In Connecticut, the defendant's statutory right to a speedy trial is codified at § 54-82m[24] and Practice Book § 43-41,[25] which provide that, if the defendant's trial does

[24] General Statutes § 54-82m provides: "In accordance with the provisions of section 51-14, the judges of the Superior Court shall make such rules as they deem necessary to provide a procedure to assure a speedy trial for any person charged with a criminal offense on or after July 1, 1985. Such rules shall provide that (1) in any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of a criminal offense shall commence within twelve months from the filing date of the information or indictment or from the date of the arrest, whichever is later, except that when such defendant is incarcerated in a correctional institution of this state pending such trial and is not subject to the provisions of section 54-82c, the trial of such defendant shall commence within eight months from the filing date of the information or indictment or from the date of arrest, whichever is later; and (2) if a defendant is not brought to trial within the time limit set forth in subdivision (1) of this section and a trial is not commenced within thirty days of a motion for a speedy trial made by the defendant at any time after such time limit has passed, the information or indictment shall be dismissed. Such rules shall include provisions to identify periods of delay caused by the action of the defendant, or the defendant's inability to stand trial, to be excluded in computing the time limits set forth in subdivision (1) of this section."

[25] Practice Book § 43-41 provides: "If the defendant is not brought to trial within the applicable time limit set forth in Sections 43-39 and 43-40, and, absent good cause shown, a trial is not commenced within thirty days of the filing of a motion for speedy trial by the defendant at any time after such time limit has passed, the information shall be dismissed with prejudice, on motion of the defendant filed after the expiration of such thirty day

not begin within twelve months from the filing of the information or from the date of his arrest, whichever is later, he may file a motion for a speedy trial. If, in the absence of "good cause shown, a trial is not commenced within thirty days of the filing of a motion for speedy trial by the defendant at any time after such time limit has passed, the information shall be dismissed with prejudice, on motion of the defendant filed after the expiration of such thirty day period." Practice Book § 43-41. Commencement of a trial is defined as "the commencement of the voir dire examination in jury cases and the swearing-in of the first witness in nonjury cases." Practice Book § 43-42. Thus, if, pursuant to a defendant's state law guarantees; see General Statutes § 54-82m; Practice Book § 43-41; trial commences within thirty days of his filing of a motion for a speedy trial, the defendant's constitutional claim is of little merit.

In the present case, the defendant filed his speedy trial motion on February 21, 2017. Under § 54-82m and Practice Book § 43-41, he therefore was entitled to a trial that commenced—defined as the beginning of jury selection—by March 23, 2017. Jury selection in fact began on February 27, 2017, well within the time period outlined by § 54-82m and Practice Book § 43-41. On March 7, 2017, in the midst of jury selection, the state untimely disclosed the evidence at issue. Jury selection ended on March 17, 2017, the same day the court heard oral argument on the defendant's motion for sanctions. After the defendant declined the trial court's offer of a continuance, evidence began on March 20, 2017.

The defendant argues that the trial court and the Appellate Court incorrectly focused on the ten day time

period. For the purpose of this section, good cause consists of any one of the reasons for delay set forth in Section 43-40. When good cause for delay exists, the trial shall commence as soon as is reasonably possible. Failure of the defendant to file a motion to dismiss prior to the commencement of trial shall constitute a waiver of the right to dismissal under these rules."

period between the state's disclosure and oral argument on his motion for sanctions, arguing that this period of time was insufficient to prepare his defense—including time to speak with Robinson, inspect the gun, and to retain and meet with his own expert—all while continuing to participate in jury selection. We agree with the defendant that it was inappropriate to expect him to prepare a response to the untimely disclosure of a firearm and associated expert reports during those ten days, all while jury selection continued. Turning the government's failure—including the mistakes by the prosecutor's office and the police—into the defendant's problem, and thereby saddling his counsel with an additional burden while picking a jury and preparing for trial, is not a remedy for the untimely disclosure of expert evidence. Nor is it a satisfactory response to this government created dilemma that defense counsel did not even try to speak to Robinson under these circumstances. Like any trial lawyer, counsel had to make judgments, whether they are called "tactical" or by some other name, about how to spend the precious days and hours before trial, and it is hardly fair—and not helpful to our analysis—to criticize counsel for failing to take steps to manifest or mitigate harm created by the errors of a variety of state actors.

The defendant's argument, however, has failed to establish that a reasonable continuance of two weeks would have caused his trial to begin beyond the statutory deadline, even if jury selection had to be paused or to begin anew. At the time of the state's disclosure, March 7, 2017, the defendant could have requested a two week continuance and still have had jury selection recommence, or begin anew, by March 21, 2017, within the statutory deadline. Additionally, the defendant has not shown that two weeks would have been insufficient time for him to speak with Robinson, inspect the gun, attempt to obtain an expert, or otherwise prepare a

response to the new evidence. This is especially so in light of the fact that the defendant has presented no argument, other than general speculation, regarding how the untimely disclosed evidence altered his theory of defense, particularly regarding the shooter's identity. Although we are not holding that two weeks necessarily constitutes a reasonable continuance in all cases, in the present case, because the firearms evidence was not central to the state's case or to the defense, the defendant has failed to establish that he could not have received a reasonable continuance without jeopardizing his statutory right to a speedy trial. As a result, "it [is] difficult for the defendant to prove that he was denied a speedy trial." *State* v. *Lacks*, supra, 58 Conn. App. 419.[26] Consequently, the third *Barker* factor does not weigh in favor of the defendant's claim.

Implicating the second *Barker* factor, the defendant also argues that a continuance was an inadequate remedy because the state's untimely disclosure was the result of "an egregious lack of diligence," although he does not contest the trial court's finding that the state did not act in bad faith. The defendant argues that the prosecutor in the present case should have been aware of this evidence two years before trial because the prosecutor's office was aware of the gun's existence and the Bridgeport police (also a state actor) possessed the gun.

We cannot disagree with the defendant that the state's actions lacked due diligence and that, if the appropriate state actors had acted with due diligence, the evidence would have been disclosed sooner. Although the prose-

[26] Given the extraordinary nature of that remedy, we decline the defendant's request to exercise our supervisory authority over the administration of justice to create a rule requiring either exclusion of evidence or dismissal of all charges when the state untimely discloses evidence after a defendant has invoked his right to a speedy trial. See, e.g., *Halladay* v. *Commissioner of Correction*, 340 Conn. 52, 67 n.9, 262 A.3d 823 (2021).

cutor in this case clearly was not aware of the evidence, it was the combined actions of several state actors—the police, the prosecutor in this case, and the prosecutor in the unrelated robbery case—that caused the late disclosure.[27] And yet, as is too often the case, any consequences for the late disclosure fell on the defendant, with the state suffering little for its own neglect.

Nevertheless, considering all relevant facts, including the trial court's undisputed finding of a lack of bad faith, the trial court's offer of both a continuance and the continuation of plea bargaining, and the possibility that the defendant could have received a reasonable continuance without hindering his right to a speedy trial, we conclude that the defendant has failed to establish that his right to a speedy trial would have been violated if he had accepted the trial court's offer of a reasonable continuance. The weight of these same factors also shows that exclusion of the evidence or dismissal of the murder charge was not the only appropriate remedy for the state's late disclosure. As a result, we cannot disagree with the Appellate Court that the trial court did not abuse its discretion in declining to exclude the evidence or to dismiss the murder charge.

Our conclusion should not be cause for self-satisfaction on the part of the state, however. In particular, although we conclude that the trial court did not abuse its discretion, the state should note well that the trial

[27] Although the defendant argues that we should impute to the prosecutor in this case the awareness of this evidence by the police for two years, he does not provide any case law or analysis in support of his argument. Thus, we do not consider this argument. Nevertheless, we note that the police and the prosecutor regularly work together in criminal cases. Additionally, in the present case, another prosecutor in the state's attorney's office clearly was aware of this evidence at some point in the unrelated robbery case. It is clear that the combined actions of multiple state actors caused the late disclosure. Regardless of whether the knowledge of the police may be imputed to the prosecutor's office, we caution all state actors that they must be diligent in their disclosure of discoverable materials in criminal cases.

court also likely would have been well within its discretion to *deny* the admission of the weapon and accompanying reports. This is especially so considering that the state was quite apparently ready to go to trial without the weapon, and the record of what precisely went awry in this case is not clear. For example, we do not know on this record the procedures in place and the technology available to the state and local police that would have enabled them to avoid what took place with the untimely disclosed evidence and to comply with their obligations.

But, we are many years removed from a time when governmental actors, sometimes (but not always) without all the resources of the private sector or some larger governmental entities, are resigned to rely on primitive tickler systems, handwritten notes, or an individual employee's memory to comply with discovery obligations. This cannot have been the only time in recent history when evidence—tangible or written—was relevant or necessary to two prosecutions, even unrelated prosecutions. A particular prosecutor's or staff person's negligence in failing either to ask for or to forward the evidence at issue can simply no longer constitute an acceptable excuse for the state's lack of compliance with its discovery obligations to the defendant's detriment. Prosecuting authorities must plan for the fact that personnel will turn over, memories will fail, and the press of other business will often interfere with the state's obligations unless measures are taken to ensure compliance. Too often, these foreseeable problems result in untimely disclosures, followed by the state's arguing that justice would not be served by enforcing the letter of the rule through the exclusion of evidence. We caution the state that, although in many cases, including this case, a continuance may be an appropriate remedy for the untimely disclosure of evidence, the state has a duty to defendants, to the public, and to the courts to act with diligence in the disclosure of

evidence. And, as our abuse of discretion standard of review appropriately makes clear, it is the solemn obligation of our trial courts in the first instance to encourage compliance with these obligations and to penalize noncompliance.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

ORDERS

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WILLIAM L. ROACH *v.* TRANSWASTE, INC.

The defendant's petition for certification to appeal from the Appellate Court, 210 Conn. App. 686 (AC 43861), is granted, limited to the following issue:

"1. Did the Appellate Court correctly conclude that the evidence was sufficient to allow the jury to award the plaintiff future lost damages?"

Glenn L. Formica, in support of the petition.

James V. Sabatini, in opposition.

Decided May 31, 2022

KACEY LEWIS *v.* COMMISSIONER OF CORRECTION

The petitioner Kacey Lewis' petition for certification to appeal from the Appellate Court, 211 Conn. App. 77 (AC 43381), is denied.

Kacey Lewis, self-represented, in support of the petition.

Brett R. Aiello, deputy assistant state's attorney, in opposition.

Decided May 31, 2022

CHRISTINA DOLAN *v.* RUSSELL J. DOLAN

The defendant's petition for certification to appeal from the Appellate Court, 211 Conn. App. 390 (AC 43674), is denied.

ALEXANDER, J., did not participate in the consideration of or decision on this petition.

David V. DeRosa, in support of the petition.

Decided May 31, 2022

STATE OF CONNECTICUT *v.* JASON GOODE

The defendant's petition for certification to appeal from the Appellate Court, 211 Conn. App. 465 (AC 43765), is denied.

ALEXANDER, J., did not participate in the consideration of or decision on this petition.

Tamar Rebecca Birckhead, assigned counsel, in support of the petition.

Meryl R. Gersz, deputy assistant state's attorney, in opposition.

Decided May 31, 2022

CLARENCE PATTERSON *v.* COMMISSIONER OF CORRECTION

The petitioner Clarence Patterson's petition for certification to appeal from the Appellate Court, 211 Conn. App. 904 (AC 44049), is denied.

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

Mark M. Rembish, assigned counsel, in support of the petition.

Brett R. Aiello, deputy assistant state's attorney, in opposition.

Decided May 31, 2022

STEVEN BERNBLUM *v.* THE GROVE COLLABORATIVE, LLC, ET AL.

The plaintiff's petition for certification to appeal from the Appellate Court, 211 Conn. App. 742 (AC 44177), is denied.

KAHN, J., did not participate in the consideration of or decision on this petition.

Earle Giovanniello, in support of the petition.

Robert M. Frost, Jr., in opposition.

Decided May 31, 2022

MICHAEL KLING *v.* HARTFORD CASUALTY INSURANCE COMPANY

The plaintiff's petition for certification to appeal from the Appellate Court, 211 Conn. App. 708 (AC 44292), is denied.

Leann Riether, in support of the petition.

Alexis L. Beyerlein, in opposition.

Decided May 31, 2022

DIGITAL 60 & 80 MERRITT, LLC *v.* BOARD OF ASSESSMENT APPEALS OF THE TOWN OF TRUMBULL ET AL.

The defendants' petition for certification to appeal from the Appellate Court, 211 Conn. App. 559 (AC 44296), is denied.

Mario F. Coppola, in support of the petition.

Charles D. Ray and *Shawn S. Smith*, in opposition.

Decided May 31, 2022

O'NEIL O'REAGAN *v.* COMMISSIONER OF CORRECTION

The petitioner O'Neil O'Reagan's petition for certification to appeal from the Appellate Court, 211 Conn. App. 845 (AC 44390), is denied.

ALEXANDER, J., did not participate in the consideration of or decision on this petition.

Deren Manasevit, assigned counsel, in support of the petition.

Sarah Hanna, senior assistant state's attorney, in opposition.

Decided May 31, 2022

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CONNECTICUT APPELLATE REPORTS

Vol. 213

CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

IN RE MADISON C. ET AL.*
(AC 44926)

Moll, Cradle and Clark, Js.

Syllabus

The respondent mother, whose parental rights as to her minor children previously had been terminated, appealed from the judgment of the trial court granting the motion to strike her petition for a new trial filed by the Commissioner of Children and Families. In her petition, the mother made allegations that she claimed constituted newly discovered evidence that, if known during the pendency of her termination trial, would have affected the outcome, specifically, that the court had approved permanency plans following the termination trial seeking to reunite the minor children with their father and that, following her release from prison after the termination trial, she had achieved a degree of personal rehabilitation sufficient to encourage the belief that she could resume a responsible position in the children's lives. The court concluded that the mother had failed to plead sufficient facts for a new trial pursuant to statute (§ 52-270). On the plaintiff's appeal, *held* that the trial court properly granted the motion to strike the petition for a new trial as it failed to state a claim on which relief could be granted: the mother's allegations in her petition did not constitute newly discovered evidence

* 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.

as the court's orders approving new permanency plans were entered well after the termination trial had ended and judgment had been rendered terminating the mother's parental rights and, thus, were not facts that existed at the time of her trial; moreover, the mother's allegation that she had achieved a degree of personal rehabilitation sufficient to encourage the belief that she could resume a responsible position in her children's lives also concerned events that occurred after her trial and were but a change in circumstances, as evidence in support of facts or events that did not exist or had not yet occurred at the time of trial is not and cannot be newly discovered.

Argued February 3—officially released June 8, 2022**

Procedural History

Petitions by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor children, brought to the Superior Court in the judicial district of New Britain, Juvenile Matters, where the petitions were withdrawn as to the respondent father; thereafter, the matter was tried to the court, *Aaron, J.*; judgments terminating the respondent mother's parental rights, from which the respondent mother appealed to this court, *Bright, C. J.*, and *Suarez and Lavery, Js.*, which affirmed the judgments; subsequently, the respondent mother filed a petition for a new trial and the court, *C. Taylor, J.*, granted the motion to strike the petition filed by the Commissioner of Children and Families and rendered judgment thereon, from which the respondent mother appealed to this court. *Affirmed.*

Albert J. Oneto IV, assigned counsel, for the appellant (respondent mother).

Benjamin Abrams, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Evan O'Roark*, assistant attorney general, for the appellee (petitioner Commissioner of Children and Families).

** June 8, 2022, the date this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Opinion

CLARK, J. Following the termination of her parental rights as to her three children,[1] the respondent, Patricia K., filed a petition for a new trial (petition),[2] pursuant to General Statutes § 52-270.[3] In response, the Commissioner of Children and Families (commissioner) filed a motion to strike for failure to state a claim upon which relief can be granted, which the court ultimately granted and rendered judgment thereon. The respondent appeals from that judgment, claiming that the court improperly granted the motion to strike her petition because she had alleged newly discovered evidence that, if known during the pendency of her trial, likely would have altered the outcome.[4] Because the facts averred in the respondent's petition do not constitute newly discovered evidence within the meaning of § 52-270, we affirm the judgment of the trial court.

The following facts, as summarized by this court in the respondent's direct appeal from the judgments terminating her parental rights; see *In re Madison C.*, 201 Conn. App. 184, 241 A.3d 756, cert. denied, 335 Conn.

[1] See *In re Madison C.*, 201 Conn. App. 184, 241 A.3d 756, cert. denied, 335 Conn. 985, 242 A.3d 480 (2020).

[2] The respondent filed a consolidated petition for a new trial with respect to the judgments terminating her parental rights as to the three minor children.

[3] General Statutes § 52-270 (a) provides: "The Superior Court may grant a new trial of any action that may come before it, for mispleading, the discovery of new evidence or want of actual notice of the action to any defendant or of a reasonable opportunity to appear and defend, when a just defense in whole or part existed, or the want of actual notice to any plaintiff of the entry of a nonsuit for failure to appear at trial or dismissal for failure to prosecute with reasonable diligence, or for other reasonable cause, according to the usual rules in such cases. The judges of the Superior Court may in addition provide by rule for the granting of new trials upon prompt request in cases where the parties or their counsel have not adequately protected their rights during the original trial of an action."

[4] The attorneys for all three minor children, the guardians ad litem for Ryan and Andrew, and counsel for the foster mother to Ryan submitted statements, pursuant to Practice Book § 79-6 (c), adopting the commissioner's brief on appeal.

985, 242 A.3d 480 (2020); and procedural history are relevant to our resolution of this appeal. The respondent and Chester C. are the biological parents of Madison, Ryan, and Andrew. Id., 186. The Department of Children and Families (department) became involved with the family in 2013, when Madison tested positive for marijuana and methadone upon birth. Id. Ryan, too, tested positive for marijuana and methadone when he was born in 2015. Id. Both Madison and Ryan were discharged from the hospital in the care of their parents. Id. In April, 2017, the police responded to a domestic dispute at the family's home where they found drug paraphernalia. Id. The police also found that the house was in deplorable condition. Id. On May 2, 2017, Madison and Ryan were removed from their parents' care pursuant to an order of temporary custody and placed in a nonrelative foster home. Id. That day, the commissioner also filed neglect petitions as to Madison and Ryan, alleging that they were being permitted to live under conditions, circumstances, or associations injurious to their well-being. Id.

When Andrew was born in November, 2017, he tested positive for marijuana, methadone, and cocaine. Id., 187. Pursuant to an order of temporary custody, Andrew was discharged from the hospital to the care of a nonrelative foster family. Id. On November 20, 2017, the commissioner filed a neglect petition as to Andrew on the basis of predictive neglect. Id. On November 30, 2017, the court, *Hon. Barbara M. Quinn*, judge trial referee, consolidated the three neglect petitions, adjudicated the children neglected, and ordered them committed to the custody of the commissioner. Id. The court also ordered specific steps for the respondent and Chester C. Id.

On February 1, 2019, the commissioner filed petitions to terminate the parental rights of the respondent and Chester C. to each of the three children "on the grounds

that the court in the prior proceeding found the children to have been neglected, and [the parents] had failed to achieve the degree of personal rehabilitation that would encourage the belief that, within a reasonable time and considering the ages and needs of the children, they could assume a responsible position in their children's lives."[5] Id.; see General Statutes § 17a-112 (j) (3) (B) (i). The court, *Aaron, J.*, tried the termination of parental rights petitions on August 5, 6, 7, and 16, 2019.[6] *In re Madison C.*, supra, 201 Conn. App. 188. On August 16, 2019, prior to the close of evidence, the commissioner withdrew the termination petitions as to Chester C.[7] Id.

The court issued a memorandum of decision on November 8, 2019, granting the petitions to terminate the respondent's parental rights to the children. Id. In the adjudicatory phase of the proceedings, the court found by clear and convincing evidence that the respondent had not and would not achieve the degree of personal rehabilitation that would encourage the belief that within a reasonable time, considering the ages and needs of all three children, she could assume a responsible position in their lives. Id., 188–89.

[5] The respondent had "a long history of substance abuse, specifically with heroin, and ha[d] been on methadone maintenance intermittently since 2012." *In re Madison C.*, supra, 201 Conn. App. 187. Her treatment "oscillated, with periods of sobriety interrupted by intense relapses." (Internal quotation marks omitted.) Id. As a result of the respondent's substance abuse issues, she had many interactions with the criminal justice system. Id. In April, 2017, she was arrested and charged with risk of injury to a child in connection with the domestic dispute that led to the removal of Madison and Ryan from her care. Id. She ultimately was convicted of risk of injury to a child. Id., 188.

[6] The respondent was incarcerated at the time of the termination of parental rights trial as a result of her conviction for risk of injury to a child. See footnote 5 of this opinion.

[7] During the pendency of the trial, on August 14, 2019, the commissioner also filed a motion to review Andrew's permanency plan, with the goal of reuniting Andrew with Chester C. In addition, when the termination of parental rights petitions against Chester C. were withdrawn on August 16, the court ordered specific steps for Chester C. and canvassed him with respect to that order.

In the dispositional phase of the proceedings, the court made findings on the criteria set forth in § 17a-112 (k), and "noted that the respondent had not successfully taken advantage of or complied with the services provided by the department and had not shown a willingness or ability to provide a safe and nurturing environment in which she appropriately could parent the children. Additionally, the court found that there was credible evidence to suggest that the 'toxic relationship between the parents and [the] respondent's overbearing and manipulative behavior toward [Chester C.] is an impediment to [Chester C.'s] effective parenting of the children.' " Id., 189. The court rendered judgments terminating the respondent's parental rights to each of the children. The respondent appealed.

On appeal to this court, the respondent did not challenge Judge Aaron's findings that she had failed to rehabilitate, had not taken advantage of the services offered to her by the department, had not shown a willingness or ability to provide a safe and nurturing environment for the children or that her behavior toward Chester C. was an impediment to his ability to effectively parent the children. See id., 189. Rather, she claimed that the "court deprived her of her substantive due process rights as guaranteed by the fourteenth amendment to the United States constitution because termination of her parental rights was not the least restrictive means necessary to ensure the state's compelling interest in protecting the best interests of the children." Id., 189–90.

The respondent's argument that there were less restrictive alternatives to the termination of her parental rights was predicated on the commissioner's withdrawal, on the last day of trial, of the termination petitions as to Chester C., which resulted in the commissioner's filing of new permanency plans to reunify the children with Chester C., rather than to place them for adoption. Id.,

191. She argued that, because there was a change of permanency plans, "alternatives to termination were appropriate because the court did not base its decision on a finding that she posed a physical threat to the safety of the children or that she would abuse her parental status in ways that could harm the children if the children were reunified with Chester C. Rather, she argue[d], the court based its decision to terminate [her parental rights] on its concern that she was 'an impediment to [the] father's effective parenting of the children.' She contend[ed] that the trial court's concerns about the potential for her to undermine Chester C.'s parenting could have been addressed through further orders limiting her guardianship, rather than by terminating her parental rights." Id. The respondent, however, acknowledged that she had not preserved this claim of constitutional error at trial; id., 190; and sought to prevail on appeal pursuant to *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015).

This court concluded that the record was inadequate to review the respondent's unpreserved constitutional claim and affirmed the judgments of the trial court. *In re Madison C.*, supra, 201 Conn. App. 196; see also *State* v. *Golding*, supra, 213 Conn. 239 (party can prevail on constitutional claim that was not preserved at trial only if record is adequate to review alleged error). In reaching this conclusion, this court noted that the respondent had not proposed any alternative permanency plans at trial that would have addressed the trial court's concerns while allowing her to maintain her parental rights. *In re Madison C.*, supra, 196. "[T]he only possible reference to an alternative plan came, not during the presentation of evidence, but during closing arguments when the respondent's counsel stated: 'If your plan is to reunify with the father and not free these children for adoption, I submit that my client's parental rights should

not be terminated in this matter.' " Id., 194. In the absence of alternative proposals, the trial court had no factual predicates on which to make a finding as to whether there were narrower means, other than termination, available to protect the children's welfare and afford them permanency. Id., 194–96. Accordingly, this court concluded that the respondent's failure to raise this claim at trial, file a motion to reargue or seek an articulation as to whether the court had considered alternatives to terminating her parental rights "left the record devoid of evidence and findings necessary to review her constitutional claim." Id., 194.

On January 21, 2021, the respondent filed the instant petition for a new termination of parental rights trial pursuant to § 52-270. She alleged in relevant part that "[o]n or about August 16, 2019, the . . . commissioner withdrew the petitions to terminate [Chester C.'s] parental rights, but proceeded with a trial to terminate the [respondent's] parental rights. . . . [P]ursuant to the fourteenth amendment to the United States constitution, the . . . commissioner was constitutionally prohibited from obtaining judgments of the Superior Court terminating [her] parental rights absent a compelling governmental interest." The respondent further averred that termination of her parental rights "was or may not have been necessary" in one or more of the following ways: "to secure for the children a permanent placement as required by General Statutes §§ 17a-110, 17a-110a, and 17a-11a . . . [or] to protect the children's essential health and safety because less drastic measures were available to the . . . commissioner . . . ."[8]

[8] The respondent also alleged that termination of her "parental rights was or may not have been necessary for the . . . commissioner to continue receiving federal funding pursuant to the Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115." In its memorandum of decision, the court, *C. Taylor*, *J*, concluded that this basis for a new trial was legally insufficient because the respondent had not alleged any newly discovered evidence in her petition as to this issue. The respondent does not challenge that ruling on appeal.

The respondent asserted as the ground for a new trial that she had "discovered material evidence in her favor that she could not have reasonably discovered before or during trial . . . ." The newly discovered evidence she alleged in support of her claim were the permanency plans seeking to reunify Madison, Ryan, and Andrew with Chester C., which the court, *C. Taylor*, *J.*, approved several months after the termination of parental rights trial had concluded.[9] Additionally, the respondent alleged that there was newly discovered evidence demonstrating that she had "achieved a degree of personal rehabilitation sufficient to encourage the belief that she could resume a responsible position in her children's lives." Specifically, the respondent alleged that, after her release from prison on June 11, 2020; see footnotes 5 and 6 of this opinion; she "found gainful employment, completed parenting education, graduated from intensive outpatient substance abuse treatment . . . engaged in mental health counseling . . . [and] did not interfere with [Chester C.'s] effective parenting of the children . . . ."

On February 23, 2021, the commissioner filed a motion to strike the petition, arguing that the petition did not allege "newly discovered evidence" within the meaning of § 52-270 because it alleged events that occurred *after* the conclusion of the termination of parental rights trial. On March 15, 2021, the respondent filed a memorandum in opposition to the motion to strike. Judge Taylor held a hearing on the motion to strike on May 24, 2021,[10] and summarily granted the motion on the same date. The court issued a written articulation of its decision on July 15, 2021.

In its articulation, the court first addressed the respondent's claim that, when the commissioner withdrew the

[9] The court approved new permanency plans for Madison and Ryan on January 2, 2020, and a new permanency plan for Andrew on January 23, 2020.

[10] The intervening foster parents of Andrew also filed a motion to strike the respondent's petition on the day of the hearing.

termination petitions against Chester C., she gained a constitutional defense to the termination petitions against her because the children were no longer going to be adopted, and there was no compelling state need to terminate her parental rights. The court noted that the respondent had pursued this claim on direct appeal and that this court had concluded that the respondent had failed to provide an adequate record for review. As to the respondent's allegation that she was entitled to a new trial because she had achieved a greater degree of rehabilitation than the court was led to believe at the trial on the termination petitions, the court observed that she could have made such arguments in her appeal from the judgments terminating her parental rights.

In sum, the court concluded that the respondent's petition had failed to plead sufficient facts to support a petition for a new trial and granted the motion to strike, explaining that, "[i]f an allegation as to a change of circumstances *after* trial constituted a sufficient basis to grant a new trial on a termination of parental rights petition, a parent could prevent a child from achieving permanency and stability indefinitely." (Emphasis added.) The respondent subsequently appealed to this court.[11]

On appeal, the respondent claims that the trial court improperly granted the motion to strike her petition because she alleged facts sufficient to state a claim for a new trial pursuant to § 52-270 on the ground of newly discovered evidence. Specifically, she argues that her petition alleged that, following the conclusion of her

[11] On July 30, 2021, this court sua sponte ordered the parties to file memoranda of law giving reasons why the original appeal should not be dismissed on the ground that judgment had not been rendered on the stricken petition for a new trial. Thereafter, the respondent moved the trial court for judgment on the stricken complaint. On August 11, 2021, Judge Taylor granted that motion and rendered judgment on the stricken petition. The respondent subsequently withdrew her original appeal and filed the present appeal on August 30, 2021.

trial, she discovered new evidence demonstrating that it was unnecessary, as a matter of due process, to terminate her parental rights because *after her parental rights had been terminated* (1) the trial court approved permanency plans for the children calling for reunification with Chester C. and (2) she had rehabilitated to a point where she could safely assume a responsible position in the lives of her children, contrary to what Judge Aaron had been led to believe at trial. The commissioner argues that, for purposes of § 52-270, newly discovered evidence must be evidence of facts that existed at the time of the original trial and, therefore, the court properly granted the motion to strike the respondent's petition. We agree with the commissioner.

We begin our discussion by setting forth our standard of review. "Because a motion to strike challenges the legal sufficiency of a pleading and, consequently, requires no factual findings by the trial court, our review of the court's ruling on [a motion to strike] is plenary." (Internal quotation marks omitted.) *Hirsch* v. *Woermer*, 184 Conn. App. 583, 587, 195 A.3d 1182, cert. denied, 330 Conn. 938, 195 A.3d 384 (2018). "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. . . . Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied." (Internal quotation marks omitted.) *Thomas* v. *State*, 130 Conn. App. 533, 543, 24 A.3d 12, cert. denied, 302 Conn. 945, 30 A.3d 2 (2011). "It is fundamental that in determining the sufficiency of a complaint challenged by a [party's] motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted." (Internal quotation marks omitted.) *Coppola Construction Co.* v. *Hoffman Enterprises Ltd. Partnership*, 309 Conn. 342, 350, 71 A.3d 480 (2013). A motion to strike, however, is properly granted by the

trial court "if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC* v. *Alves*, 262 Conn. 480, 498, 815 A.2d 1188 (2003).

A trial court's authority to grant a petition for a new trial is set forth in § 52-270 (a), which provides in relevant part that "[t]he Superior Court may grant a new trial of any action that may come before it, for . . . the discovery of new evidence . . . ." What constitutes newly discovered evidence is not defined by statute, but "[t]he law on the subject of new trials for [the discovery of new evidence] is well settled in this state by a long and uniform course of judicial decisions . . . ." *Hamlin* v. *State*, 48 Conn. 92, 93 (1880). Our appellate case law establishes that "[a] party is entitled to a new trial on the ground of newly discovered evidence if such evidence is, in fact, newly discovered, will be material to the issue on a new trial, could not have been discovered and produced, on the trial which was had, by the exercise of due diligence, is not merely cumulative and is likely to produce a different result." (Internal quotation marks omitted.) *Johnson* v. *Raffy's Café I, LLC*, 173 Conn. App. 193, 211, 163 A.3d 672 (2017); see also *Asherman* v. *State*, 202 Conn. 429, 434, 521 A.2d 578 (1987), as further refined in *Shabazz* v. *State*, 259 Conn. 811, 827–28, 792 A.2d 797 (2002); *Hamlin* v. *State*, supra, 93–94. "This strict standard is meant to effectuate the underlying equitable principle that once a judgment is rendered it is to be considered final, and should not be disturbed by posttrial motions except for a compelling reason." (Internal quotation marks omitted.) *Asherman* v. *State*, supra, 434.

It is well established that the granting of a new trial "is not intended to reach errors available on appeal of which the party should have been aware at the time when an appeal might have been taken. . . . It is an additional safeguard to prevent injustice in cases where

the usual remedy by appeal does not lie or where, if there is an adequate remedy by appeal, the party has been prevented from pursuing it by fraud, mistake or accident. . . . [Section 52-270] does not furnish a substitute for, nor an alternative to, an ordinary appeal, but applies only when no other remedy is adequate and when in equity and good conscience relief against a judgment should be granted." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *LaBow* v. *LaBow*, 69 Conn. App. 760, 766, 796 A.2d 592, cert. denied, 261 Conn. 903, 802 A.2d 853 (2002). "[T]he causes for which new trials may be granted . . . are only such as show that the parties did not have a fair and full hearing at the first trial . . . ." (Internal quotation marks omitted.) *In re Jonathan M.*, 255 Conn. 208, 239, 764 A.2d 739 (2001).

I

We first consider the respondent's allegation that, several months after the conclusion of the trial on the petition to terminate her parental rights, the court entered orders approving new permanency plans for the children, which called for reunification with Chester C. Because those orders were entered well after the trial had ended and judgment had been rendered terminating the respondent's parental rights, we conclude that the respondent has not alleged the existence of newly discovered evidence within the meaning of § 52-270. As a result, the court properly concluded that this allegation does not state a claim for a new trial on the basis of newly discovered evidence.

Our case law makes clear that a party seeking a new trial under § 52-270 on the basis of the discovery of new evidence must allege evidence of facts or events that existed at the time of the original proceeding. See *Lozada* v. *Warden*, 24 Conn. App. 723, 725, 591 A.2d 1272 (1991) (evidence of first habeas counsel's ineffec-

tiveness is not newly discovered evidence sufficient to support petition for new trial because such evidence did not exist, but rather was generated, at time of first habeas trial), aff'd, 223 Conn. 834, 613 A.2d 818 (1992); *Wendt* v. *Wendt*, Superior Court, judicial district of Stamford-Norwalk, Docket No. FA-99-0172598-S (March 2, 2001) (newly discovered evidence must be based on facts in existence at trial); *State* v. *Goodwin*, 3 Conn. Cir. 386, 390–91, 215 A.2d 913 (evidence that is inadmissible at time of trial because it did not exist at time of trial is not newly discovered evidence), cert. denied, 153 Conn. 725, 213 A.2d 525 (1965); see also Black's Law Dictionary (11th Ed. 2019) p. 701 ("newly discovered evidence" is evidence in existence at time of trial, which then unknown to party, is later discovered). Evidence in support of facts or events that did not exist or had not yet occurred at the time of trial, is not, and cannot be, newly discovered.

Our conclusion that a petition for a new trial on the ground of newly discovered evidence must be based on evidence offered to prove facts that existed at the time of the original trial is consistent with this state's well settled standard governing the merits of a petition for a new trial. In Connecticut, a party seeking to prevail on a petition for a new trial on the ground of newly discovered evidence must demonstrate that the evidence "could not have been discovered and produced [in] the former trial by the exercise of due diligence." (Internal quotation marks omitted.) *Skakel* v. *State*, 295 Conn. 447, 507, 991 A.2d 414 (2010). "[I]f the new evidence relied upon could have been known with reasonable diligence, a new trial will not be granted." (Internal quotation marks omitted.) Id., 506. The requirement that a party must have exercised due diligence to discover what could have been known at trial is impossible to square with a definition of newly discovered evidence that includes evidence of facts that did not exist at the

time of trial. A party simply cannot be expected to diligently pursue evidence establishing facts that did not exist at trial. See *Wendt* v. *Wendt*, supra, Superior Court, Docket No. FA-99-0172598-S ("[b]y definition, evidence of posttrial events can *never* be discovered at the time of trial, regardless of the degree of diligence exercised" (emphasis in original)).

The respondent nevertheless contends that our Supreme Court's decisions in *Kubeck* v. *Foremost Foods Co.*, 190 Conn. 667, 461 A.2d 1380 (1983), and *Taborsky* v. *State*, 142 Conn. 619, 116 A.2d 433 (1955), stand for the proposition that a trial court may grant a petition for a new trial even though the alleged newly discovered evidence seeks to establish facts or events that occurred or came into existence after a trial has ended. We are not persuaded.

In *Kubeck*, the plaintiff commenced a personal injury action after sustaining injuries in a motor vehicle crash. *Kubeck* v. *Foremost Foods Co.*, supra, 190 Conn. 668. Because the court found in favor of the plaintiff as to liability on summary judgment, only the issue of damages was tried to the jury, which awarded the plaintiff $10,000. Id. The plaintiff later filed a petition for a new trial in light of newly discovered evidence indicating that she had suffered a disc injury in the motor vehicle collision and that, therefore, the original judgment was inadequate and a new trial would produce a different result. Id., 668–71. The trial court denied her petition on the ground that she had failed to show that the new evidence could not have been discovered with due diligence prior to the first trial. Id., 671. On appeal, our Supreme Court reversed the court's judgment, concluding that the court had abused its discretion because, in finding that the plaintiff had failed to exercise due diligence, it had erroneously imputed to the plaintiff the failure of her doctors to discover the injury. Id., 672–74.

Kubeck did not hold that a petition for a new trial "need not be predicated on facts existing at the time of trial." Nothing in *Kubeck* suggests that the newly discovered medical condition at issue in that case did not exist at the time of trial. On the contrary, our Supreme Court noted that the trial court had found that the disc injury was causally related to the motor vehicle crash and that the trial court's conclusion that the plaintiff had failed to exercise due diligence was supportable only if the failure of the plaintiff's doctors to discover the disc injury prior to trial was imputed to the plaintiff. Id., 672–73. In other words, the analysis in *Kubeck* presumed that the disc injury existed at the time of trial but was unknown to the plaintiff.

Our Supreme Court's decision in *Taborsky* is no more helpful to the respondent. In that case, the court reversed the judgment of the trial court, which had denied a petition for a new criminal trial on the ground of newly discovered evidence bearing on the competency of a key state's witness in a murder trial. *Taborsky* v. *State*, supra, 142 Conn. 621, 624–29, 634. In concluding that the trial court had erred in denying the petition, our Supreme Court noted that there was evidence at the hearing on the petition establishing that the witness' mental disability, the extent of which was not known to the petitioner until shortly after trial, had existed prior to and during the pendency of the petitioner's trial and was therefore evidence likely to bring about a different result in a new trial. Id., 628–33. In considering whether evidence of the witness' competency would be admissible and relevant to the issue of the witness' credibility in a new trial, in the event that the witness was unavailable to testify and transcripts of the witness' prior testimony were offered; id., 624; the court observed that, "since a condition of mental [disability] is always a more or less continuous one, it would be proper, *in order to ascertain the fact of its existence at a certain*

time, to consider its existence at a subsequent time." (Emphasis added.) Id., 629–30. Furthermore, although the court acknowledged that a new trial ordinarily will not be granted on the ground of impeachment evidence, it concluded that the impeachment evidence in *Taborsky* went "to the very sanity of the key witness, without whose evidence the accused could not have been convicted." Id., 632.

Thus, the respondent's reliance on *Taborsky* as standing for the proposition that newly discovered evidence need not be predicated on facts existing at the time of trial is misplaced. The decision makes clear that the petitioner in that case was granted a new trial because the discovery of new evidence bearing on the competency of a crucial state's witness called into question the veracity of the witness' testimony against the petitioner at the time of the original trial. The petitioner in that case did not merely allege a change in the witness' competency subsequent to the trial and unrelated to the veracity of that witness at the time of the original trial.

In sum, our case law, including the authorities relied upon by the respondent, plainly establish that, for purposes of seeking a new trial on the ground of newly discovered evidence, the evidence must be offered to prove facts that existed or events that occurred at the time of the original proceeding. This requirement helps to ensure that a petition for a new trial on the basis of newly discovered evidence is not used to undermine the finality of judgments. As our appellate courts have observed, the standard a party must satisfy to obtain a new trial is "strict and is meant to effectuate the underlying equitable principle that once a judgment is rendered it is to be considered final, and should not be disturbed by posttrial [proceedings] except for a compelling reason." (Internal quotation marks omitted.) *Jones* v. *State*, 328 Conn. 84, 92–93, 177 A.3d 534 (2018); see also *Carter* v. *State*, 159 Conn. App. 209, 222–23,

122 A.3d 720, cert. denied, 319 Conn. 930, 125 A.3d 204 (2015). "There must be an end of litigation, and for that reason the rules governing new trials should be strictly adhered to." (Internal quotation marks omitted.) *Gonirenki* v. *American Steel & Wire Co.*, 106 Conn. 1, 12, 137 A. 26 (1927); see also *Lancaster* v. *Bank of New York*, 147 Conn. 566, 578, 164 A.2d 392 (1960) (without rule limiting right to new trial on basis of new evidence merely affecting witness's credibility, "there might never be an end to litigation" (internal quotation marks omitted)). "Finality of litigation is essential so that parties may rely on judgments in ordering their private affairs and so that the moral force of court judgments will not be undermined. The law favors finality of judgments . . . ." (Internal quotation marks omitted.) *U.S. Bank, National Assn.* v. *Mamudi*, 197 Conn. App. 31, 48, 231 A.3d 297, cert. denied, 335 Conn 921, 231 A.3d 1169 (2020).

This principle of law is especially important in child protection matters. As Judge Taylor aptly observed, if a parent's allegation of a change in circumstances after a judgment is rendered is a sufficient basis for a new trial, a parent could prevent a child from achieving permanency and stability indefinitely. "Time is of the essence in child custody cases. . . . This furthers the express public policy of this state to provide all of its children a safe, stable nurturing environment. . . . When the child whose interest is to be protected is very young, delay in adjudication imposes a particularly serious cost on governmental functioning." (Citations omitted; internal quotation marks omitted.) *In re Juvenile Appeal*, 187 Conn. 431, 439–40, 446 A.2d 808 (1982); see also *In re Davonta V.*, 285 Conn. 483, 494, 940 A.2d 733 (2008) (our appellate cases have "noted consistently the importance of permanency in children's lives" (internal quotation marks omitted)). "There is little that can be as detrimental to a child's sound development

as uncertainty . . . especially when such uncertainty is prolonged." *Lehman* v. *Lycoming County Children's Services Agency*, 458 U.S. 502, 513–14, 102 S. Ct. 3231, 73 L. Ed. 2d 928 (1982). Thus, a "[s]tate's interest in finality is unusually strong" with respect to disputes involving the termination of parental rights. Id., 513.

Although the respondent acknowledges that the law favors finality of litigation, she argues that "the principle must yield on occasion when it appears that its application will result in a miscarriage of justice" and that the circumstances alleged in her petition warrant the exercise of the trial court's equitable powers.[12] We acknowledge that "[a] petition for a new trial under § 52-270 is a proceeding essentially equitable in nature"; (internal quotation marks omitted) *Jacobs* v. *Fazzano*, 59 Conn. App. 716, 722, 757 A.2d 1215 (2000); and "provides a critical procedural mechanism for remedying an injustice." (Internal quotation marks omitted.) *Mitchell* v. *State*, 338 Conn. 66, 74, 257 A.3d 259 (2021). That said, the grounds that may be asserted to support a petition for a new trial are circumscribed by statute. See *Black v. Universal C.I.T. Credit Corp.*, 150 Conn. 188, 192, 187 A.2d 243 (1962) (petition for new trial "is authorized, and its scope is limited, by the terms of the

[12] The respondent's assertion that she is entitled to equitable relief from the judgment terminating her parental rights is predicated, in part, on her contention that her direct appeal from that judgment was a "*per se*" inadequate remedy. (Emphasis in original.) That contention lacks merit. In her direct appeal, the respondent claimed that she was deprived of her due process rights because termination of her parental rights was not the least restrictive means necessary to achieve a compelling state interest once the commissioner withdrew the termination petitions as to Chester C. *In re Madison C.*, supra, 201 Conn. App. 191. This court declined to review her constitutional claim because she failed to raise it at trial and had failed to create an adequate record for review under *Golding*. Id., 190, 194. It was not impossible for her to have created such a record, however. The respondent could have availed herself of appellate review of her constitutional claim by raising it in the termination trial or ensuring the record was adequate for review under *Golding*.

statute"). The party seeking a new trial "has the burden of proving by a preponderance of the evidence that [he or she] is entitled to a new trial on the grounds claimed." (Internal quotation marks omitted.) *Jacobs* v. *Fazzano*, supra, 723. Accordingly, the fundamental question before the trial court on the commissioner's motion to strike in this appeal was whether the facts alleged in the respondent's petition stated a claim for a new trial pursuant to § 52-270. Because the court's orders approving new permanency plans did not occur until after the respondent's trial, they were not facts in existence at the time of her trial and, consequently, did not constitute newly discovered evidence. These allegations thus failed to satisfy the threshold requirement of stating a claim upon which equitable relief may be granted.

II

For the same reasons discussed in part I of this opinion, the respondent's claim that she is entitled to a new trial for the discovery of new evidence establishing that she rehabilitated to a greater extent than what the trial court was led to believe at her trial also fails. In her petition for a new trial, the respondent alleged that, following her release from prison on June 11, 2020, which was approximately seven months after the court terminated her parental rights, she found gainful employment, graduated from intensive outpatient substance abuse treatment, finished relapse prevention therapy, and engaged in counseling to address her mental health issues. She also alleged that she had not interfered with Chester C.'s effective parenting of the children and that she had "achieved a degree of personal rehabilitation sufficient to encourage the belief that she could resume a responsible position in her children's lives." On appeal, she argues that the court improperly struck her petition as to this claim because it alleges newly discovered evidence that establishes that the termination of her parental rights was not necessary to achieve a compel-

ling government interest and, therefore, is evidence likely to produce a different result at a new trial.

Like the respondent's allegations relating to the orders approving new permanency plans with respect to Chester C., these allegations concern events that occurred *after* the respondent's trial, which concluded on August 16, 2019. If anything, these allegations are but a change in circumstances and, consequently, are not legally sufficient to support a petition for a new trial based on newly discovered evidence under § 52-270.

For the foregoing reasons, we conclude that the court properly granted the motion to strike the respondent's petition for a new trial as it failed to state a claim on which relief could be granted.

The judgment is affirmed.

In this opinion the other judges concurred.

CITY OF MERIDEN *v.* AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 1016 ET AL.
(AC 44483)

Moll, Suarez and DiPentima, Js.

Syllabus

The plaintiff city sought to confirm an arbitration award issued in connection with the termination of the defendant's employment as a police officer for the city. The city's chief of police, C, requested an internal affairs investigation of the defendant on the basis of his alleged insubordination and misappropriation of public funds after he enrolled in a training course at the city's expense even though his request to attend that training had been denied. Upon learning of this investigation, the defendant filed a complaint against C in which he alleged a pattern of retaliatory conduct. An independent consultant, R, was hired to conduct the internal affairs investigation of the defendant, and he concluded, in relevant part, that the insubordination allegation was substantiated. The city hired an attorney, A, to investigate the defendant's allegations against C. A concluded that the totality of the evidence did not support,

and in many instances was contradictory to, a finding of retaliation by C. As a result of A's findings, the city manager placed the defendant on administrative leave and requested that an internal affairs investigation be conducted regarding the defendant's allegations against C. R was retained to act as an independent hearing officer. R reviewed the results of A's investigation and determined that many of the defendant's allegations against C were not made in good faith and that some were knowingly false, and that the defendant violated certain police department rules and an order pertaining to topics such as accountability, dishonesty and retaliatory conduct. Upon R's recommendation, the city terminated the defendant's employment. The defendant's union filed a grievance on behalf of the defendant, which was submitted to arbitration. After a hearing, the arbitration panel made numerous factual findings and issued its award, which stated that the defendant's termination had been for just cause. The city filed an application with the trial court to confirm the award, and the defendant subsequently filed an application to vacate the award. Following a hearing, the trial court rendered judgment granting the city's application to confirm the award and denying the defendant's application to vacate the award, from which the defendant appealed to this court. *Held*:

1. The defendant could not prevail on his claim that the trial court applied the incorrect legal standard when it reviewed his application to vacate the arbitration award because he alleged that the award was procured by corruption, fraud or undue means pursuant to the applicable statute (§ 52-418 (a) (1)): the trial court properly determined that § 52-418 (a) (1)) did not apply to warrant vacatur of the arbitration award because, although the defendant repeatedly asserted, without any factual support, that an e-mail he discovered after the arbitration hearing was concealed from him and that the e-mail contained facts material to the panel's determination, the trial court did not have reason to consider that e-mail when rendering its decision, as the defendant did not provide the court with an affidavit to authenticate the e-mail or to show that he was the individual referenced in the e-mail; moreover, the defendant offered no explanation as to how he obtained the e-mail or why he was unable to discover it prior to the arbitration hearing; furthermore, the defendant's arguments concerning the e-mail and the effect it would have had on the award had he introduced it as evidence at the arbitration hearing were purely speculative.
2. The defendant could not prevail on his claim that the trial court erred in determining that the arbitration procedure was fair and impartial on the basis of his claim that the panel improperly allowed C to be present at the arbitration hearing while his subordinates were testifying: although the defendant argued that C's presence at the hearing had a chilling effect on the subordinates' testimony, he acknowledged that he could not point to any specific instances in which that testimony was

affected by C's presence and did not cite case law to support his arguments; moreover, the defendant did not argue that C should have been sequestered in order to prevent him from shaping his testimony to falsely corroborate the testimony of another witness, which is the purpose of sequestration; furthermore, it was for the arbitration panel to determine whether and when sequestration was to occur.

3. The defendant could not prevail on his claim that the trial court erred by overlooking the arbitration panel's reliance on an investigation that was not fair and impartial: although the defendant attempted to raise public policy concerns about the panel's alleged reliance on A's investigation by arguing that A's representation of the city and C in other matters prevented her from conducting a fair and impartial investigation of C in the present case, the defendant was essentially raising an evidentiary claim, and, because the submission to arbitration was unrestricted, the trial court was not permitted to review the evidence considered by the panel, and this court would not review the award for errors of fact; moreover, because the defendant had the opportunity to raise his concerns about A at the arbitration hearing and it was within the province of the panel to consider A's relationship with the city and C and what effect, if any, those relationships had on her investigation, the defendant failed to identify a clear public policy that allegedly was violated by the panel's award.

Argued February 14—officially released June 14, 2022

Procedural History

Application to confirm an arbitration award, brought to the Superior Court in the judicial district of New Haven, where the defendant Patrick Gaynor filed an application to vacate the award; thereafter, the case was tried to the court, *Young*, *J.*; judgment denying the defendant's application to vacate and granting the plaintiff's application to confirm, from which the defendant Patrick Gaynor appealed to this court. *Affirmed.*

Patrick Gaynor, self-represented, the appellant (defendant).

Michael J. Rose, with whom, on the brief, was *Christopher M. Neary*, for the appellee (plaintiff).

Opinion

DiPENTIMA, J. The self-represented defendant, Patrick Gaynor, appeals from the judgment of the trial

court denying his application to vacate an arbitration award rendered in favor of the plaintiff, the city of Meriden (city), in which a three member arbitration panel determined that the city had just cause to terminate his employment.[1] On appeal, the defendant claims that the court erred (1) in applying the standard for vacating an arbitration award because the award allegedly was procured by corruption, fraud or undue means, (2) in determining that the arbitration procedure was fair and impartial and (3) by overlooking the panel's reliance on an investigation that was not fair and impartial. We affirm the judgment of the court.

The following facts as found by the arbitration panel and procedural history are relevant to our resolution of the defendant's appeal. The defendant was employed by the city as a police officer with the rank of captain. On June 12, 2015, the defendant requested permission from Jeffrey Cossette, the city's chief of police, to take a training course in leadership, organizational behavior, and project management through Northwestern University. At that time, the defendant was serving as acting communications director, which is a position that can be filled by a nonpolice officer.[2] Cossette denied the defendant's request, citing budgetary considerations. Notwithstanding that denial, at the city's expense, the defendant signed up for the course at a cost of $4000 plus a $165 registration fee.

On September 1, 2016, Cossette requested that an internal affairs investigation be initiated on the basis

[1] Gaynor's union, American Federation of State, County and Municipal Employees, Local 1016, also was named as a defendant in the underlying action, but did not participate in this appeal. Accordingly, we will refer to Gaynor as the defendant throughout this opinion. The defendant declined union representation and retained his own counsel for the arbitration proceedings. He was self-represented before the trial court and is self-represented on appeal.

[2] The arbitration panel, however, found that the training program "was designed for police leadership functions."

of the defendant's alleged insubordination and misappropriation of public funds. Upon learning of the investigation, the defendant filed a complaint[3] against Cossette in which he alleged a pattern of retaliatory conduct as a result of his involvement in a criminal prosecution against Cossette's son.[4] Because of the defendant's complaint against Cossette, an independent consultant, Charles Reynolds,[5] was hired to make a determination regarding the defendant's alleged insubordination and misappropriation of public funds. Reynolds determined that the allegation of misappropriation of public funds was not substantiated because, as acting communications director, the defendant had the authority to expend those funds. Reynolds found that the allegation of insubordination, however, was substantiated.

The city hired Attorney Paula Anthony of Berchem, Moses & Devlin, P.C., to investigate the defendant's allegations against Cossette. Anthony conducted interviews and collected evidence. Anthony concluded that " '[t]he totality of the evidence reviewed does not support, and in many instances is contradictory to, a finding of retaliation.' " Upon receipt of Anthony's findings, the city manager placed the defendant on administrative leave and requested that an internal affairs investigation be conducted regarding the defendant's allegations against Cossette. Sergeant Christopher Fry, who worked

[3] Although the arbitration panel's factual findings do not indicate with what entity the defendant filed his complaint, we note that the city investigated the allegations in the complaint.

[4] Cossette's son was indicted by a federal grand jury on November 14, 2012, and thereafter was tried, convicted, and imprisoned for criminal conduct not specified in this record. The defendant had brought the son's conduct to light and testified at his criminal trial.

[5] The arbitration panel described Reynolds as "a highly experienced prior police chief turned independent consultant, who has worked on the Oversight Commission for Police Reform in Northern Ireland, for the Department of Justice Civil Rights Division working on consent decrees, and [is] currently working for a federal judge in Oakland, California, monitoring the compliance with that city's negotiated [p]olice [d]epartment consent decree."

for the city's police department, conducted the investigation and concluded that the defendant had violated several of the department's policies and orders. Reynolds was retained to act as an independent hearing officer to review the results of the investigation and make recommendations based on those results.

Reynolds conducted a *Loudermill* hearing[6] on May 19, 2017, which lasted eight hours.[7] Reynolds evaluated the defendant's allegations against Cossette and found that none of the allegations had merit. In fact, Reynolds determined that many of the allegations were not made in good faith and that some were knowingly false. Reynolds further determined that the defendant violated two of the police department's rules and one of its orders pertaining to topics such as accountability, dishonesty and retaliatory conduct. Reynolds considered recommending that the defendant be demoted and receive counseling, but he ultimately recommended that the defendant's employment be terminated. Reynolds stated that " '[t]he overriding thing was the reckless regard for the truth, you know, how he didn't engage in fact finding and truthfulness, which is the stock in trade of a police officer . . . so the only option I had was to recommend termination.' "

The city terminated the defendant's employment in June, 2017. The defendant's union, American Federation of State, County and Municipal Employees, Local 1016, filed a grievance on behalf of the defendant, which was submitted to arbitration before the state Board of

[6] Pursuant to *Board of Education* v. *Loudermill*, 470 U.S. 532, 546, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985), due process entitles a "tenured public employee" to "oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story." "The opportunity to present one's 'side of the story' is generally referred to as a *Loudermill* hearing." *AFSCME, Council 4, Local 2663* v. *Dept. of Children & Families*, 317 Conn. 238, 243 n.3, 117 A.3d 470 (2015).

[7] The defendant attended the hearing and was represented by counsel.

Mediation and Arbitration. The city and the defendant jointly submitted the following questions to be decided by the arbitration panel: "Was the termination of [the defendant] for just cause? If not, what shall the remedy be?" The submission was unrestricted. A panel of three arbitrators (panel) conducted a hearing over the course of twelve days, from November 3, 2017, through May 23, 2019. The parties then submitted posthearing briefs. On March 10, 2020, the panel issued its award, which stated: "The termination of [the defendant] was for just cause."[8]

The panel made a series of factual findings and noted that the defendant "was provided an extraordinarily wide latitude over the twelve days of hearings to provide any evidence, even with the most tangential relevance, to rebut the city's evidence supporting its decision to terminate his employment." The panel stated: "This case is about a dishonest employee." The panel found, among other things, that the defendant made allegations against Cossette that "he knew were false, or recklessly added them to the litany of allegations with no concern whether they were false or not." The panel stated that the defendant "was clearly untruthful when testifying under oath" concerning a conversation he had had with an acquaintance, and that "it was readily observable that the [defendant] attempted to steer" the testimony of that acquaintance during his testimony at the hearing. The panel further noted that there was "a pattern of untruths and reckless disregard for the truth" by the defendant, and that he was trying to "bring down" Cossette.

On March 19, 2020, the city filed an application to confirm the arbitration award in the Superior Court. On April 17, 2020, the defendant filed an application to

[8] In his brief to this court, the defendant represents that one of the arbitrators dissented to the award. The record reflects, however, that the arbitration award was signed by all three arbitrators on the panel.

vacate the award. In that motion, he argued that there was "evident partiality on the part of the arbitrators" and stated that the arbitrators "committed misconduct" that prejudiced him. Specifically, he argued that the panel "refus[ed] to hear evidence pertinent and material to the controversy," "allow[ed] the [city] to introduce audio recordings for which the defendant had not been disciplined," "refus[ed] to compel [the city's] witness to disclose the identity of another who purportedly had information relevant to the proceedings," "refus[ed] the defendant's request to sequester the [city's] investigator . . . who was a material witness to the controversy," and "permit[ed] [the investigator] to fabricate an allegation that was prejudicial toward the defendant and refus[ed] to allow the defendant's counsel to examine [the investigator] regarding his allegations . . . ." He also argued that the award violated public policy because it punished the defendant for "bringing forth good faith complaints of misconduct by a law enforcement official that were not fairly and fully investigated . . . ." On November 2, 2020, upon agreement of the parties, the court held a hearing on both the city's application and the defendant's application.

On January 4, 2021, the court issued a memorandum of decision in which it denied the defendant's application to vacate the award.[9] The court stated that the "only proper issue" before it was whether the award conformed to the submission. The court concluded that it did. The court stated that the defendant "[did] not attack the conformity of the award to the submission" and "offered no evidence to suggest that the award does not conform."

The court noted that it "[found] none of the [defendant's] assertions to be credible even if they were justiciable and subject to review." The court stated that

[9] The court simultaneously granted the city's application to confirm the arbitration award.

the defendant "substantially reassert[ed] the claims he made both at the arbitration hearing and in a voluminous posthearing brief. Those assertions [were] repeated in the present hearing: the underlying investigation was faulty and the investigators were biased. Neither of these are properly for the court's review." The court noted that the defendant presented ten claims of retaliation by Cossette, and "[t]he arbitrators found each to be meritless, with specific bases for each finding. The arbitrators found multiple instances of [the defendant's] conduct which independently provided a basis for termination.

"In the hearing itself, the arbitrators . . . found [the defendant] to be reckless and untruthful. They found the testimony of [the defendant's] witness 'unreliable.' Each determination by the arbitrators is set forth with particularity." The court further stated: "It must be noted how vociferously the panel characterized [the defendant's] lack of credibility, both witnessed firsthand and by investigators. The arbitrators cited specific instances of [the defendant's] false statements and baseless accusations of retaliation both in the various investigations and in the hearing itself . . . ."

The court concluded: "Despite lengthy argument and hundreds of pages of filings, [the defendant] has failed to establish that the award was procured by corruption, fraud or undue means. He has shown no evident partiality or corruption on the part of any arbitrator. There is no assertion that the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown. There is no evidence that the arbitrators refused to hear evidence pertinent and material to the controversy or of any other action by which the rights of [the defendant] were prejudiced. There is no evidence that the arbitrators exceeded their powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was

not made. There is no claim of statutory violation or violation of public policy. In short, [the defendant] has not met his burden of proof in his application for vacatur, even if the submission had been restricted." This appeal followed. Additional facts and procedural history will be set forth as necessary.

We begin by setting forth the relevant principles of law and standard of review, which are applicable to each of the defendant's claims. "When considering a motion to vacate an unrestricted arbitration award, a trial court should not substitute its judgment for that of the arbitrators. Judicial review of arbitral decisions is narrowly confined. . . . When the parties agree to arbitration and establish the authority of the arbitrator through the terms of their submission, the extent of our judicial review of the award is delineated by the scope of the parties' agreement. . . . When the scope of the submission is unrestricted, the resulting award is not subject to de novo review even for errors of law so long as the award conforms to the submission. . . . In other words, [u]nder an unrestricted submission, the arbitrators' decision is considered final and binding; *thus, the courts will not review the evidence considered by the arbitrators nor will they review the award for errors of law or fact.* . . . Furthermore, [e]very reasonable presumption and intendment will be made in favor of the award and of the arbitrator's acts and proceedings." (Citation omitted; emphasis in original; internal quotation marks omitted.) *Kellogg* v. *Middlesex Mutual Assurance Co.*, 326 Conn. 638, 645–46, 165 A.3d 1228 (2017).

"In light of these constraints, a court may vacate an unrestricted arbitration award only under certain limited conditions: (1) the award rules on the constitutionality of a statute . . . (2) the award violates clear public policy . . . [or] (3) the award contravenes one or more of the statutory proscriptions of [General Stat-

utes] § 52-418." (Internal quotation marks omitted.) Id., 646. We review de novo the court's determination as to whether any of those exceptions apply. See, e.g., *Norwalk Medical Group, P.C.* v. *Yee*, 199 Conn. App. 208, 216, 235 A.3d 540 (2020); *Toland* v. *Toland*, 179 Conn. App. 800, 810, 182 A.3d 651, cert. denied, 328 Conn. 935, 183 A.3d 1174 (2018). We review the court's findings of fact for clear error. *Henry* v. *Imbruce*, 178 Conn. App. 820, 828, 177 A.3d 1168 (2017).

In the present case, the submission was unrestricted. The defendant does not challenge the award's conformance to the submission. Rather, his first two claims assert that the award should be vacated pursuant to § 52-418 (a), which provides in relevant part that "the superior court . . . shall make an order vacating the award if it finds . . . (1) . . . the award has been procured by corruption, fraud or undue means . . . ." We interpret the defendant's third claim as arguing that the award violates public policy.[10] We will address each claim in turn.

I

The defendant first claims that the court erred in applying the standard for vacating an arbitration award because the award was procured by corruption, fraud or undue means. We conclude that the court applied the correct standard when reviewing the defendant's application to vacate the arbitration award. Furthermore, we reject the defendant's contention that the award was procured by corruption, fraud or undue means.

As best we can discern, the defendant challenges the court's statement in its memorandum of decision that "[t]he only proper issue before the court is whether [the defendant] has met his burden to produce evidence sufficient to show that [the award] does not conform

[10] The defendant listed six issues in his brief; we have reframed the issues briefed for clarity.

to the submission." We interpret his claim as arguing that because the court only considered whether the award conformed to the submission, it failed to consider whether the award should be vacated pursuant to § 52-418 (a) (1). Specifically, he asserts that he presented the court with evidence that the award relied on perjured testimony and that the court overlooked this evidence when rendering its decision on his motion.

The following additional procedural history is relevant to our resolution of this claim. Deputy Chief Timothy Topulos testified at the arbitration hearing that he and the defendant had a personal friendship and a good working relationship. After the arbitration panel issued its award, the defendant claims to have obtained an e-mail from Topulos to the former city manager in which Topulos referenced an unnamed employee "who held [the police department] hostage for so many years" and "undermin[ed] [the police department's] mission and the public's trust and confidence . . . ."

In his brief to this court, the defendant argues that he is the employee referenced in Topulos' e-mail. He repeatedly asserts, without any factual support, that Topulos "concealed" this e-mail from him and the panel and that the e-mail contained facts material to the panel's determination. Specifically, the defendant argues that the e-mail contradicts Topulos' testimony about his relationship with the defendant and that "[t]he award relied on Topulos' feelings of friendship and his liking of [the defendant] . . . ." Because the defendant purportedly discovered this e-mail after the arbitration hearing and could not present it to the panel, he asserts that the panel was not aware of Topulos' animus toward him when it issued its award. The court did not mention Topulos' e-mail in its memorandum of decision, nor did it inquire further about the e-mail when the defendant brought the e-mail to the court's attention at the hearing.

Upon our review de novo of the court's decision, we conclude that the court properly determined that § 52-418 (a) (1) did not apply to warrant vacatur of the award.[11] We further conclude that the court did not have reason to consider Topulos' e-mail when rendering its decision. The defendant did not provide the court with an affidavit to authenticate the e-mail or to show that he was the unnamed employee referenced by Topulos. Rather, his arguments concerning the e-mail, and the effect it would have had on the award had he introduced it as evidence at the arbitration hearing, are purely speculative. Furthermore, the defendant offered no explanation as to how he obtained this e-mail or why he was unable to discover it prior to the arbitration hearing. A mere allegation, without evidentiary support, that an individual has intentionally concealed material facts is insufficient to demonstrate that an arbitration award has been procured by corruption, fraud or undue means. See *Doctor's Associates, Inc.* v. *Windham*, 146 Conn. App. 768, 781, 81 A.3d 230 (2013). Accordingly, the defendant's claim fails.[12]

[11] As stated previously, the court stated in its memorandum of decision that the defendant "failed to establish that the award was procured by corruption, fraud or undue means." This statement indicates that the court considered the defendant's argument that the award should be vacated pursuant to § 52-418 (a) (1), rather than solely considering whether the award conformed to the submission.

[12] Even if we were to accept the defendant's arguments as true, we note that the panel's factual findings make clear that the arbitration award did not hinge on Topulos' testimony. Over the course of the twelve day hearing, the parties presented evidence and the panel heard testimony from a number of witnesses, including the defendant. Although the panel referenced Topulos' testimony to support some of its findings, it made a number of other findings about the defendant's conduct that were supported by other evidence. The court stated in its memorandum of decision that "[i]t must be noted how vociferously the panel characterized [the defendant's] lack of credibility" and that "[t]he arbitrators cited specific instances of [the defendant's] false statements and baseless accusations of retaliation both in the various investigations and in the hearing itself . . . ." Thus, we fail to see how this e-mail would have had any impact on the panel's award had the defendant presented it to the panel as evidence.

II

The defendant claims that the court erred in determining that the arbitration procedure was fair and impartial. Specifically, as we can best discern, he argues that the award contravenes § 52-418 (a) (1). The defendant claims that the panel wrongly allowed Cossette to be present at the arbitration hearing while his subordinates were testifying, over the defendant's objection. The defendant argues that Cossette's presence had a chilling effect on the testimony of his subordinates. The defendant argues that, although he "cannot demonstrate that witnesses were chilled or changed [their] testimony based on Cossette's presence, the [panel's] ruling in permitting Cossette to remain created a substantial risk that this would occur . . . ."[13]

In analyzing this claim, the defendant makes a series of conclusory allegations, many of which he made before the trial court. In fact, he acknowledges that he cannot point to any specific instances in which the testimony of Cossette's subordinates was affected by Cossette's presence. Additionally, he does not cite case law to support his arguments. As our Supreme Court has stated, "[t]he obvious purpose of sequestering a witness while another is giving his testimony is to prevent the one sequestered from shaping his testimony to corroborate

[13] The defendant also argues that he did not have an opportunity to "fully examine" Fry, who accused him of tampering with his witness during the hearing. In its arbitration award, the panel stated that "it was readily observable that the [defendant] attempted to steer" the testimony of a witness, "rendering both [the defendant and the witness] complicit in providing false testimony" during the hearing. The defendant represents that the panel did not observe him trying to steer the witness' testimony by making facial expressions and shaking his head while the witness was testifying. Rather, he contends that it was Fry who brought his behavior to the panel's attention. He argues that the panel did not allow him to cross-examine Fry about his allegations of witness tampering. In light of the limited scope of review over the parties' unrestricted submission, we decline to reach the merits of this argument, as it constitutes an improper challenge to the panel's factual findings and other actions.

falsely the testimony of the other . . . .'' (Internal quotation marks omitted.) *State* v. *Nguyen*, 253 Conn. 639, 649–50, 756 A.2d 833 (2000). The defendant does not argue that the panel should have sequestered Cossette for that purpose. Furthermore, as the court noted in its memorandum of decision, it was for the panel to ''determine whether and when sequestration [was] to occur.'' Accordingly, we reject this claim.

III

Lastly, the defendant claims that the court erred by overlooking the panel's reliance on an investigation that was not fair and impartial.[14] We disagree.

In his brief to this court, the defendant makes several references to the public policy concerns of having Anthony investigate the allegations that he had made against Cossette in his grievance. Therefore, we reasonably can interpret his claim as arguing that the award violates public policy because the panel relied in part on Anthony's investigation in issuing its award.[15] In his brief to this court, the defendant states that attorneys from Berchem, Moses & Devlin, P.C., including Anthony, have represented the city and Cossette ''in various labor/pension matters prior to the [defendant's] complaint, during the pendency of the investigation, and

[14] This claim pertains to Anthony's investigation of Cossette, which was conducted in response to the defendant's grievance against Cossette. In his brief to this court, the defendant raises two related claims about this investigation. First, he claims that the court erred in overlooking that the panel relied on an investigation that did not comply with General Statutes § 7-294bb, which is titled ''[s]tate and local police policy concerning complaints from the public alleging misconduct committed by law enforcement personnel.'' Second, he claims that the court erred in overlooking the panel's reliance on Anthony's investigation, which could not have been conducted in a fair and impartial manner because of Anthony's duty to her clients. We address these claims together.

[15] The court did not interpret the defendant's application to vacate the arbitration award as making any arguments that the award violated public policy. In its memorandum of decision, the court stated that there was ''no claim of . . . violation of public policy.''

thereafter." He argues that Anthony's representation of the city and Cossette prevented her from conducting a fair and impartial investigation of Cossette "while also fulfilling her duty to her clients in reviewing [the defendant's] claims and advising her clients of potential legal issues." He further argues that Anthony was "precluded from divulging information that would be [adverse] to the position of her clients, [who are the city] and Cossette."

"Our Supreme Court in *Schoonmaker* v. *Cummings & Lockwood of Connecticut, P.C.*, [252 Conn. 416, 747 A.2d 1017 (2000)], enunciated the proper standard of review for determining whether an arbitral decision violates a clear public policy. . . . *Schoonmaker* require[s] a two-step analysis in cases such as this one in which a party raises the issue of a violation of public policy in an arbitral award. First, we must determine whether a clear public policy can be identified. Second, if a clear public policy can be identified, we must then address the ultimate question of whether the award itself conforms with that policy." (Citation omitted; internal quotation marks omitted.) *Toland* v. *Toland*, supra, 179 Conn. App. 811–12.

Although the defendant attempts to make a public policy argument about the award, he essentially raises an evidentiary claim about Anthony's investigation and the findings therein. By challenging the panel's "reliance" on Anthony's investigation, he is challenging the method through which the panel decided to admit and weigh evidence related to Anthony's investigation. Because the submission was unrestricted, the trial court was not permitted to review the evidence considered by the panel, nor will we review the award for errors of fact. The defendant had the opportunity to raise his concerns about Anthony at the arbitration hearing. It was within the province of the panel to consider Anthony's relationship with the city and Cossette and what

effect, if any, those relationships had on her investigation, her report and the findings therein. Therefore, the defendant failed to identify a clear public policy that allegedly was violated by the panel's award. Accordingly, we conclude that the court did not err in its review of the defendant's arguments challenging the panel's reliance on Anthony's investigation.

The judgment is affirmed.

In this opinion the other judges concurred.

ONE ELMCROFT STAMFORD, LLC *v.* ZONING BOARD OF APPEALS OF THE CITY OF STAMFORD ET AL.
(AC 41208)

Elgo, Moll and Lavery, Js.

Syllabus

The plaintiff appealed to the Superior Court from the decision by the defendant Zoning Board of Appeals of the City of Stamford granting the application of the defendant P, filed on behalf of the defendant P Co., for approval for the location of an automotive repair business on certain real property. The board had referred P Co.'s application to the city's Planning Board and Engineering Bureau for comment. The Planning Board recommended that the application be denied. The Engineering Bureau did not object to the application but expressed various concerns. The board thereafter published notice of a public hearing on the application, which stated that P Co. sought to operate a used car dealership on the property. The board approved the application subject to certain conditions, which included concerns expressed by the Engineering Bureau. The plaintiff, which owned property that abutted the site at issue, claimed, inter alia, that the board failed to conduct a suitability analysis, as required by statute ([Rev. to 2003] § 14-55). The Superior Court concluded that the board had given due consideration to the suitability of the property and rendered judgment denying the appeal. The plaintiff then appealed to this court, which concluded that the General Assembly had not repealed § 14-55 in 2003, and reversed the Superior Court's judgment and remanded the case for further proceedings. The defendants then appealed to the Supreme Court, which determined that the General Assembly had repealed § 14-55 in 2003 and

reversed in part this court's judgment and remanded the case to this court to consider the plaintiff's remaining claims. *Held*:

1. The plaintiff's claim that the notice of the public hearing on P Co.'s application was defective and, thus, deprived the board of jurisdiction to consider the application, was unavailing; because the legislature has not enacted a proper substitute for § 14-55, which had set forth the requirements for prehearing notice regarding location approval applications, the board could not have lacked jurisdiction to hear the application, as it was not statutorily required to provide such notice at the time P Co. filed its application in 2016.
2. The plaintiff could not prevail on its contention that the board violated its right to fundamental fairness because the notice of the public hearing was misleading in that it did not sufficiently describe P Co.'s intended use of the property: although the notice stated that the property would be used for the sale of used cars, P clarified at the public hearing that, although used cars occasionally would be sold on the property, the primary intended use of the property was for general automotive repair, and, because the applicable zoning regulation (§ 19.A.3.b) referred to the statute (§ 14-54) applicable to the board's authority to hear and decide location approval applications, the defendants sufficiently apprised the plaintiff of the proposed use of the property, as the statutory (§ 14-51 (a) (2)) definition of used car dealer, which encompassed automotive repair and used car sales, accurately described the proposed use of the property; moreover, in accordance with the applicable zoning regulation (§ 20.B.1), the board provided written notice of the public hearing to all owners of property, including the plaintiff, within the applicable boundary area of the property at issue, which described the proposed use of the property as automotive repair and used car dealer.
3. The board applied an incorrect legal standard in ruling on P Co.'s location approval application and mistakenly believed it could not deny such application because the proposed use was permitted in the zone at issue: the board's collective statement of its basis for granting P Co.'s application expressly applied the legal standard under the regulation (§ 19.B.2.a (2)) that governs variance approvals rather than § 19.A.3.b, which is applicable to location approval applications; moreover, the board's assertion that its error was merely clerical was belied by the record, which demonstrated that it exceeded its statutory authority and its authority under § 19.A.3 when it referred P Co.'s application to the city's engineering and planning agencies, and, as the board was required by § 19.A.3 to hear and decide the application, its error in treating the application as a variance request was exacerbated by the terms of its approval, which required P Co. to comply with all concerns articulated by the Engineering Bureau; furthermore, because the members of the board were obligated as agents of the state to make a determination in reviewing P Co.'s location approval application, they were mistaken in

their belief that they lacked the authority to deny the application because P Co.'s proposed use was permitted in the zone at issue.

4. The board did not commit an error of law by failing to distinguish the denial by a different municipal entity seven years earlier of a location approval application for a different business to operate a used car dealership on the property at issue; the plaintiff's reliance on the "impotent to reverse" rule, which precludes a municipal agency from revisiting its prior decisions and revoking its duly enacted action, was unavailing because the board did not make any prior determinations or render a decision on the earlier application, as that denial was rendered by a different municipal entity that, at that time, had powers and duties distinct from those of the board, and P Co.'s application was filed after the legislature's amendment (Public Acts 2016, No. 16-55, § 4) of § 14-54, which transferred from that different municipal entity to the board the authority to act on location approval applications.

(*One judge concurring in part and dissenting in part*)

Argued September 13, 2021—officially released June 14, 2022

Procedural History

Appeal from the decision by the named defendant granting the application of the defendant Pisano Brothers Automotive, Inc., et al. for approval to locate an automotive repair business on certain real property, brought to the Superior Court in the judicial district of New Britain and transferred to the judicial district of Stamford-Norwalk, where the case was tried to the court, *Hon. Taggart D. Adams*, judge trial referee; judgment denying the plaintiff's appeal, from which the plaintiff appealed to this court, *Sheldon*, *Elgo* and *Lavery*, *Js.*, which reversed the trial court's judgment and remanded the case to that court for further proceedings, and the defendant Pasquale Pisano et al., on the granting of certification, appealed to the Supreme Court, which reversed this court's judgment and remanded the case to this court for further proceedings. *Reversed in part*; *further proceedings*.

Jeffrey P. Nichols, with whom was *Amy Souchuns* and, on the brief, *John W. Knuff*, for the appellant (plaintiff).

Gerald M. Fox III, for the appellees (defendant Pasquale Pisano et al.).

Opinion

ELGO, J. This administrative appeal returns to us on remand from our Supreme Court. *One Elmcroft Stamford, LLC* v. *Zoning Board of Appeals*, 337 Conn. 806, 256 A.3d 151 (2021) (*Elmcroft II*). In *One Elmcroft Stamford, LLC* v. *Zoning Board of Appeals*, 192 Conn. App. 275, 283–89, 217 A.3d 1015 (2019) (*Elmcroft I*), rev'd, 337 Conn. 806, 256 A.3d 151 (2021), this court concluded, inter alia, that General Statutes (Rev. to 2003) § 14-55[1] had not been repealed and required the defendant Zoning Board of Appeals of the City of Stamford (board) to consider the suitability of the location in question as a prerequisite to the granting of a certificate of location approval in accordance with General Statutes § 14-54. Following its grant of certification to the defendants, Pisano Brothers Automotive, Inc., and Pasquale Pisano; see *One Elmcroft Stamford, LLC* v. *Zoning Board of Appeals*, 333 Conn. 936, 218 A.3d 594 (2019); the Supreme Court concluded, as a matter of law, that § 14-55 had been repealed by Public Acts 2003, No. 03-184, § 10. See *One Elmcroft Stamford, LLC* v. *Zoning Board of Appeals*, supra, 337 Conn. 809–10. The court thus reversed the judgment of this court and remanded the matter to us with direction to consider the remaining claims of the plaintiff, One Elmcroft Stamford, LLC. See id., 826.

In accordance with that order, we now consider whether the Superior Court properly rejected the plaintiff's claims that the board (1) lacked subject matter

[1] General Statutes (Rev. to 2003) § 14-55 provides in relevant part: "No such certificate shall be issued until the application has been approved and such location has been found suitable for the business intended, with due consideration to its location in reference to schools, churches, theaters, traffic conditions, width of highway and effect on public travel."

All references to § 14-55 in this opinion are to the 2003 revision of the General Statutes.

jurisdiction to hear the application due to defective legal notice, (2) violated the plaintiff's right to fundamental fairness in administrative proceedings, (3) applied an improper legal standard in granting the certificate of location approval, and (4) failed to "consider or distinguish" a prior denial of a certificate of approval application for the location in question. We affirm in part and reverse in part the judgment of the Superior Court.

The relevant facts are largely undisputed. On June 1, 2016, Pisano Brothers Automotive, Inc., entered into a lease for a 6500 square foot parcel of real property known as 86 Elmcroft Road (property), which is located in the "M-G General Industrial District" in Stamford.[2] On that same date, Pisano, acting on behalf of Pisano Brothers Automotive, Inc., applied for a "used car dealer" license from the Department of Motor Vehicles (department).[3] In that application, Pisano listed himself as vice president of Pisano Brothers Automotive, Inc.

Pursuant to § 14-54, "[a]ny person who desires to obtain a license for dealing in or repairing motor vehicles" must first obtain "a certificate of approval of the location for which such license is desired" (location approval) from the applicable municipal zoning agency, which, in this case, was the board. In accordance with that statutory imperative, Pisano filed an application with the board for a location approval on July 14, 2016 (Pisano application),[4] on a preprinted form furnished

[2] In the various materials in the record before us, that district is described interchangeably as the "M-G zone" and the "MG zone."

[3] The application form provided by the department asks applicants to specify the "type of license" being requested and contains four boxes labeled "new car dealer," "used car dealer, "general repairer," and "limited repairer." On the application completed by Pisano, he checked "used car dealer."

[4] In *Elmcroft I*, this court concluded that Pisano "had standing to apply to the board for location approval." *One Elmcroft Stamford, LLC* v. *Zoning Board of Appeals*, supra, 192 Conn. App. 283. No party petitioned for certification to appeal to the Supreme Court with respect to the propriety of that determination. For clarity, we refer to Pasquale Pisano and Pisano Brothers Automotive, Inc., collectively as the applicant and individually by name.

by the board. The first page of that form asks applicants to provide the requested information "in ink" and then lists boxes for five distinct applications: "Variance(s)," "Special Exception," "Appeal from Decision of Zoning Enforcement Officer," "Extension of Time," and "Motor Vehicle"; Pisano checked "Motor Vehicle." Pisano then provided handwritten details regarding the location of the property, the owner of the property, and the applicant on page one of the form.

The second page of the application form contains a section titled "VARIANCES" and directs applicants to "complete this section *for variance requests only*. See a Zoning Enforcement Officer for help in completing this section." (Emphasis added.) Unlike the information provided on page one of the application, which is set forth in an upright block script, the variance section on page two contains the following in a strikingly larger and italicized cursive script: "APA TAB II #55 to allow a used car dealer to be located in an MG zone."[5] Although it is unclear from the record exactly who made that notation on the application form, Pisano explained at the subsequent public hearing that, in preparing the application, he had met with the city's land use officials, including the zoning enforcement officer, who worked with him to complete the application. That testimony is confirmed by the fact that the variance section of the application submitted by Pisano is stamped "ZONING ENFORCEMENT APPROVAL For Submission to Zoning Board of Appeals" and contains the signature of that official.[6]

[5] The "APA TAB II #55" notation ostensibly is a reference to "Appendix A—Table II" of the Stamford Zoning Regulations, which pertains to permitted uses in commercial and industrial districts. "Auto Sales Area, Used" is listed as number fifty-five on that table.

[6] The record before us also contains an "application packet" review form, which specifies that "all applications must be reviewed by zoning enforcement prior to ZBA submittal." That form also contains the signature of the zoning enforcement officer.

Section 19.B of the Stamford Zoning Regulations (regulations) governs variance applications, and § 19.B.1 memorializes the board's "power after public notice and hearing to determine and vary the application of these regulations in harmony with their general purpose and intent and with due consideration for conserving the public health, safety, convenience, welfare and property values."[7] Notably, § 19.B.3.d authorizes the board to refer variance applications to the Stamford Planning Board, which, "in reviewing such matters, shall set forth its opinion as to whether or not the proposed use or feature is in reasonable harmony with the various elements and objectives of the Master Plan and the comprehensive zoning plan . . . ." Stamford Zoning Regs., § 19.B.3.d (2). The regulations also authorize the board to refer variance applications "to other [a]gencies." Stamford Zoning Regs., § 19.B.3.e.

Upon receiving the Pisano application, the board referred it to other Stamford land use agencies "[i]n accordance with [§] 19 of the [regulations]," including the Planning Board and the Engineering Bureau. Those referrals expressly sought "comments" on what the board labeled a variance request.[8]

[7] That regulatory provision comports with the statutory mandate of General Statutes § 8-6 (a), which provides in relevant part: "The zoning board of appeals shall have the following duties . . . (3) to determine and vary the application of the zoning bylaws, ordinances or regulations in harmony with their general purpose and intent and with due consideration for conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated, a literal enforcement of such bylaws, ordinances or regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done and the public safety and welfare secured . . . ."

[8] The record before us contains the board's formal referral of the Pisano application to various land use agencies. Appended to that referral is a document titled "Zoning Board of Appeals Referrals," next to which "86 Elmcroft Road" is handwritten. Under the section titled "Variances," the boxes corresponding to several municipal agencies are checked, including the Planning Board and the Engineering Bureau.

In a subsequent correspondence dated August 4, 2016, the Engineering Bureau informed the board that it had "reviewed plans for a variance to allow for a used car dealer to be located in the M-G Zone" and that it "has found the [proposed use] will not result in any adverse drainage impacts as there will be no increase in impervious coverage." The Engineering Bureau thus indicated that it "does not object to [the Pisano] application proceeding with the approval process with the following condition: New concrete curb and sidewalk shall be installed along the frontage of the property." The Engineering Bureau concluded by noting that "[c]urrently there is no sidewalk at this location and adjacent properties are equipped with sidewalks. Measures shall be taken to prevent vehicles from parking within the City [right-of-way]."

The board also received a letter from the Planning Board dated September 8, 2016, which stated that it had reviewed the Pisano application "in accordance with the provisions of the Stamford Zoning Regulations." The letter continued: "The Planning Board unanimously recommended *DENIAL* of [the Pisano application]. It is the opinion of the [Planning] Board that the proposed application does not keep with the character of the neighborhood and finds these requests are not consistent with the 2015 Master Plan Category #9 (Urban Mixed-Use)."[9] (Emphasis in original.)

The board scheduled a public hearing on the Pisano application and published legal notice in a local newspaper on September 1 and 7, 2016.[10] The board then held

[9] We reiterate that the regulations require the Planning Board, in reviewing a *variance* application, to "set forth its opinion as to whether or not the proposed use or feature is in reasonable harmony with the various elements and objectives of the Master Plan . . . ." Stamford Zoning Regs., § 19.B.3.d (2).

[10] The notice published by the board stated:

"CITY OF STAMFORD

"ZONING BOARD OF APPEALS

"LEGAL NOTICE

the public hearing on the Pisano application on September 14, 2016. At its outset, Chair Claire D. Friedlander read the correspondence from the Engineering Bureau and the Planning Board into the record, which began by noting that the Engineering Bureau "has reviewed the plans for a variance to allow for a used car dealer to be located in the MG zone . . . ."[11]

Attorney Gerald M. Fox III then appeared on behalf of the applicant and explained that Pisano Brothers Automotive, Inc., had been in business as an automobile repair shop in Stamford for more than twenty years. Fox further indicated that "[t]he used car dealer aspect of this application is not one that is something that [the applicant] uses very often . . . . [Pisano Brothers Automotive, Inc.] probably sells . . . less than five [cars] a year." Pisano also appeared at the hearing and stated that, although there would be occasional used car sales, the primary business conducted on the property would be general automotive repair.[12] Pisano confirmed

"The [board] will hold a public hearing and meeting on Wednesday, September 14, 2016, at 7 PM in the Cafeteria located on the 4th floor of the Stamford Government Center Building, 888 Washington Boulevard, Stamford at which time and place the following application will be considered:

"Application #059-16 of [Pisano] for a [m]otor [v]ehicle approval of Table II, Appendix A, #55 (Auto Sales Requirements) of the [regulations] in order to allow a [u]sed [c]ar [d]ealer to operate and be located in an MG zone. Said property is located on the east side of Elmcroft Road in an MG zone and is known as 86 Elmcroft Road. This application is exempt from Coastal Area Management Approval, Exemption Number 10C.

"At the above mentioned time and place a public hearing will be held and all interested parties are invited to attend. After the public hearing, there may be a meeting to discuss and possibly decide the application and any other business pending before the [b]oard." (Emphasis omitted.)

[11] That statement mirrors the notation on the "variance" section of the Pisano application.

[12] With respect to the used car dealer aspect of his business, Pisano stated that there would be "no prices, no signs, no nothing" on any used cars stored on the property. He further explained that, "if I do sell a car, it's usually to a customer that comes in and asks, do you have anything for sale. That's the only reason. Otherwise, there's no banners or anything like that. I'm not—if I do sell cars, it would be anywhere from one to five a year at the most."

that the property contained a total of six parking spaces, as depicted on an "improvement location survey" that he submitted to the board. Pisano also confirmed that his business provided towing services for its customers "from eight [a.m.] to five [p.m.]" but was "not triple AAA." Pisano acknowledged that a tow truck would be stored inside the existing building on the property.

At the hearing, multiple board members raised public safety concerns in light of the limited parking available on the 6500 square foot property. For example, prior to opening the floor for public comment, Friedlander emphasized to the applicant that, "we've had tow truck issues in this neighborhood over the years, and I think that's why we have people who are concerned about that. Tow trucks have been over the streets. They haven't been [stored completely] on the property, and there's a real concern that there's not—that's why you're getting the questions that you're getting . . . . [I]f [the Pisano application is] going to be approved, there has to be some kind of blood faith oath that nothing will be [parked] off the property at any time." Another board member, John A. Sedlak, expressed his concern that, when he recently visited the property, "there were ten cars parked in front—well, actually, eleven cars—[and] the parking lot was totally full. There was one car parked out on [a] sidewalk so you couldn't—you had to go out and walk out in the street." Sedlak then asked who was "storing all these cars there," to which Pisano replied, "I am." Sedlak responded, "Well, you're parking a car on the sidewalk right now." When Friedlander asked Pisano if he would "be comfortable with a limitation [on the number of] cars on the outside of the property at any time," Fox responded, "[t]hat's no problem, yes," and Pisano agreed, stating, "[w]e could do that."

During the public comment portion of the hearing, the board heard from John Darosa, a neighbor who

resided at 62 Elmcroft Road. Darosa began his remarks by stating in relevant part: "I am totally against the proposal. A few years ago, East Coast Towing wanted that building. They wanted to lease [the property], and we had some serious concerns as residents. . . . I'm hearing some of the same things tonight that I heard with East Coast Towing. I don't know if there's any kinfolk or not with this operation and East Coast Towing, but it seems like it's pretty much the same type of thing." Darosa contrasted the property with other businesses in the area, noting that those properties were "secluded" from the "main roads" and were not "eyesores . . . ." Darosa noted that parking was "a mess" on the property and that it "looks terrible," emphasizing that the sidewalk "disappears" in front of the property. Darosa thus opined that, "to put a car dealership [on the property], whether he's bringing in ten cars or fixing . . . cars, there's no way to hide them. The property is too small, at least that's what I think, and we went over this with East Coast Towing a few years ago and I think you guys realized that. . . . [I]t's just not a fit for the area."

The board also heard from Stamford resident Al Sgritta, who noted that cars were being stored on a property on Taff Avenue that was "not being attended to by the local authorities. They just came to look the other way. And I'm sure the same thing [will occur on the property] with vehicles being stored and towing trucks being stored. And you said, well, it's just there temporarily, and it's temporarily every day. . . . [W]hat will happen there on [the property] is a strong possibility."

When public comment concluded, Fox addressed the board and emphasized that the property was located in the M-G zone. He continued: "A lot of things can go there as of right because of the way the state of Connecticut has chosen to deal with used car dealers and car repair, [so] *this board does have to approve*

the location." (Emphasis added.) At the same time, Fox stated that the board had "the opportunity to put some limitations on what [the applicant] can do that, hopefully, will alleviate some of the concerns that you've heard tonight," and then noted several potential conditions that the board could attach to its approval. In his comments, Pisano likewise indicated that he was open to the board's attaching conditions to its approval and emphasized that the property was in the M-G zone, where an automobile repair business is a permitted use. After Pisano concluded his remarks, the public hearing was closed.

When deliberations on the Pisano application began, board member Georgiana White stated in relevant part: "I feel that this has been made more complicated than it is. . . . Because there's a misunderstanding, perfectly understandable but, nonetheless, a misunderstanding, a misconception . . . . I don't think the neighbors really understand it, but the key here, to me . . . is [that the property is in] an MG zone, and there are businesses that can move in tomorrow that would not appear here." White further opined that the "only reason" the applicant was before the board was because of the "label" of its business as a car repair shop. White also noted that what she saw as "advantageous" was that the board had "the opportunity to try to make it even more acceptable to the neighborhood here" by attaching certain conditions to its approval. In his remarks, Sedlak agreed with White that the board's hands were tied in light of the fact that an automobile repair business was a permitted use in the M-G zone under the regulations. As he stated, "unfortunately, this . . . property is a lousy property for a repair shop, terrible. . . . It's lousy, but it's permitted."[13] Board member Nino Anto-

[13] Sedlak also articulated his frustration with the zoning classification of the area in question, stating: "Why the hell hasn't the Planning Board and the Zoning Board over the many, many years changed that side of the street to something different from [the] MG zone. . . . [T]he Zoning Board and

nelli similarly stated that "this is a good opportunity [to] improve the building [on the property]. . . . Because again, it's an MG zone. Anybody can move in."

After discussing various conditions of approval, the board granted the location approval subject to fourteen detailed conditions. The board's certificate of decision, which was signed by Friedlander and recorded on the Stamford land records, contained an explicit "statement of its findings and approval," which states: "The board finds . . . [t]hat the aforesaid circumstances of conditions is/are such that the strict application of the provisions of these [r]egulations would deprive the [applicant] of the reasonable use of such land or building(s) and the granting of the application is necessary for the reasonable use of the land or building(s). The [b]oard GRANTS a Motor Vehicle approval of Table II, Appendix A, #55 (Auto Sales Requirements) of the Zoning Regulations in order to allow a Used Car Dealer to operate and be located in an [M-G] zone." The board attached fourteen conditions to its approval, which it characterized as "restrictions" in its certificate of decision.[14]

the Planning Board have not done a good job. . . . [T]he zoning should have been changed on this [area] years ago."

[14] The conditions attached to the board's approval were:

"1. All concerns of the Engineering [Bureau] shall be adhered to.

"2. There shall be no more than [six] cars parked in the front.

"3. The [applicant] shall make an effort to contact the Engineering Bureau and discuss having [it] add sidewalks to the area.

"4. The hours of operation shall be [8 a.m. to 6 p.m.], Monday through Saturday.

"5. There shall be no vehicular parking between the front property line and the curb on Elmcroft Road.

"6. There shall be one tow truck only on the premises.

"7. There shall be year round evergreen screening around the property.

"8. There shall be no auto body shop or painting of cars on the premises.

"9. All cars belonging to visitors, patrons or employees shall be parked on the site at all times.

"10. No vehicle repairs shall be permitted outside of the building.

"11. No impact tools shall be used outside of the building.

"12. No storage of inoperative vehicles shall be permitted outside of the building.

At all relevant times, the plaintiff was the owner of abutting property at 126 Elmcroft Road. Following the board's decision to grant the location approval application, the plaintiff commenced an administrative appeal in the Superior Court pursuant to General Statutes §§ 14-57 and 4-183.[15] The plaintiff claimed, inter alia, that the board (1) lacked subject matter jurisdiction to hear the Pisano application due to defective legal notice, (2) violated its right to fundamental fairness in administrative proceedings, (3) "acted illegally, arbitrarily, and in abuse of discretion" by applying an improper legal standard to the location approval request, and (4) failed "to consider or distinguish the Zoning Board's decision, dated December 14, 2009, that the [p]roperty was unsuitable for use as a used car dealership." The court, *Hon. Taggart D. Adams*, judge trial referee, rejected the plaintiff's claims and concluded that substantial evidence existed to support the board's decision. From that judgment, the plaintiff appealed to this court.

I

We first consider the plaintiff's claim that the board lacked subject matter jurisdiction to hear the Pisano application due to an alleged defect in the prehearing notice published in a local newspaper. It is well established that "subject matter jurisdiction is a threshold matter that we must resolve in order to address [a party's] other claims." *In re Joshua S.*, 260 Conn. 182,

"13. Outside visible storage of any automotive equipment including tires, batteries, auto parts, etc., shall not be permitted.

"14. The location, size, and appearance of the building and improvements shall be as per plan depicted on IMPROVEMENT LOCATION SURVEY, dated revised [July 15, 2016], copies of which are on file in the office of the [board]."

[15] General Statutes § 14-57 provides: "Any person aggrieved by the performance of any act [regarding the issuance of dealers' and repairers' licenses] by such local authority may take an appeal therefrom to the superior court for the judicial district within which such town or city is situated, or in accordance with the provisions of [§] 4-183. Any such appeal shall be privileged."

191 n.11, 796 A.2d 1141 (2002). A determination regarding subject matter jurisdiction presents a question of law, over which our review is plenary. See, e.g., *Vitale* v. *Zoning Board of Appeals*, 279 Conn. 672, 678, 904 A.2d 182 (2006).

Not all claims of improper notice are jurisdictional in nature. See, e.g., *Lauer* v. *Zoning Commission*, 220 Conn. 455, 462, 600 A.2d 310 (1991) (failure to give personal notice to specific individual not jurisdictional defect); *Mohican Valley Concrete Corp.* v. *Zoning Board of Appeals*, 75 Conn. App. 45, 52, 815 A.2d 145 (2003) (emphasizing that "notice requirements may be jurisdictional"). At the same time, our Supreme Court has "long held that failure to give newspaper notice is a subject matter jurisdictional defect . . . . Noncompliance with the statutory requirement of public notice invalidates the subsequent action by the zoning board . . . ." (Citations omitted.) *Koepke* v. *Zoning Board of Appeals*, 223 Conn. 171, 175, 610 A.2d 1301 (1992); see also *Wright* v. *Zoning Board of Appeals*, 174 Conn. 488, 491, 391 A.2d 146 (1978) ("[c]ompliance with prescribed notice requirements is a prerequisite to a valid action by a zoning board of appeals and failure to give proper notice constitutes a jurisdictional defect"); *Koskoff* v. *Planning & Zoning Commission*, 27 Conn. App. 443, 447, 607 A.2d 1146 ("[s]trict compliance with statutory mandates regarding notice to the public is necessary"), cert. granted, 222 Conn. 912, 608 A.2d 695 (1992) (appeal withdrawn November 10, 1992); R. Fuller, 9B Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 46:1, p. 3 ("[c]ompliance with the statutory requirement as to notice of the public hearing is a prerequisite to valid action by the agency"). Our analysis begins, therefore, with the statutory notice requirements for location approval applications.

As this court has observed, § 14-55 set forth "the jurisdictional requirements for a prehearing notice"

regarding location approval applications.[16] *Mohican Valley Concrete Corp.* v. *Zoning Board of Appeals*, supra, 75 Conn. App. 52. The General Assembly, however, repealed that statute in 2003; see *One Elmcroft Stamford, LLC* v. *Zoning Board of Appeals*, supra, 337 Conn. 809; and it has not enacted a proper substitute of any kind.[17] As a result, no statutory notice requirements have existed for location approval applications filed pursuant to § 14-54 in the nearly nineteen years since § 14-55 was repealed.

When Pisano filed his application for a location approval in 2016, the board was not statutorily obligated to provide notice of the public hearing on that application. A fortiori, the board could not have lacked subject matter jurisdiction over the Pisano application due to noncompliance with statutory notice requirements.

II

The plaintiff alternatively argues that, even if the board had subject matter jurisdiction to hold a public

[16] General Statutes (Rev. to 2003) § 14-55 provides in relevant part: "In any town, city or borough the local authorities referred to in [§] 14-54 shall, upon receipt of an application for a certificate of approval . . . assign the same for hearing within sixty-five days of the receipt of such application. Notice of the time and place of such hearing shall be published in a newspaper having a general circulation in such town, city or borough at least twice, at intervals of not less than two days, the first not more than fifteen, nor less than ten days, and the last not less than two days before the date of such hearing and sent by certified mail to the applicant not less than fifteen days before the date of such hearing. . . ."

[17] We recognize that, on June 4, 2003, the legislature passed No. 03-265, § 9, of the 2003 Public Acts, which "purported to amend § 14-55 by appending two new sentences to the previously existing language." *One Elmcroft Stamford, LLC* v. *Zoning Board of Appeals*, supra, 337 Conn. 810. For the reasons discussed in its comprehensive decision, our Supreme Court concluded that this attempted amendment of § 14-55 was ineffective in light of the legislature's repeal of § 14-55 days earlier. Id., 817–22. The Supreme Court thus held that "despite having passed multiple amendments to the statutory scheme governing certificates of approval of the location . . . the legislature has not yet seen fit to reenact the provisions previously set forth in § 14-55." (Citation omitted.) Id., 825.

hearing on the Pisano application, it violated the plaintiff's right to fundamental fairness by insufficiently describing the proposed use of the property in its prehearing notice. We do not agree.

The procedural right involved in administrative proceedings properly is described as the right to fundamental fairness, as distinguished from the due process rights that arise in judicial proceedings. *Grimes* v. *Conservation Commission*, 243 Conn. 266, 273 n.11, 703 A.2d 101 (1997). "While proceedings before [administrative agencies] are informal and are conducted without regard to the strict rules of evidence . . . they cannot be so conducted as to violate the fundamental rules of natural justice. . . . Fundamentals of natural justice require that there must be due notice of the hearing . . . ." (Citations omitted; internal quotation marks omitted.) *Megin* v. *Zoning Board of Appeals*, 106 Conn. App. 602, 608, 942 A.2d 511, cert. denied, 289 Conn. 901, 957 A.2d 871 (2008). Whether the right to fundamental fairness has been violated in an administrative proceeding is a question of law over which our review is plenary. See id. Moreover, "the burden of proving that the notice was defective rests on the persons asserting its insufficiency." *Peters* v. *Environmental Protection Board*, 25 Conn. App. 164, 170, 593 A.2d 975 (1991).

As this court observed in a case involving a location approval application, "the purpose of a prehearing notice is to permit members of the general public to prepare intelligently for a public hearing at which they may be heard about the merits of a pending application. . . . [I]mperfections in the contents of a notice do not automatically deprive a zoning board of the authority to act on an application. A notice is not misleading even though it does not describe the proposed action in detail or with exactitude. . . . Presumably, our courts have allowed zoning boards and administrative agencies some latitude with respect to such defects so as to

avoid the harsh consequences of a jurisdictional defect, which permits a disappointed litigant to question a zoning board decision long after board proceedings have concluded . . . .'' (Citations omitted; internal quotation marks omitted.) *Mohican Valley Concrete Corp.* v. *Zoning Board of Appeals*, supra, 75 Conn. App. 52–53. ''A notice is proper . . . if it fairly and sufficiently apprises the public of the action proposed, making possible intelligent preparation for participation in the hearing.'' *Cocivi* v. *Plan & Zoning Commission*, 20 Conn. App. 705, 708, 570 A.2d 226, cert. denied, 214 Conn. 808, 573 A.2d 319 (1990).

The prehearing notice published in the local newspaper stated in relevant part that a public hearing would be held on the Pisano application ''for a [m]otor [v]ehicle approval of Table II, Appendix A, #55 (Auto Sales Requirements) of the [regulations] in order to allow a [u]sed [c]ar [d]ealer to operate and be located in an MG zone. . . .'' See footnote 10 of this opinion. At the public hearing, Pisano clarified that the primary intended use of the property was not used car sales, but general automotive repair. In light of that admission, the plaintiff contends that the legal notice provided by the board was misleading, as it did not sufficiently describe the intended use of the property.

As this court has noted, ''zoning boards of appeal are creatures of statute'' that ''possess a limited authority, as circumscribed by statute, the scope of which cannot be enlarged or limited by either the board or the local zoning regulations.'' *Komondy* v. *Zoning Board of Appeals*, 127 Conn. App. 669, 679, 16 A.3d 741 (2011). The municipal regulations here specify the limited duties of the board, which include review of location approval applications. See Stamford Zoning Regs., § 19.A.3. With particular respect to ''Dealers' and Repairers' Licenses,'' the regulations refer to § 14-54 and recognize the board's

authority to "hear and decide" location approval applications in accordance therewith. Stamford Zoning Regs., § 19.A.3.b. That authority derives exclusively from title 14, chapter 246, part III (d) of the General Statutes, which governs the issuance of dealers' and repairers' licenses in this state.

Significantly, that statutory scheme delineates only four types of licensees—"[n]ew car dealer, "[u]sed car dealer," "[r]epairer," and "[l]imited repairer."[18] General Statutes § 14-51. For licensing purposes, a repairer is defined as "any person, firm or corporation qualified to conduct such business in accordance with the requirements of [§] 14-52a, having a suitable facility and having adequate equipment, engaged in repairing, overhauling, adjusting, assembling or disassembling any motor vehicle, but shall exclude a person engaged in making repairs to tires, upholstering, glazing, general blacksmithing, welding and machine work on motor vehicle parts when parts involving such work are disassembled or reassembled by a licensed repairer." General Statutes § 14-51 (a) (3). By contrast, a used car dealer is defined in relevant part as "any person, firm or corporation engaged in the business of merchandising motor vehicles other than new who may, incidental to such business, repair motor vehicles."[19] General Statutes § 14-51 (a) (2). In light of the undisputed fact that the applicant's intended use of the property included *both* general automotive repairs and the sale of used cars, the latter definition more accurately describes that proposed use, as it encompasses both automotive repair and used car sales.[20]

[18] It is undisputed that Pisano Brothers Automotive, Inc., is not a new car dealer or a limited repairer.

[19] At the public hearing, Fox explained that he had asked the zoning enforcement officer about the proper classification of the proposed use on the property. The zoning enforcement officer informed him that he thought that a "repair shop would be a less intrusive use than a used [car dealer], so it would fall into that category" as a used car dealer.

[20] For that reason, we reject the plaintiff's ancillary contention that the "use described at the hearing was different than the license sought from the [department] . . . ."

Furthermore, it is undisputed that, in addition to the legal notice that the board published in a local newspaper, the applicant provided written notice of the public hearing to all owners of property within "100 feet . . . of the boundary area" of the property—including the plaintiff—in accordance with § 20.B.1 of the regulations. In that notice, the applicant described the proposed use of the property as follows: "Automotive repair/used car dealer." The record contains a certificate of mailing from the United States Postal Service, which indicates that the applicant mailed that notice to the plaintiff on September 2, 2016, almost two weeks prior to the public hearing.[21] At no time has the plaintiff alleged that it did not receive that written notice or description of the proposed use of the property.

In light of the foregoing, we conclude that the applicant sufficiently apprised the plaintiff of the proposed use of the property. The plaintiff, therefore, cannot establish a violation of its right to fundamental fairness.

III

We turn next to the plaintiff's contention that the board applied an improper legal standard in granting the certificate of location approval. Because that claim involves a question of law, our review is plenary. See *St. Joseph's High School, Inc.* v. *Planning & Zoning Commission*, 176 Conn. App. 570, 586–87, 170 A.3d 73 (2017).

A

Before considering the specific claims advanced by the plaintiff, additional context is necessary. Under Connecticut law, the approval of the proposed location by a municipal zoning board is a prerequisite to the issuance of a state license to deal in or repair motor vehicles. See General Statutes § 14-54; *Mohican Valley*

[21] No member or representative of the plaintiff participated in the public hearing on the Pisano application.

Concrete Corp. v. *Zoning Board of Appeals*, supra, 75 Conn. App. 45. When a municipal zoning board reviews a location approval application pursuant to § 14-54, it acts as "a special agent of the state." *Vicino* v. *Zoning Board of Appeals*, 28 Conn. App. 500, 504, 611 A.2d 444 (1992). As the Supreme Court explained, "[i]n receiving and hearing and, eventually, in denying the application, the [municipal zoning board] was not functioning under either the municipal zoning ordinance or the zoning statutes. . . . It was acting in a special capacity. It was serving as the local agency named by the General Assembly to determine whether a certificate of approval should be issued." (Citations omitted.) *Mason* v. *Board of Zoning Appeals*, 143 Conn. 634, 637, 124 A.2d 920 (1956); see also *Sun Oil Co.* v. *Zoning Board of Appeals*, 154 Conn. 32, 35, 221 A.2d 267 (1966) ("[o]btaining a certificate of approval . . . is not a zoning matter"); *Dubiel* v. *Zoning Board of Appeals*, 147 Conn. 517, 520, 162 A.2d 711 (1960) (when acting on location approval application, "the board is not dealing primarily with zoning but is performing a separate function delegated to it as an agency of the state"); *Charchenko* v. *Kelley*, 140 Conn. 210, 213, 98 A.2d 915 (1953) ("the determination of the propriety of utilizing the plaintiff's premises as a location for his proposed business is an administrative matter").

Because it is acting as an "agent of the state," a municipal zoning board "must follow the statutory criteria in determining whether to issue the certificate of approval." *Vicino* v. *Zoning Board of Appeals*, supra, 28 Conn. App. 505; accord *Mason* v. *Board of Zoning Appeals*, supra, 143 Conn. 637–38 (explaining that "[i]t is to [the General Statutes], then, that we must turn to find the test for the [municipal zoning board] to apply in reaching its determination" on location approval application and emphasizing that zoning board "could legally go

no further than to apply the test incorporated in the statute"). For more than one-half century, location approval applications were evaluated pursuant to a statutory standard that required consideration of the suitability of the location in question, as most recently codified in § 14-55. See, e.g., *New Haven College, Inc.* v. *Zoning Board of Appeals*, 154 Conn. 540, 542–43, 227 A.2d 427 (1967); *Atlantic Refining Co.* v. *Zoning Board of Appeals*, 142 Conn. 64, 66, 111 A.2d 1 (1955); *Colonial Beacon Oil Co.* v. *Zoning Board of Appeals*, 128 Conn. 351, 354, 23 A.2d 151 (1941). Pursuant to that statutory standard, a municipal zoning agency was not permitted to grant a location approval unless "such location has been found suitable for the business intended, with due consideration to its location in reference to schools, churches, theaters, traffic conditions, width of highway, and effect on public travel." (Internal quotation marks omitted.) *Vicino* v. *Zoning Board of Appeals*, supra, 505. As our Supreme Court noted, "the language of the statute [was] explicit in stating what the board [was] to consider when it acts on an application." *New Haven College, Inc.* v. *Zoning Board of Appeals*, supra, 543.

In light of the legislature's repeal of § 14-55 in 2003; see *One Elmcroft Stamford, LLC* v. *Zoning Board of Appeals*, supra, 337 Conn. 809; that statutory standard no longer exists. As a result, municipal zoning boards are left in a precarious predicament: pursuant to § 14-54, they remain obligated to act on location approval applications as administrative agencies of the state, yet are bereft of any statutory standard to apply to such applications.[22] The challenge in acting on such applica-

[22] As one judge noted, "[w]e have the perhaps odd situation where these local zoning boards are posited as agents of the state but do not apply state mandated criteria in deciding to issue certificates of location approval." *Glenn* v. *Zoning Board of Appeals*, Superior Court, judicial district of New Haven, Docket No. CV-05-4010376-S (March 30, 2006) (*Corradino, J.*) (41 Conn. L. Rptr. 140, 143).

tions is compounded by the fact that "members of a [municipal] zoning board typically are laypersons more familiar with their community than with the niceties of applicable law" and that "[z]oning boards ordinarily conduct their proceedings with some degree of informality." (Internal quotation marks omitted.) *Mohican Valley Concrete Corp.* v. *Zoning Board of Appeals*, supra, 75 Conn. App. 50. As this court has observed, "[i]n light of these institutional realities, the legislature may well have thought it useful to provide specific statutory guidance for the manner in which zoning boards should conduct their proceedings . . . ." Id. With the repeal of § 14-55, such legislative guidance no longer is provided to municipal zoning boards.

As our Supreme Court emphasized in *One Elmcroft Stamford, LLC* v. *Zoning Board of Appeals*, supra, 337 Conn. 825, the courts of this state cannot act as plenary lawgivers. See *Ashmore* v. *Hartford Hospital*, 331 Conn. 777, 787, 208 A.3d 256 (2019); *Hayes* v. *Smith*, 194 Conn. 52, 65, 480 A.2d 425 (1984). "We are not in the business of writing statutes; that is the province of the legislature." *State* v. *Rupar*, 293 Conn. 489, 511, 978 A.2d 502 (2009). Only the General Assembly can fill the legislative void created by the repeal of § 14-55.

The question, then, is what standard remains following the repeal of § 14-55. In this regard, we note the observation in *Charchenko* v. *Kelley*, supra, 140 Conn. 212–13, that "[w]hether or not a location for repairing automobiles and for dealing in used cars should be approved is to be determined upon the basis of the situation actually existing when the certificate of approval is sought. . . . An inquiry to resolve this question involved a consideration of all relevant circumstances." (Citation omitted.) In the absence of statutory criteria like those previously specified in § 14-55; see footnote 1 of this opinion; it is left to municipal zoning boards to determine, in their discretion, the factors

relevant to their decision on whether to grant a location approval.[23]

Because municipal zoning boards act on location approval applications as administrative agencies of the state, appeals of such decisions are "governed not by General Statutes § 8-8, but by [§] 14-57." *Mohican Valley Concrete Corp.* v. *Zoning Board of Appeals*, supra, 75 Conn. App. 47 n.6. Section 14-57, in turn, "incorporates the rules contained in [§] 4-183 of the Uniform Administrative Procedure Act [General Statutes § 4-166 et seq.]." Id.; see footnote 15 of this opinion. Pursuant to § 4-183 (j), a reviewing court "shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Accordingly, a municipal zoning board's decision on a location approval application will be reversed only when it violates the precepts outlined in § 4-183 (j). With that context in mind, we turn to the plaintiff's claims.

[23] Due to the repeal of § 14-55, zoning boards no longer are *obligated* to conduct a suitability analysis by applying the factors specified therein. At the same time, we are aware of no authority that would preclude consideration of those factors, notwithstanding repeal of that statute. As the plaintiff's counsel noted at oral argument before this court, "I don't think [a zoning board] could be faulted for applying a suitability analysis." We concur with that observation. A zoning board likewise is free to consider whether "the use of the proposed location will . . . imperil the safety of the public." *Atlantic Refining Co.* v. *Zoning Board of Appeals*, 150 Conn. 558, 561, 192 A.2d 40 (1963).

B

On appeal, the plaintiff contends that the board committed an error of law by applying an improper legal standard to the location approval application submitted by Pisano.[24] More specifically, the plaintiff submits that the board (1) improperly treated the Pisano application as a variance request and (2) operated under the mistaken belief that a municipal zoning board lacks authority to deny a location approval application when the proposed use is permitted in the zone in question. We agree.

1

In *One Elmcroft Stamford, LLC* v. *Zoning Board of Appeals*, supra, 192 Conn. App. 293–96, this court concluded that the board had rendered a formal, official, collective statement of the reason for its decision in its certificate of decision on the Pisano application, which was recorded on the Stamford land records on September 29, 2016.[25] See generally *Verrillo* v. *Zoning Board of Appeals*, 155 Conn. App. 657, 672–76, 111 A.3d 473 (2015). For that reason, this court determined that the Superior Court improperly had searched beyond that stated reason in contravention of the maxim that

[24] In the principal appellate brief that it filed when this appeal was commenced, the plaintiff claimed that the board "decided the [Pisano] application under the wrong standard." After the Supreme Court remanded the case to this court with direction to consider the plaintiff's remaining claims; see *One Elmcroft Stamford, LLC* v. *Zoning Board of Appeals*, supra, 337 Conn. 826; the plaintiff requested permission to file "an expedited, supplemental brief addressing how the Supreme Court's partial reversal . . . affects the scope of the Appellate Court's review on remand." This court subsequently ordered the parties to file supplemental briefs addressing, inter alia, the question of whether, "irrespective of the issue of compliance with the repealed § 14-55," the board committed reversible error by applying an improper legal standard. The plaintiff and the applicant thereafter filed supplemental briefs in accordance with that order; the board did not file a supplemental brief or response of any kind.

[25] Friedlander signed that certificate of decision in her official capacity as chair of the board.

a court "should not go behind the official statement of the board." *Chevron Oil Co.* v. *Zoning Board of Appeals*, 170 Conn. 146, 153, 365 A.2d 387 (1976); see also *DeMaria* v. *Planning & Zoning Commission*, 159 Conn. 534, 541, 271 A.2d 105 (1970) (when zoning agency has "formally stated" reason for its decision, court should not go behind that official, collective statement to search record for other reasons supporting decision); *Mohican Valley Concrete Corp.* v. *Zoning Board of Appeals*, supra, 75 Conn. App. 51 (noting that "[t]he same rule" applicable to land use appeals applies in administrative appeals involving location approvals). Following our decision in *Elmcroft I*, no party petitioned for certification to appeal to the Supreme Court to challenge the propriety of that determination. We concur with, and are bound by, that settled determination. See *State* v. *Joseph B.*, 187 Conn. App. 106, 124 n.13, 201 A.3d 1108 ("we cannot overrule a decision made by another panel of this court absent en banc consideration"), cert. denied, 331 Conn. 908, 202 A.3d 1023 (2019).

In its certificate of decision on the Pisano application, the board set forth an explicit "statement of its findings and approval," stating in relevant part: "The board finds . . . [t]hat the aforesaid circumstances or conditions is/are such that the strict application of the provisions of these [r]egulations would deprive the [applicant] of the reasonable use of such land or building(s) and the granting of the application is necessary for the reasonable use of the land or building(s)." That language is identical to the standard contained in § 19.B.2.a (2) of the regulations for variance requests.[26] As the Superior

[26] Section 19.B.2.a of the regulations provides in relevant part: "In considering a variance application, the [b]oard shall state upon its record the specific written findings regarding all of the following conditions . . . . (2) . . . [T]he aforesaid circumstances or conditions are such that the strict application of the provisions of these [r]egulations would deprive the applicant of the reasonable use of such land or [b]uilding and the granting of the variance is necessary for the reasonable use of the land or [b]uilding."

Court noted in its memorandum of decision, the board's certificate of decision "looks and reads like a variance" approval. Our Supreme Court agreed with that observation. See *One Elmcroft Stamford, LLC* v. *Zoning Board of Appeals*, supra, 337 Conn. 812 n.8.

We conclude that the collective statement of the basis of the board's decision indicates that the board improperly applied the legal standard that governs variance approvals under the regulations. Although the board alleges that this collective statement was a mere clerical error, the record belies that claim and demonstrates that the board misunderstood its proper role in acting on location approval applications. For example, upon its receipt of the Pisano application, the board referred it to, among other Stamford agencies, the Engineering Board and Planning Board and requested their "comments" on what the board characterized as a variance request. See footnote 8 of this opinion. Nothing in the General Statutes authorizes a municipal zoning board, when acting on a location approval application as an agent of the state, to solicit feedback on the application from other municipal agencies. Furthermore, although the regulations permit the board to make such referrals when *variances* are requested; see Stamford Zoning Regs., § 19.B.3; they confer no such authority with respect to location approval requests. To the contrary, the regulations specifically require the board to "hear and decide" location approval applications for dealers' and repairers' licenses "in accordance with . . . [§§] 14-54 and [14-55] . . . ."[27] Stamford Zoning Regs.,

[27] The regulations in effect at the time that Pisano filed his application in 2016 antedate the decision of our Supreme Court in *Elmcroft II*, which clarified that § 14-55 had been repealed by the legislature in 2003. Following its repeal, § 14-55 "must be considered . . . as if it never existed." (Internal quotation marks omitted.) *One Elmcroft Stamford, LLC* v. *Zoning Board of Appeals*, supra, 337 Conn. 821; see also *State* v. *Daley*, 29 Conn. 272, 275 (1860) ("[t]he effect of [the] repeal was, for the most obvious reason, that the law, as to any proceedings under it which were not past and closed, must be considered as if it had never existed").

§ 19.A.3.b. By referring the Pisano location approval application to other municipal agencies, the board exceeded its authority under § 19.A.3 of the regulations.[28]

The board's error in treating the Pisano application as a variance request was exacerbated by the terms of its subsequent approval. In its August 4, 2016 memorandum on the Pisano application, sent in response to the variance referral issued by the board, the Engineering Bureau informed the board that it had "reviewed plans for a variance to allow for a used car dealer to be located in the M-G Zone" and indicated that it "does not object to [the Pisano] application proceeding with the approval process with the following condition: New concrete curb and sidewalk shall be installed along the frontage of the property."[29] The Engineering Bureau also stated that "[c]urrently there is no sidewalk at this location and adjacent properties are equipped with sidewalks. Measures shall be taken to prevent vehicles from parking within the City [right-of-way]." In its certificate of decision, the board specifically conditioned its approval of the Pisano application on "[a]ll concerns of the Engineering [Bureau being] adhered to."[30] See footnote 14 of this opinion.

[28] In that respect, the board's referral more aptly is characterized as an unlawful procedure in contravention of § 4-183 (j) (3).

[29] That correspondence was read into the record at the public hearing.

[30] We also are troubled by the board's belated effort to minimize its reliance on the variance standard contained in § 19.B.2.a (2) of the regulations. The plaintiff commenced this administrative appeal on November 14, 2016. The plaintiff filed a memorandum of law in support thereof on February 27, 2017; the board and the applicant filed their respective memoranda in opposition on April 20 and 21, 2017. On September 18, 2017—two days before argument on the appeal was scheduled in the Superior Court—the board recorded a "revised certificate of decision" on the Stamford land records regarding the Pisano application. That certificate is identical to the one recorded one year earlier, with one exception. The statement of the board's findings is omitted, with the following language inserted in its place: "NOTE—This corrected [c]ertificate eliminates 'variance' language on the original [c]ertificate of [d]ecision . . . since [the Pisano application] is not a variance application, it is an application for [c]ertificate of [a]pproval for location of a [u]sed [c]ar [d]ealership." As this court noted in *Elmcroft I*,

In the present case, the board issued a formal, official, collective statement of its decision, in which it expressly applied the legal standard that governs variance approvals under § 19.B.2.a (2) of the regulations to its review of a location approval application pursuant to § 19.A.3.b of the regulations. The board also issued a "variance" referral of the Pisano application to other municipal agencies, despite the fact that the board had no authority to do so under the regulations or the General Statutes. Moreover, the terms of the board's decision required the applicant to comply with "[a]ll concerns" articulated by a separate municipal agency. Those transgressions constitute errors of law that compromised the integrity of this administrative proceeding.

2

The plaintiff also contends that the board applied an incorrect legal standard by operating under the mistaken belief that a municipal zoning board lacks authority to deny a location approval application when the proposed use is permitted in the zone in question. The record substantiates that contention.

During the public hearing, the board heard from Darosa, a neighbor who opined that the 6500 square foot property was "too small" for the applicant's proposed use and that such use was "not a fit for the area." In

that revised certificate "was submitted to the Superior Court in a supplemental return of record. The record contains no indication as to how this revised decision was made, and it does not appear to have been issued in accordance with the modification procedures set forth in General Statutes § 4-181a et seq. It does not appear that the Superior Court considered the revised [certificate] when rendering its judgment." *One Elmcroft Stamford, LLC* v. *Zoning Board of Appeals*, supra, 192 Conn. App. 291 n.9. Although we agree that this purported correction cannot properly be considered the formal, collective statement of the basis of the board's decision on the Pisano application, the recording of that document nonetheless suggests a tacit acknowledgment by the board that an improper standard was specified as the collective basis of its decision in the original certificate.

light of his concerns, an unidentified board member asked Darosa: "Is there something [the applicant] can do that would make [the proposed use] acceptable . . . if you could say, this is what I want, and we make that a condition [of approval] before [the applicant] proceeds, what would be on your wish list, or is there nothing?" Darosa responded in the negative, stating that the proposed use "just doesn't fit." Friedlander then explained to Darosa that she thought the question about potential conditions was asked "because [the applicant's proposed use] does have a right to exist" in the M-G zone. When Darosa replied, "Mm hmm, okay," Friedlander noted that "the question is how could it be made more palatable . . . ."[31]

The board's deliberations on the Pisano application began with White's statement that "this [application] has been made more complicated than it is. . . . Because there's a misunderstanding, perfectly understandable but, nonetheless, a misunderstanding, a misconception . . . . I don't think the neighbors really understand it, but *the key here*, *to me* . . . is [that the property is in] an MG zone, and there are businesses that can move in tomorrow that would not appear here." (Emphasis added.) White opined that the "only reason" the applicant was before the board was because of the "label" of its business as a car repair shop and stated that the board nevertheless had "the opportunity to try to make [the proposed use] even more acceptable to the neighborhood here" by attaching certain conditions

[31] After the public comment portion of the hearing concluded, Fox similarly stated: "[O]ne of the things that strikes me is that it is [in] an MG zone, this property. A lot of things can go there as of right because of the way the state of Connecticut has chosen to deal with used car dealers and car repair, [so] *this board does have to approve* the location." (Emphasis added.) Fox then noted that the board had "the opportunity to put some limitations on what [the applicant] can do that, hopefully, will alleviate some of the concerns that you've heard tonight," and then discussed several potential conditions that the board could attach to its approval.

to its approval. Friedlander agreed that the board could impose conditions but emphasized that "[t]hey have to be reasonable." At that point, Sedlak agreed with White that the board's hands were tied in light of the fact that an automobile repair business was a permitted use in the M-G zone under the regulations. As he stated, "unfortunately, this property is a lousy property for a repair shop, terrible. . . . It's lousy, but it's permitted." When Friedlander asked Antonelli if he had "anything you want to say" on the Pisano application, Antonelli similarly stated that "this is a good opportunity [to] improve the building [on the property]. . . . Because, again, it's an MG zone. Anybody can move in." Sedlak then replied: "Wait a second. We're still discussing this case. . . . There's conditions to be put on this." The board then discussed various potential conditions and granted the location approval.[32]

The transcript of the public hearing supports the plaintiff's contention that the board members mistakenly believed that a municipal zoning board lacks discretion to deny a location approval application when the proposed use is permitted in the zone in question. That perception is contrary to established precedent.

[32] The record indicates that, at the time of the hearing, the board was comprised of four regular members—Friedlander, Sedlak, White, and Antonelli—and two alternate members, Ernest Matarasso and Matthew Tripolitsiotis. Although the transcript of the public hearing does not indicate that Tripolitsiotis was designated to act on the Pisano application in accordance with General Statutes § 8-5a; see, e.g., *Komondy* v. *Zoning Board of Appeals*, supra, 127 Conn. App. 675–76; and Tripolitsiotis is not identified in any manner in that transcript, the minutes of the board's September 14, 2016 meeting state that Tripolitsiotis voted to approve the Pisano application along with the four regular members of the board.

The transcript of the September 14, 2016 meeting also indicates that the members of the board never formally voted on the Pisano application, nor was any motion to approve the application made by any member. Rather, following a discussion of potential conditions, Friedlander simply declared: "Application 059-16, 86 Elmcroft Road has been approved, five votes in favor, none in opposition with the following conditions."

In *Mrowka* v. *Board of Zoning Appeals*, 134 Conn. 149, 149–51, 55 A.2d 909 (1947), the applicants sought licenses to sell gasoline and to conduct automobile repairs on a property in Plainville, both of which required them to obtain a location approval from the municipal zoning board of appeals. The zoning board denied the application due to traffic and safety concerns, and the plaintiffs appealed to the Superior Court. Id., 149–52. In reversing the determination of the zoning board, the Superior Court predicated its conclusion on the fact that "the lot in question is in an industrial zone" where "the use the plaintiffs propose to make of it is permissible in such a zone . . . ." Id., 152. The court emphasized that other commercial uses of nearby properties existed in the zone and opined that "no greater hazard would be created by the use of the premises for a gasoline station than by other uses permitted in such a zone." Id., 153. The court thus concluded that "[t]o exclude a gas station as a traffic hazard and yet regard the other enumerated uses as less likely to add to those traffic congestions or hazards inherent in any built up industrial zone seems to the court to be unsupported by rationality and therefore unreasonable and arbitrary and so to that extent unlawful." (Internal quotation marks omitted.) Id. The Supreme Court disavowed that reasoning, stating in relevant part: "To approve the court's reasoning would not only go against the judgment of the legislature but would destroy the right of a zoning board ever to refuse a certificate of approval for a gasoline station the proposed location of which was in an industrial zone, a conclusion which cannot be sound." Id., 154. The Supreme Court further characterized the Superior Court's reasoning as an "error in the fundamental basis of [its] decision . . . ." Id.

This court reached a similar conclusion in *Ferreira* v. *Zoning Board of Appeals*, 48 Conn. App. 599, 712 A.2d 423 (1998). Like the applicant here, the plaintiff

in *Ferreira* sought a used car dealer license and, accordingly, filed a location approval application with the zoning board pursuant to § 14-54. Id., 600. Following a hearing, the zoning board denied the application, concluding that the proposed location was not suitable for such use. Id., 602. On appeal, the Superior Court "reasoned that, because the proposed use was permitted by existing zoning laws of the city of Shelton, it was presumed to be suitable." Id., 602–603. The Superior Court thus reversed the decision of the zoning board. Id., 602. From that judgment, the zoning board appealed to this court, which rejected the reasoning of the Superior Court. In reversing its judgment, we concluded that the Superior Court had "improperly substituted its judgment for that of the board" and that substantial evidence existed in the record to support the board's conclusion that the location was not suitable for the plaintiff's proposed use. Id., 604–605.

Mrowka and *Ferreira* stand for the proposition that the fact that a proposed use is permitted in a particular zone does not obligate a zoning board to grant a location approval application. Indeed, *all* applications filed pursuant to § 14-54 necessarily involve uses that are permitted to some degree, as "[a] certificate of approval for a particular use cannot be issued if that use would violate zoning regulations." *Raymond* v. *Zoning Board of Appeals*, 164 Conn. 85, 89, 318 A.2d 119 (1972).

The General Assembly, in designating municipal zoning boards as agents of the state, entrusts in them the responsibility "to *determine* whether a certificate of approval should be issued." (Emphasis added.) *Mason* v. *Board of Zoning Appeals*, supra, 143 Conn. 637; see also id., 638 ("under the statute, the [zoning board] was to give or refuse to give its approval of a geographical site"); *Charchenko* v. *Kelly*, supra, 140 Conn. 212 ("[w]hether or not a location for repairing automobiles and for dealing in used cars should be approved is to

be determined upon the basis of the situation actually existing when the certificate of approval is sought" and should entail "consideration of all relevant circumstances"); *Mohican Valley Concrete Corp.* v. *Zoning Board of Appeals*, supra, 75 Conn. App. 59–60 (§ 14-54 "requires local zoning boards to decide the suitability of the location of an automobile dealership"); *East Coast Towing, Ltd.* v. *Stamford*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-09-6002900-S (June 30, 2010) (50 Conn. L. Rptr. 225, 227) ("The intention of § 14-54 is to have some relevant review of the placement of such a business. To allow an interpretation of the statutory requirement that approval is simply a 'rubber stamp' would ignore the purpose of the statute, that is, to permit the local authority that has knowledge and familiarity with the location to analyze . . . whether the operation is suitable for the location. It would be meaningless to enact a statute requiring a permit process if there was no discretion afforded the local authority to determine if the use 'fits' within the surrounding area."). When a zoning board is presented with a location approval application, it acts not in its zoning capacity, but as an agent of the state. See, e.g., *Sun Oil Co.* v. *Zoning Board of Appeals*, supra, 154 Conn. 35; *Dubiel* v. *Zoning Board of Appeals*, supra, 147 Conn. 520. Accordingly, in reviewing a location approval application, a municipal zoning board is obligated to make a determination, irrespective of the permitted nature of the proposed use, on whether a certificate of approval should issue. As a matter of law, the members of the board were mistaken in concluding otherwise during their deliberations.

IV

The plaintiff also contends that the board committed an error of law by failing to "consider or distinguish" a prior denial of a location approval application to operate a similar business on the property. That claim

requires us to consider the proper application of the "impotent to reverse" rule, which presents a question of law subject to plenary review.[33] See *Purnell* v. *Inland Wetlands & Watercourses Commission*, 209 Conn. App. 688, 719, 269 A.3d 124, cert. denied, 343 Conn. 908, A.3d (2022).

A

In many ways, the impotent to reverse rule operates as the administrative agency equivalent of the doctrine of stare decisis.[34] As this court recently explained, "[t]he impotent to reverse rule has governed the conduct of municipal administrative agencies in this state for more than ninety years. . . . [F]rom the inception of [land use regulation] to the present time, [our appellate courts] have uniformly held that a [municipal land use agency] should not ordinarily be permitted to review

[33] Although our conclusion in part III of this opinion that the board erroneously applied an incorrect legal standard is dispositive of the appeal and necessitates a remand to the board for a new hearing, the plaintiff's impotent to reverse claim is almost certain to arise on remand. We, therefore, deem it appropriate to address that claim. See, e.g., *Oudheusden* v. *Oudheusden*, 338 Conn. 761, 778, 259 A.3d 598 (2021); *Total Recycling Services of Connecticut, Inc.* v. *Connecticut Oil Recycling Services, LLC*, 308 Conn. 312, 325, 63 A.3d 896 (2013). By contrast, we decline to address the plaintiff's claim that the conditions that were attached to the board's approval; see footnote 14 of this opinion; are impossible to satisfy. We decline to speculate as to (1) whether the board, on remand, will grant the location approval application, (2) whether the board, on remand, will attach any conditions to such approval, and (3) the nature of any such conditions. See *New Hartford* v. *Connecticut Resources Recovery Authority*, 291 Conn. 502, 510, 970 A.2d 578 (2009) (speculation and conjecture have no place in appellate review).

[34] "The doctrine of stare decisis counsels that a court should not overrule its earlier decisions unless the most cogent reasons and inescapable logic require it. . . . Stare decisis is justified because it allows for predictability in the ordering of conduct, it promotes the necessary perception that the law is relatively unchanging, it saves resources and it promotes judicial efficiency. . . . It is the most important application of a theory of [decision-making] consistency . . . and . . . is an obvious manifestation of the notion that [decision-making] consistency itself has normative value." (Internal quotation marks omitted.) *Spiotti* v. *Wolcott*, 326 Conn. 190, 201, 163 A.3d 46 (2017).

its own decisions and revoke action once duly taken. . . . Otherwise . . . there would be no finality to the proceeding and the decision would be subject to change at the whim of the board or through influence exerted on its members. . . .

"At the same time . . . although [f]inality of decision is . . . desirable in the administrative context . . . that principle is by no means inflexible. . . . The impotent to reverse rule thus embodies an important limitation on the ability of an administrative agency to reconsider its prior determinations, while at the same time affording a degree of flexibility in limited circumstances. The rule dictates that an administrative agency cannot reverse a prior decision unless there has been a change of conditions or other considerations have intervened which materially affect the merits of the matter decided. . . . Mere change in conditions or other factors is not enough; only proof of material change permits an agency to reconsider its prior determination. . . . Moreover, the impotent to reverse rule applies . . . only when the subsequent application seeks substantially the same relief as that sought in the former. And it is for the administrative agency, in the first instance, to decide whether the requested relief in both applications is substantially the same."[35] (Citations omitted; internal quotation marks omitted.) Id., 719–21.

Accordingly, in applying the impotent to reverse rule, a municipal administrative agency must make two distinct factual determinations. The agency must determine (1) whether the application in question seeks substantially the same relief as that sought in a previous

[35] Our Supreme Court has held that the impotent to reverse rule applies in the specific context of location approval applications. See *Mason* v. *Board of Zoning Appeals*, supra, 143 Conn. 639 (observing, in case involving location approval application, "that, after an administrative agency has made a decision relating to the use of real property, it is ordinarily powerless to reverse itself, although it may do so if a change in circumstances has occurred since its prior decision, or other considerations materially affecting the

application that was decided by that agency and (2) whether a change of conditions or other considerations have intervened that materially affect the merits of the agency's decision on that prior application. See id., 720–21. Those factual questions must be answered by the municipal administrative agency in the first instance and cannot be decided by a reviewing court. See *Fiorilla* v. *Zoning Board of Appeals*, 144 Conn. 275, 279, 129 A.2d 619 (1957); *Hoffman* v. *Kelly*, 138 Conn. 614, 618, 88 A.2d 382 (1952); see also *Purnell* v. *Inland Wetlands & Watercourses Commission*, supra, 720–21; cf. *Hunter Ridge, LLC* v. *Planning & Zoning Commission*, 318 Conn. 431, 445, 122 A.3d 533 (2015) (Superior Court sits as appellate tribunal when hearing administrative appeal); *Shanahan* v. *Dept. of Environmental Protection*, 305 Conn. 681, 716 n.23, 47 A.3d 364 (2012) (appellate tribunal cannot find facts).

B

The plaintiff's claim is predicated on the undisputed fact that, in 2009, a company known as East Coast Towing, Ltd. (East Coast), applied for a location approval to operate a used car dealership on the property, which business included the "repair of vehicles and the storage of tow trucks" on the property. *East Coast Towing, Ltd.* v. *Zoning Board*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-10-6003028-S (March 2, 2011) (51 Conn. L. Rptr. 572, 573). Following a public hearing at which "members of the public opposed the application claiming that the [property] was unsuitable for the proposed use"; id.; the Zoning Board of the City of Stamford (agency) denied the location approval application. Id. East Coast appealed the propriety of that decision to the Superior Court, which concluded that there was substantial evidence to support the reasons stated by the agency for its denial of

merits of the subject matter have intervened and no vested rights have arisen").

the application on suitability grounds pursuant to § 14-55.[36] Id., 578. The court, therefore, dismissed the administrative appeal. See id.

Like the East Coast application, the Pisano application here seeks a location approval to conduct used car sales, automotive repair, and the storage of a tow truck on the property. Because it involves a similar location approval request, the plaintiff posits that the board "committed legal error when it failed to address its 2009 decision [on the East Coast application] denying [a] location approval at the exact same site." The plaintiff further submits that, pursuant to the impotent to reverse rule, the board "should have compared the two [applications], and it was legal error for the [board] to reverse *its prior denial* without giving due consideration to whether circumstances had changed." (Emphasis added.) On the particular facts of this anomalous case, we disagree.

The impotent to reverse rule precludes a municipal administrative agency from revisiting "*its own decisions* and revok[ing] action once duly taken." (Emphasis added.) *Mitchell Land Co.* v. *Planning & Zoning Board of Appeals*, 140 Conn. 527, 533, 102 A.2d 316 (1953); see also *Malmstrom* v. *Zoning Board of Appeals*, 152 Conn. 385, 390, 207 A.2d 375 (1965) ("[o]rdinarily, an administrative agency cannot reverse a prior decision"); *Fiorilla* v. *Zoning Board of Appeals*, supra, 144 Conn. 279 (specifying when administrative agency is justified "in reversing itself"). The impotent to reverse rule "thus

[36] In light of the legislature's repeal of § 14-55 in 2003, the propriety of the agency's December 14, 2009 denial of the East Coast application is questionable. We note in this regard that the Superior Court, in its 2011 decision affirming that denial, erroneously concluded that "§ 14-55 was actually not repealed in [2003] and that the statute remains in effect . . . ." *East Coast Towing, Ltd.* v. *Zoning Board*, supra, 51 Conn. L. Rptr. 577; contra *One Elmcroft Stamford, LLC* v. *Zoning Board of Appeals*, supra, 337 Conn. 809 (concluding that § 14-55 was repealed in 2003).

embodies an important limitation on the ability of an administrative agency to reconsider *its prior determinations* . . . .'' (Emphasis added.) *Purnell* v. *Inland Wetlands & Watercourses Commission*, supra, 209 Conn. App. 720.

Contrary to the plaintiff's contention before both the Superior Court and this court, the board did *not* make any prior determinations or render a decision on the East Coast location approval application in 2009. Rather, that decision was made by the agency, which, at the time, was the entity designated by statute to act on location approval applications. See General Statutes (Rev. to 2003) § 14-54 (a). Critically, the agency and the board are separate municipal administrative agencies with distinct powers and duties under the city charter. See Stamford Charter §§ C6-40-1 and C6-50-1.

In 2016, the General Assembly amended § 14-54. See Public Acts 2016, No. 16-55, § 4. As a result of that amendment, the authority to act on approval location applications in Stamford was transferred from the agency to the board, effective July 1, 2016. The Pisano application was filed two weeks later. The fact that the board and its members had no previous involvement, and made no determinations, with respect to the East Coast location approval application undermines any claim that, in granting the Pisano application, the board improperly reversed itself in contravention of the impotent to reverse rule.

In its reply to the supplemental appellate brief filed by the applicant, the plaintiff suggests that the fact that the agency, rather than the board, decided the East Coast location approval application is a ''distinction without a difference.'' The plaintiff has provided no authority to support that assertion, nor are we aware of any. The concurring and dissenting opinion likewise has identified no authority in which the impotent to

reverse rule has been applied against a municipal agency that did not itself act on a prior application.

Furthermore, the record in the present case indicates that, although the use of the property by East Coast was vaguely alluded to by Darosa during the public hearing, the board never was apprised that the agency had rendered a decision on a location approval application for the property. Neither the agency's decision on the East Coast application nor the Superior Court's decision upholding the agency's determination was furnished to the board. In such circumstances, it would be imprudent and inequitable to impute constructive notice on the part of board members of the substance of the proceeding before, and the decision of, a separate municipal agency seven years earlier. In this regard, we are mindful that members of municipal administrative agencies like the board "typically are laypersons more familiar with their community than with the niceties of applicable law"; *Mohican Valley Concrete Corp.* v. *Zoning Board of Appeals*, supra, 75 Conn. App. 50; and that their "procedural expertise may not always comply with the multitudinous statutory mandates under which they operate." *Gagnon* v. *Inland Wetlands & Watercourses Commission*, 213 Conn. 604, 611, 569 A.2d 1094 (1990). On the particular circumstances of this case, we conclude that the board did not commit an error of law by failing to distinguish the agency's 2009 denial of the location approval application by East Coast.[37]

[37] This opinion should not be construed to preclude the parties, on remand, from providing the board with evidence regarding the East Coast location approval application and the agency's decision to deny that request in 2009. The board, as arbiter of credibility, is entitled to assign whatever weight it deems appropriate to such evidence. See *Cadlerock Properties Joint Venture, L.P.* v. *Commissioner of Environmental Protection*, 253 Conn. 661, 676, 757 A.2d 1 (2000) ("[n]either this court nor the [Superior Court] may . . . substitute its own judgment for that of the administrative agency on the weight of the evidence" (internal quotation marks omitted)), cert. denied, 531 U.S. 1148, 121 S. Ct. 1089, 148 L. Ed. 2d 963 (2001).

V

As a final matter, we briefly address an ancillary issue raised sua sponte in the concurring and dissenting opinion regarding the ability of a municipal zoning board to conditionally approve a location approval application. Our Supreme Court has explained that "[w]ell established principles govern further proceedings after a remand by this court. In carrying out a mandate of [the Supreme Court], the [lower] court is limited to the specific direction of the mandate as interpreted in light of the opinion. . . . This is the guiding principle that the [lower] court must observe." (Internal quotation marks omitted.) *Bauer* v. *Waste Management of Connecticut, Inc.*, 239 Conn. 515, 522, 686 A.2d 481 (1996). In *Elmcroft II*, our Supreme Court remanded the case to this court with specific direction to "consider the plaintiff's remaining claims." *One Elmcroft Stamford, LLC* v. *Zoning Board of Appeals*, supra, 337 Conn. 826. In this administrative appeal, the plaintiff has not raised any claim regarding the authority of a municipal zoning board, in acting on a location approval application pursuant to § 14-54, to condition its approval on an applicant's compliance with particular restrictions. Accordingly, that issue is beyond the scope of the remand ordered by our Supreme Court.

We recognize that municipal zoning agencies routinely attach conditions to location approvals. See, e.g., *Mohican Valley Concrete Corp.* v. *Zoning Board of Appeals*, supra, 75 Conn. App. 56 n.11; id., 62 (noting, in case in which board attached conditions to its approval, that "the board might have taken account of the willingness of the defendants to accept a certificate of approval with conditions designed to mitigate some of the concerns raised by the plaintiffs"); *University Realty, Inc.* v. *Planning Commission*, 3 Conn. App. 556, 558, 490 A.2d 96 (1985) (affirming decision to grant location approval that "was subject to certain conditions, one

of which was approval from the defendant of the site development of the property as required by the city zoning regulations"); *Modern Tire Recapping Co.* v. *Town Plan & Zoning Commission*, Superior Court, judicial district of Hartford, Docket No. CV-13-6041410-S (December 30, 2013) (commission granted location approval "with conditions"); *Gibson* v. *New Haven City Plan Commission*, Superior Court, judicial district of New Haven, Docket No. CV-07-4027997-S (October 27, 2008) (zoning board granted location approval subject to multiple conditions); *Zaldumbide* v. *Zoning Board of Appeals*, Superior Court, judicial district of Fairfield, Docket No. CV-90-270866 (July 23, 1992) (same). Moreover, the "application for automobile dealer's or repairer's license" form prepared by the department specifically asks whether "there are any restrictions placed on the licensee's uses of the property" by the municipal zoning agency.

At the same time, we are aware of no statutory authority for such conditional approval. Although the General Assembly expressly has conferred authority on municipal agencies to render conditional approval in certain contexts; see, e.g., General Statutes § 8-2 (a) (special permits granted by zoning agency may be subject "to conditions necessary to protect the public health, safety, convenience and property values"); General Statutes § 22a-42a (d) (1) (inland wetlands agency may impose conditions on permit to conduct regulated activity); it has not done so with respect to location approvals granted pursuant to § 14-54. Nonetheless, our Supreme Court has recognized, in another context, that "[a] zoning board of appeals may, *without express* [*statutory*] *authorization*, attach reasonable conditions to the grant of a variance." (Emphasis added.) *Burlington* v. *Jencik*, 168 Conn. 506, 509, 362 A.2d 1338 (1975). Mindful of the limited scope of our review on remand, we leave for another day the question of a zoning board's

authority to render conditional approval on an application filed pursuant to § 14-54.

The judgment is reversed in part and the case is remanded to the Superior Court with direction to remand the case to the Zoning Board of Appeals for further proceedings consistent with this opinion; the judgment is affirmed in all other respects.

In this opinion MOLL, J., concurred.

LAVERY, J., concurring in part and dissenting in part. I agree that the judgment of the trial court should be reversed in part and that the case should be remanded to the court with direction to remand the case to the defendant Zoning Board of Appeals of the City of Stamford (board) for a new hearing. Specifically, I agree that the board (1) did not lack subject matter jurisdiction to hear the application, (2) did not violate the right of the plaintiff, One Elmcroft Stamford, LLC, to fundamental fairness with its prehearing notice, (3) improperly treated the application for a certificate of approval of location (Pisano application) filed by the defendant Pisano Brothers Automotive, Inc. (Pisano Brothers),[1] as one for a variance, and (4) operated under the mistaken belief that a municipal zoning board lacks the authority to deny a location approval application when the proposed use is permitted in the zone in question. Additionally, I agree with the majority's conclusion that it "concur[s] with, and [is] bound by," this court's "settled determination" in *One Elmcroft Stamford, LLC* v. *Zoning Board of Appeals*, 192 Conn. App. 275, 293–97, 217 A.3d 1015 (2019), rev'd, 337 Conn. 806, 256 A.3d 151 (2021) (*Elmcroft I*), that the trial court erred by searching beyond the board's stated reason for approving the

[1] Where necessary, I will refer to Pisano Brothers Automotive, Inc., as Pisano Brothers and to the defendant Pasquale Pisano as the defendant.

Pisano application.[2] I respectfully disagree, however, with the majority's conclusion that the board did not err by failing to distinguish a prior denial of a location approval application to operate a similar business on the property. Additionally, I believe that we must address the board's imposition of conditions on the certificate of approval when it erroneously reviewed the Pisano application under the variance standard. I, therefore, concur in part and respectfully dissent in part.

I

First, I believe that the board erred by failing to distinguish the present case from the decision in *East Coast Towing, Ltd.* v. *Zoning Board*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-10-6003028-S (March 2, 2011) (51 Conn. L. Rptr. 572) (*East Coast Towing*), which involved the same property. On remand, if the board decides to issue a certificate of approval of location for the property, I strongly believe that it must articulate on the record why it is departing from that decision.

To reiterate, in *East Coast Towing*, an applicant proposed in 2009 to use the property in the present case as a base of operations for its towing business (East Coast Towing application). Id., 572–73. After a public hearing, the Zoning Board of the City of Stamford (agency)

[2] As this court noted in *Elmcroft I*, the trial court's review of the board's decision was governed by the Uniform Administrative Procedure Act, General Statutes § 4-166 et seq. *One Elmcroft Stamford, LLC* v. *Zoning Board of Appeals*, supra, 192 Conn. App. 279; see also *Vicino* v. *Zoning Board of Appeals*, 28 Conn. App. 500, 504–505, 611 A.2d 444 (1992). Thus, because the board stated on the record its reasons for approving the application, the trial court could not look beyond those reasons to uphold the board's decision. See, e.g., *Azzarito* v. *Planning & Zoning Commission*, 79 Conn. App. 614, 618, 830 A.2d 827 ("[w]hen a [board] states its reasons in support of its decision on the record, the court goes no further, but if the [board] has not articulated its reasons, the court must search the entire record to find a basis for the [board's] decision" (internal quotation marks omitted)), cert. denied, 266 Conn. 924, 835 A.2d 471 (2003).

declined to issue a certificate of approval of location.[3] Id., 573. In reaching its decision, the agency applied the suitability standards in General Statutes (Rev. to 2003) § 14-55.[4] Id., 574.

The plaintiff applicant appealed to the Superior Court and argued in relevant part that § 14-55 had been repealed and that the agency was not permitted to consider the standards set forth in that statute when reviewing its application. Id., 573–74. The plaintiff further argued that the agency was required to approve the application once it determined that the proposed use was one permitted in the M-G general industrial

[3] In its resolution disapproving the application, the agency made the following findings:

"1. The subject property is already intensively used for a 24/7 tow truck operation with the stated intention to keep ten (10) tow trucks on the property;

"2. David M. Emerson, Executive Director of the Environmental Protection Board, has recommended that a traffic operations and management plan be provided to demonstrate that tow trucks and vehicles will not be staged and queued on the city street. Mr. Emerson concludes that the use will have a significant impact on the character of the site and surroundings resulting from the need to park tow trucks on call and to move and store cars awaiting release to their owners.

"3. Howard J. Weissberg, P.E., Senior Transportation Engineer, Tighe & Bond, has submitted a review of traffic, parking and safety issues and notes that only one parking space is available to support used car inventory, customer parking and tow truck parking. Mr. Weissberg further reports that due to the size of the lot and building there is limited traffic circulation and the potential for on-street parking and the back out of trucks and vehicles, creating a potential conflict with traffic flow and safety concerns on Elmcroft Road.

"4. Significant concerns for safety of neighborhood children and nuisance conditions and diesel fumes from the 24/7 towing and repair operations was expressed by residents and owners of adjacent residential properties, elected officials and representatives of the South End Neighborhood Revitalization Zone.

"5. The South End is rapidly becoming more residential in character, with an estimated 4,000 new housing units and major public parks planned immediately north and west of the subject property." (Internal quotation marks omitted.) *East Coast Towing, Ltd.* v. *Zoning Board*, supra, 51 Conn. L. Rptr. 574.

[4] All references to § 14-55 in this opinion are to the 2003 revision of the General Statutes.

zone. Id., 574. The court concluded that § 14-55 had not been repealed and dismissed the appeal after concluding that there was substantial evidence to support the reasons stated by the agency for its denial of the application. Id., 577–78.

The plaintiff in the present case maintains that the board is bound by the agency's decision on the East Coast Towing application and that it should have articulated why it departed from the prior denial when it granted the Pisano application. As part of the legal standard that the plaintiff invites this court to adopt, it argues that, on remand, the board "must either follow or expressly distinguish" the decision in *East Coast Towing*. Two cases from our Supreme Court support the plaintiff's position. First, *Hoffman* v. *Kelly*, 138 Conn. 614, 88 A.2d 382 (1952), involved an appeal from the denial by the Liquor Control Commission (commission) of the plaintiff's application for a druggist liquor permit. The commission found that the property was unsuitable because, "having considered the number of like outlets in the neighborhood, [the commission] found that the granting of a permit in this locality would have been detrimental to public interest, and because the commission was satisfied that there had been no change in the neighborhood since [its] prior denials." Id. The plaintiff appealed to the trial court, and, after hearing additional evidence and finding facts, the court sustained the appeal and ordered the commission to issue a permit to the plaintiff. See id.

On appeal to our Supreme Court, the commission argued "that its denial of the permit [was] justified under the principle of law which ordinarily renders every administrative agency impotent to reverse itself unless (1) a change of conditions has occurred since its prior decision or (2) other considerations materially affecting the merits of the subject matter have intervened and no vested rights have arisen." Id., 616–17. The court

concluded that the trial court impermissibly found that there had been a change of conditions by finding its own facts and reaching its own conclusion, rather than determining, on the basis of the facts found by the commission, whether the commission's conclusion was unreasonable or illogical. See id., 617. The court noted that, to support a denial of the permit on the ground that the commission was bound by its earlier decision, the commission needed to make findings that the conditions in the neighborhood had not changed and that there were no new considerations materially affecting the subject matter. See id. Because the commission did not make such findings, the reasons it supplied did not support its denial of the permit on the ground that it was not free to reverse its prior decision. Id. The court stated that it is for the commission to say "whether new considerations have arisen, what they are and whether they so materially change the aspect of the case that they will justify a change of decision." Id., 618. Our Supreme Court remanded the case to the trial court with direction to remand the case to the commission "to be proceeded with in accordance with law." Id.

Second, *Mason* v. *Board of Zoning Appeals*, 143 Conn. 634, 124 A.2d 920 (1956), involved an appeal from the refusal by the Board of Zoning Appeals of the City of Bridgeport (board of zoning appeals) to issue a certificate approving the plaintiff's property "as a suitable location for carrying on the business of repairing motor vehicles." Id., 635. The board of zoning appeals previously had issued to the plaintiff's brother a certificate approving the same property as a suitable location for motor vehicle repairs. Id. Five years later, the brother transferred title to the property and his interest in the business to the plaintiff. Id., 635–36. The plaintiff submitted an application to the board of zoning appeals for a certificate of approval. Id., 636. A public hearing was held on the plaintiff's application at which neigh-

bors complained about the hours of operation of the brother's business, along with noise and fumes caused by the car repairs. Id. The board of zoning appeals also received from the Bridgeport Fire Department a report detailing hazards that existed on the premises. Id. At the conclusion of the hearing, the board of zoning appeals denied the plaintiff's application without stating in the record its reason for doing so. Id.

On appeal to our Supreme Court, the plaintiff claimed that the board of zoning appeals acted arbitrarily, illegally, and in abuse of its discretion in issuing a certificate of approval to his brother and then reversing its ruling when it declined to issue a certificate to him, even though no change of circumstances had occurred since it first approved the location. Id. Our Supreme Court, citing *Hoffman*, stated: "[A]fter an administrative agency has made a decision relating to the use of real property, it is ordinarily powerless to reverse itself, although it may do so if a change in circumstances has occurred since its prior decision, or other considerations materially affecting the merits of the subject matter have intervened and no vested rights have arisen." Id., 639. The court concluded that, because there was nothing in the record to show a change of circumstances since the prior decision of the board of zoning appeals, that entity acted illegally in reversing itself. See id.

In the present case, the defendant and Pisano Brothers argue that the board should not be bound by the agency's 2009 decision on the East Coast Towing application because, among other things, the decision was made by a different administrative agency that is a separate and independent branch of Stamford's land use department. The majority agrees with this argument.

As the majority notes, in 2009, when the hearing on the East Coast Towing application took place, General Statutes (Rev. to 2009) § 14-54 delegated to *the agency*

the authority to review location approval applications and to issue certificates of approval of location. In 2016, shortly before the hearing on the Pisano application, the legislature amended § 14-54, which now delegates to *the board* the authority to review these applications and issue these certificates. See Public Acts 2016, No. 16-55, § 4. Accordingly, the majority does not address the applicability of our Supreme Court's decisions in *Hoffman* v. *Kelly*, supra, 138 Conn. 614, and *Mason* v. *Board of Zoning Appeals*, supra, 143 Conn. 634.

I strongly disagree with the majority's conclusion that "[t]he fact that the board and its members had no previous involvement, and made no determinations, with respect to the East Coast [Towing] location approval application undermines any claim that, in granting the Pisano application, the board improperly reversed itself . . . ." In reaching this conclusion, the majority states that "the agency and the board are separate municipal administrative agencies with distinct powers and duties under the city charter." The majority's emphasis on the differences between the agency and the board is misplaced and inconsequential, as it ignores that neither entity was exercising its zoning powers when it reviewed the location approval applications for the property.

For all intents and purposes, the agency and the board were the same entity when they reviewed the respective applications. Both the agency and the board acted as the agent of the Commissioner of Motor Vehicles pursuant to the power delegated to them by § 14-54. See, e.g., *New Haven College, Inc.* v. *Zoning Board of Appeals*, 154 Conn. 540, 542, 227 A.2d 427 (1967); *Dubiel* v. *Zoning Board of Appeals*, 147 Conn. 517, 520, 162 A.2d 711 (1960). In other words, the agency and the board occupied the same role, had the same powers, and were tasked with issuing the same certificate pursuant to the same statute. Thus, I do not see a distinction between

the entities in this context, and I believe that the agency's prior decisions on location approval applications should have precedential value.

Because of the majority's holding, zoning boards of appeal can now ignore all location approval decisions made by other land use agencies prior to 2016. For example, if the owner of an automobile repair shop, which received its certificate of approval from a municipality's planning and zoning commission prior to 2016, transfers ownership of the business to an unrelated party, that party would need to seek approval from the municipality's zoning board of appeals. When reviewing the party's application, the zoning board of appeals will not be bound by the planning and zoning commission's prior decision on the location, and it can deny the new owner's application even if no change in circumstances has occurred. Thus, allowing boards of appeals to reverse the decisions of other land use agencies without providing justification could lead to inconsistent and unpredictable results for future property owners. Furthermore, in the present case, the Superior Court upheld the agency's denial of the East Coast Towing application. That the court upheld a decision disapproving the location of the same property only adds to the precedential value of the agency's decision.

If, on remand, the board decides to issue a certificate of approval on the Pisano application, I believe that it must also articulate whether a change in circumstances has occurred since the agency's decision on the East Coast Towing application. The board should develop a record that supports its decision, as a reviewing court will not be able to supply its own reasons to uphold this decision. I am not suggesting that the board *cannot* reverse the agency's prior decision regarding the property. Rather, if the board issues a certificate of approval on remand, I simply believe that it must state on the record its reasons for departing from the prior decision.

II

I also take issue with the majority's failure to address the board's imposition of conditions on the certificate of approval when it erroneously reviewed the Pisano application under the variance standard. The board attached fourteen conditions to its certificate of approval of the Pisano application. The trial court did not address the issue of whether the board had the authority to attach those conditions, even though the proposed use of the property was fully permitted in the M-G zone in which the property is located. On appeal, neither party specifically challenges the board's authority to attach those conditions. I believe that this issue, however, is subsumed within the plaintiff's broader claim that the board erred by treating the Pisano application as one for a variance. Put differently, the board attached conditions to the certificate of approval *because* it impermissibly reviewed the Pisano application as if it were an application for a variance.

"In general terms, conditions may be attached to variances, special permits, site plans . . . and regulated activities permits." R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 21:14, p. 680. There exist statutes that permit municipal zoning agencies to impose conditions on applicants in certain situations. See, e.g., General Statutes § 8-2 (a) (special permits granted by zoning agency may be subject "to conditions necessary to protect the public health, safety, convenience and property values"); General Statutes § 22a-42a (d) (1) (inland wetlands agency may impose conditions on permit to conduct regulated activity). Section 14-54, however, grants municipal land use agencies only the power either to issue or decline to issue certificates of approval of the locations for which licenses are sought. The statute does not explicitly give these agencies the power to attach conditions to the certificates of approval that they issue. In the

present case, as I previously have noted, the board was acting as an agent of the Commissioner of Motor Vehicles and, therefore, could act only with the powers delegated to it by § 14-54.

I recognize that in *Mohican Valley Concrete Corp.* v. *Zoning Board of Appeals*, 75 Conn. App. 45, 48, 815 A.2d 145 (2003), a zoning board of appeals attached conditions to its certificate of approval. Pursuant to the local zoning regulations, "the approval took the form of granting the [applicants] a special exception." Id., 47. Thus, the zoning regulations are what provided the zoning board of appeals with the authority to attach conditions to the applicants' use of the property. Furthermore, in upholding the decision of the zoning board of appeals, this court noted that "the board might have taken account of the willingness of the defendants to accept a certificate of approval with conditions designed to mitigate some of the concerns raised by the plaintiffs." Id., 62.

In the present case, however, the proposed use of the property is permitted as of right in the M-G zone in which the property is located. Thus, there are no independent zoning regulations that permitted the board to attach conditions to its approval. Furthermore, my review of the hearing transcript reveals that, unlike the situation in *Mohican Valley Concrete Corp.* v. *Zoning Board of Appeals*, supra, 75 Conn. App. 62, neither the defendant nor his counsel agreed to several of the fourteen conditions listed in the board's written decision. For example, the board imposed restrictions on parking, vehicle storage, and equipment storage that were not expressly discussed at the hearing.

I also recognize that there is a Department of Motor Vehicles form titled "application for automobile dealer's or repairer's license" that suggests that the board in the present case was permitted to restrict the use of

the property when it issued its certificate of approval.[5] Section 2 of this form, which is to be completed "by local authorities of the city . . . in which the location is proposed," asks: "Are there any restrictions placed on the licensee's use of the property?" If the local authority that completes the form answers in the affirmative, it must attach a copy of the restrictions that it has imposed on the licensee. This form, however, does not provide any explanation for when a local zoning authority can impose "restrictions" on its approval of an application. For example, this section could apply in situations in which, as in *Mohican Valley Concrete Corp.* v. *Zoning Board of Appeals*, supra, 75 Conn. App. 47 n.4, 48 and n.7, local zoning regulations permit a local zoning authority to attach conditions to an applicant's use of a property. In the absence of any statutory language granting local zoning authorities the authority to restrict a licensee's use of a property when issuing a certificate of approval, simply including this question on the form does not mean that local zoning authorities possess such statutory authority.

In the present case, it is apparent that the board attached conditions to its certificate of approval because it acted as though it was reviewing a variance request under the Stamford zoning regulations. Accordingly, I believe that the majority's failure to address the board's attachment of conditions to the certificate is inconsistent with its conclusion that "the board improperly applied the legal standard that governs variance approvals under the regulations." These two errors inextricably are tied together. By not addressing whether the board could have attached conditions to the certificate of approval, the majority has invalidated the underlying error of the board while leaving intact a result of its

[5] This form is to be submitted to the Department of Motor Vehicles after a hearing on an application has taken place and a local zoning authority has issued a certificate of approval of a proposed location.

error. On remand, if the board decides to approve the Pisano application, I do not believe that it can attach conditions to its approval because (1) it does not have the statutory authority to do so, and (2) there are no zoning regulations that independently provide the board with this authority.

For the foregoing reasons, I concur in part and respectfully dissent in part.

STATE OF CONNECTICUT *v.* JAHMON HAKEEM NORRIS (AC 44024)

Bright, C. J., and Clark and DiPentima, Js.

Syllabus

Convicted under two informations of the crimes of risk of injury to a child, assault in the third degree, breach of the peace in the second degree and interfering with an officer, the defendant appealed to this court. The defendant's convictions stemmed from his involvement in a domestic violence incident with his girlfriend, which her minor child witnessed, and from his aggressive behavior with a police officer and hospital staff after he was brought to a hospital following the domestic violence incident. He claimed that the trial court improperly failed to conduct an adequate independent inquiry into his competency to stand trial and to order a competency hearing at the start of trial following a prior evaluation in which he had been found competent to stand trial. He also claimed that the court improperly granted the state's motion for joinder of the cases for trial because the conduct alleged in the domestic violence assault case was significantly more brutal and shocking than the conduct at the hospital alleged in the interfering with an officer case. *Held*:

1. The trial court did not abuse its discretion in denying the defendant's motion for a competency evaluation or in failing to conduct an independent inquiry into his competency, the defendant having failed to meet his burden that, at the time he moved for the competency evaluation, the court had before it specific factual allegations that, if true, would have constituted substantial evidence of mental impairment: the court, before ruling on the motion, engaged in extensive dialogue with the defendant, observed his demeanor, took notice of his general pattern of disruptive conduct, reviewed the competency report in the case file, and determined that the defendant was competent to stand trial and

that his repeated disruptions and assertions that he did not understand were a delay tactic and specifically referenced the defendant's behavior when denying the motion; moreover, the court concluded that, on the basis of the defendant's comments and ability to remain calm and cooperative during the initial stages of jury selection, the defendant clearly understood what was happening; furthermore, the court did not err in relying, in part, on the defendant's previous competency evaluation, as the defendant failed to produce any evidence that demonstrated that his condition had changed since that evaluation, and the previous report was not the only source of information on which the court relied in making its determination.

2. The trial court did not abuse its discretion in consolidating the two informations for trial, as the defendant failed to demonstrate that joinder resulted in substantial prejudice to him: although the trial court erred by joining the defendant's two cases for trial because the defendant's conduct with respect to the domestic violence assault charge was significantly more brutal and shocking than his conduct at the hospital relating to the interfering with an officer charge, the court's explicit instructions to the jury to consider each charge separately in reaching its verdict sufficiently cured the risk of substantial prejudice to the defendant and, therefore, preserved the jury's ability to fairly and impartially consider the offenses charged in the jointly tried cases; moreover, it was highly unlikely that the violent nature of the facts adduced in the domestic violence case prejudiced the jury's verdict as to the defendant's state of mind in the interfering with an officer case because the facts of what happened at the hospital were undisputed; furthermore, the fact that the jury acquitted the defendant of charges in both cases highlighted the limited prejudicial impact that joinder had.

Argued January 3—officially released June 14, 2022

Procedural History

Substitute information, in the first case, charging the defendant with the crimes of risk of injury to a child, interfering with an officer, breach of the peace in the second degree, interfering with an emergency call, assault in the third degree, threatening in the second degree and strangulation in the second degree, and substitute information, in the second case, charging the defendant with the crimes of assault on a public safety officer and interfering with an officer, brought to the Superior Court in the judicial district of Waterbury, geographical area number four, where the court, *Doyle*, *J.*, granted the defendant's motion for a competency

evaluation; thereafter, following a competency hearing, the court, *Doyle*, *J.*, determined that the defendant was competent to stand trial; subsequently, the court, *Klatt*, *J.*, granted the state's motion for joinder and denied the defendant's motion for a competency evaluation; thereafter, the matter was tried to the jury before *Klatt*, *J.*; verdicts and judgments of guilty of risk of injury to a child, assault in the third degree, breach of the peace in the second degree and interfering with an officer, from which the defendant appealed to this court. *Affirmed.*

Naomi T. Fetterman, assigned counsel, for the appellant (defendant).

Melissa Patterson, senior assistant state's attorney, with whom were *Anne Holley*, senior assistant state's attorney, and, on the brief, *Maureen Platt*, state's attorney, for the appellee (state).

Opinion

BRIGHT, C. J. The defendant, Jahmon Hakeem Norris, appeals from the judgments of conviction, rendered by the trial court following a jury trial, of risk of injury to a child in violation of General Statutes § 53-21 (a) (1), breach of the peace in the second degree in violation of General Statutes § 53a-181 (a) (2), assault in the third degree in violation of General Statutes § 53a-61 (a) (1), and interfering with an officer in violation of General Statutes § 53a-167a. On appeal, the defendant claims that the court abused its discretion by (1) failing to conduct an adequate independent inquiry into the defendant's competency to stand trial and order a competency hearing pursuant to General Statutes § 54-56d[1]

[1] General Statutes § 54-56d (c) provides: "If, at any time during a criminal proceeding, it appears that the defendant is not competent, counsel for the defendant or for the state, or the court, on its own motion, may request an examination to determine the defendant's competency."

and (2) improperly granting the state's motion for joinder for trial of the charge of interfering with an officer with the other charges the defendant faced. We affirm the judgments of the trial court.

The following facts, which reasonably could have been found by the jury, and procedural history inform our review of the defendant's claims. In February, 2018, the defendant rekindled a friendship with T.[2] At that time, the defendant was having financial difficulties and needed help, so T allowed him to live with her and her children at her Waterbury apartment. By April, 2018, T and the defendant were in a romantic relationship.

On the morning of April 14, 2018, the defendant, T, and T's six year old daughter, I, were all at the apartment. The defendant and T were arguing because the defendant had asked her for money to visit his daughter in New Haven, but T did not have any money to give him. As the argument progressed, the defendant became more aggressive with T and eventually pushed her into the kitchen. At that point, T asked the defendant to leave, but he refused and began walking toward her. T told him, "Do not put your hands on me," but the defendant kept coming. T grabbed a knife to defend herself, but the defendant broke the blade off of the knife while it was still in her hand.

The fight between the defendant and T then became more physical. The defendant grabbed at T, struck her, bit her, held her down on the couch, ripped her clothes off, spat in her face, pressed his arm against her throat, grabbed her by the hair, threw her onto the kitchen floor, and then hit her again, this time in the mouth,

[2] In accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018), as amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 106, 136 Stat. 49; we decline to identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that person's identity may be ascertained.

which caused her to bleed onto the floor. The defendant later instructed I to clean up her mother's blood.

During the fight, T told I to leave the apartment, but the defendant prevented I from leaving. T also repeatedly tried to call 911, but the defendant took her phone. The defendant eventually gave T her phone back so that she could try to find someone to give the defendant money. T used that opportunity to text several people and tell them that she needed help because the defendant would not let her go.

One of the people who received a text from T called the police, and two officers from the Waterbury Police Department, Brian Gutierrez and Justin DeVaull, were dispatched to T's apartment to conduct a welfare check. After arriving at the apartment building, the officers knocked on the exterior front door but no one answered. They eventually located an open window and used that to enter the building. The officers then found the door to T's apartment, knocked, and identified themselves. The defendant partially opened the door but with the chain lock still in place. The officers identified themselves again and told the defendant that they were there for a welfare check, but the defendant slammed the door shut. The officers then kicked the door down so that they could check on T. Upon entering the apartment, they found T in the kitchen, crying and shaking, and with bruises to her neck, back, and lip, and bite marks on both sides of her body. I was also in the kitchen with T and appeared scared. The officers then arrested the defendant.

After the defendant was arrested, he was taken to St. Mary's Hospital in Waterbury. Officer Joseph Civitella accompanied the defendant to the hospital and was assigned to guard him while he was being treated. The defendant was seen by a physician, who determined that he needed X-rays. While the defendant and Civitella

waited for him to be x-rayed, the defendant became agitated and impatient. Civitella unsuccessfully tried to calm him down, but the defendant, who was partially handcuffed to a stretcher, became physically aggressive and launched himself off of the stretcher and onto the floor. Civitella requested assistance to get the defendant back on the stretcher. A fellow officer, as well as hospital security staff and a patient care assistant, Raphael Pages, came to help. While the group was struggling to return the defendant to the stretcher, he began banging his head against the wall. Pages, in an attempt to restrain the defendant, placed his hand over the defendant's face. The defendant then bit Pages' finger through his medical glove, causing Pages to bleed.

The state charged the defendant in two separate informations—one relating to the domestic violence incident in T's apartment and one relating to the defendant's actions at the hospital. With respect to the domestic violence incident, the defendant was charged with risk of injury to a child, interfering with an officer, breach of the peace in the second degree, interfering with an emergency call, assault in the third degree, threatening in the second degree, and strangulation in the second degree. With respect to the hospital incident, the defendant was charged with assault on a public safety officer and interfering with an officer.

Prior to the defendant's trial, the state filed a motion to join the two informations for trial, which the court, *Klatt*, *J.*, granted.[3] A jury trial followed. With respect to the domestic violence incident, the defendant testified that T was the aggressor and that he had acted in self-defense. He also testified that he never prevented I from leaving the apartment. As to the hospital incident, the defendant admitted to throwing himself off of the

[3] Additional facts about the joinder of the two informations will be provided in part II of this opinion.

stretcher and biting Pages but claimed that he only bit Pages because Pages was restricting his ability to breathe.

After the conclusion of the trial, the jury found the defendant guilty of risk of injury to a child, assault in the third degree, and breach of the peace in the second degree in the domestic violence case, and guilty of interfering with an officer in the hospital case. The jury acquitted the defendant of the remaining charges in both cases. The court accepted the jury's verdict and sentenced the defendant to a total effective term of twelve years of incarceration, execution suspended after six years, with five years of probation. This appeal followed. Additional facts and procedural history will be set forth below as needed.

I

The defendant first claims that the court abused its discretion by failing to conduct an independent inquiry into his competency to stand trial and, consequently, failing to order a competency hearing pursuant to § 54-56d. We are not persuaded.

The following additional facts and procedural history are necessary to our resolution of these claims. Defense counsel was appointed for the defendant on May 15, 2018, and, thereafter, moved for a competency evaluation pursuant to § 54-56d, which the court, *Doyle*, *J.*, granted. Suzanne Ducate, a psychiatrist, performed the defendant's competency evaluation and issued a report in which she concluded that the defendant was able to understand the proceedings against him and assist in his own defense. On December 10, 2018, the court held a competency hearing at which the defendant was found competent to stand trial.

On July 26, 2019, the defendant filed a motion for a speedy trial, which was granted on September 11, 2019.

Two days later, defense counsel made an oral motion to withdraw as counsel, which the court granted. Thereafter, Attorney Jared Millbrandt was appointed to represent the defendant. Then, on November 6, 2019, the parties appeared before the court for a hearing on the state's motion for joinder and the start of jury selection. At the start of the hearing, the defendant indicated that he wanted to address the court. The court warned the defendant against doing so, but the defendant iterated his wish to speak. The defendant then remarked as follows:

"In all due respect, Your Honor, I don't believe that I'm ready to go to trial. I wasn't briefed or prepared to go to trial; I just met this attorney . . . maybe less than a month [ago]. We had two sessions in Cheshire, and since then it's—I'm not prepared. I don't know nothing about the jury. I don't know about the selection. I don't know what to ask him. I wasn't told anything. Today was supposed to have been a day where we schedule, and . . . I was supposed to have another chance of seeing my lawyer to talk to him about jury duty, or how to pick [a] jury, or what to say to the jury, or what the jury is."

The parties then had a short conversation with the court about the defendant's previously granted motion for a speedy trial. The parties also agreed that jury selection had been scheduled to start that day. The court then explained to the defendant that his speedy trial motion had "[set] into motion a series of steps, which lead to jury selection." The court further noted that there was no indication that defense counsel was unprepared to select a jury. In response, the defendant reiterated his belief that he and Millbrandt were not prepared for jury selection and that it was in the defendant's best interest to reschedule the proceedings. Defense counsel denied being unprepared, and the court denied the defendant's motion for a continuance.

The court next attempted to hear the state's motion for joinder, but the defendant interrupted the proceedings again, this time stating: "I don't want to work with [Millbrandt] no more. It's over. I don't want to work with you, so I don't know how that's going to work. I'd rather represent myself. I'm fine." The court advised the defendant against representing himself and also warned him that continued disruptions would not be tolerated. The court took no action on the defendant's request to have defense counsel removed.

After hearing arguments from the parties on the state's motion for joinder, the court granted that motion. Because the state had filed two substitute informations in order to correct some typographical errors, the court ordered that the defendant be put to plea on the substitute informations. At that point, the defendant remarked: "Your Honor, I don't know what's going on." The court explained that, as a matter of procedure, the defendant needed to enter his not guilty pleas again. The following colloquy then took place:

"The Defendant: So what about the splitting the two cases and not joining? That's what we—

"The Court: I granted the state's motion to join them, so it's one trial that you're facing. Two separate information[s], but one trial that you're facing.

"The Defendant: So, you're saying that the jury's going to hear both cases at the same time?

"The Court: Correct.

"The Defendant: But that's—I thought that's what we were arguing about. Your Honor, see, this is what I'm—

"The Court: And I get that, sir. Your counsel made—again, your—

"The Defendant: He made an argument just now for that?

"The Court: He argued it, he filed a brief.

"The Defendant: Wait a minute. When did he argue on—that's what I'm just trying to understand. I don't understand.

"The Court: Sir, I am not getting into a conversation with you about what just happened. You heard your attorney argue. I have already indicated that he has filed a motion. I've listened to both arguments—

"The Defendant: Can I see that motion? Oh, this is the motion?

"The Court: I have done—I have listened to both arguments—

"The Defendant: Yes.

"The Court: I've researched the case law, and I've made a ruling. Just because . . . the court doesn't rule in your favor, does not mean that a lawyer is not doing his job. Now, put the defendant to plea. . . .

"The Defendant: No, I don't understand what's going on."

The court again attempted to put the defendant to plea, first on the information in the domestic violence case, to which the defendant pleaded not guilty. The court next asked the defendant if he was electing a trial by the court or a trial by jury, to which the defendant again professed, "I don't know what's going on." The court explained the difference between a jury trial and a bench trial, but the defendant continued to state that he did not understand what was happening. This led to another exchange between the court, the defendant, and defense counsel:

"The Defendant: Okay. And what are we doing right now?

"[Defense Counsel]: We're picking a jury, as I've explained to you a number of times.

"The Defendant: I don't understand you. I don't understand it.

"[Defense Counsel]: Your Honor, at this point I don't know what more I can say to the court.

"The Court: Sir, are you electing to a court or a jury?

"The Defendant: If I'm asking Your Honor, if I'm being forced, I don't want to be forced to say anything that I [don't] understand. That's why I'm asking. I don't—and I see that you're getting frustrated because you're feeling like I—

"The Court: What don't you understand about what's happening?

"The Defendant: I just don't understand what's going on. I don't know why I'm pleading guilty, okay—

"The Court: You're not pleading guilty, you're pleading not guilty.

"The Defendant: Okay. I don't understand why I'm not—

"The Court: What don't you understand about being told that you're being asked whether or not you want a jury trial? You filed the motion for [a] speedy trial. You're telling me you don't understand. What don't you understand about this process?

"The Defendant: I filed for a motion because that's what I discussed with my lawyer, that that was for my best interest.

"The Court: Okay.

"The Defendant: To push the case forward. But, since then I don't understand where—like, what's today and how like, you're telling me to plead—not plead guilty,

and to pick for a jury. And that you said something about you and the court and the state, or whatever.

"The Court: All right.

"The Defendant: I'm not playing to—you know, I don't—

"The Court: Sir, I don't—quite frankly I'm going to have it noted for the record that it appears to me that the defendant fully understands what's happening, and is attempting to be obstructionist. So, again—

"The Defendant: Okay.

"The Court: [A]re you electing to a jury trial?

"The Defendant: Your Honor—

"The Court: Do you want a jury to make a decision as to whether or not you're guilty or not guilty, or do you want a judge to make a decision as to whether or not you're guilty or not guilty? It's that simple. It's not difficult to understand. You're an intelligent young man, make that choice now.

"The Defendant: I don't—I don't—what do you want me to do, man?"

Defense counsel then asked for a five minute recess, which the court granted. After the parties returned to the courtroom, defense counsel moved for a competency evaluation, stating: "Your Honor, at this time I just would like to make a record. I met with [the defendant] in an effort to discuss what is happening here today again. I emphasize[d] that we are here to begin jury selection in his case, for which he had prior counsel file a speedy trial motion. He repeatedly indicated to me he doesn't understand what's happening. At this point I'm making a motion pursuant to [§] 54-56d, as he does not apparently have the ability to assist in his own defense, nor understand the charges against him."

The defendant then interrupted, again stating that he did not understand what was happening. Defense counsel explained that he was moving for a competency evaluation to determine whether the defendant understood the nature of the charges against him, as had previously occurred in the case. The defendant proclaimed to have no memory of a prior competency evaluation, at which point the prosecutor interrupted and noted that the defendant had previously undergone a competency evaluation and been found competent to stand trial. The court then reviewed the competency report in the case file. Thereafter, the court remarked:

"All right. I've reviewed the file. I'll indicate for the record that apparently the defendant's indication that he doesn't know, he doesn't understand, has been a repeated theme throughout this particular prosecution.

"The psychiatrist who examined him indicated that he was uncooperative throughout the process. He repeatedly responded to her, I don't know, I don't remember, it's none of your business. That he claimed [that] he developed some type of amnesia when he was incarcerated. I lost my memory at [the Department of Correction]. I can't remember things. But it's simply—the bottom line determination is overall, and I'm quoting from the [competency] report. 'Overall it is the evaluator's opinion that [the defendant's] uncooperativeness during the evaluation and his lack of psychiatric symptoms or signs indicate that his performance during much of the evaluation is not considered to be an accurate representation of his abilities [or knowledge] base, especially with his past history of involvement with the legal system.' I think he is attempting to simply prolong or postpone things, rather than to get to—ultimately get to the trial. I do not see where his behavior or anything that [the defendant] has said is indicative of the fact that he's not capable of understanding or not capable of assisting his counsel. He may be unwilling

to do so, but that is not the same as being incapable. So, in light of that, and in light of the fact that there has been a recent evaluation, and I've seen nothing different other than he repeats the same thing again and again and again, I'll deny any motion for evaluation."

In response, the defendant remarked: "Your Honor, like I said, I'm not playing any games with you. I'm not trying to manipulate the system." The court responded that such a comment told the court that the defendant was "fully capable and understanding of the system and [had] the ability to proceed." The substitute informations were again read to the defendant, who continued to claim that he did not understand. The court then entered pleas of not guilty on all of the charges in both informations and elected a jury trial on the defendant's behalf. Thereafter, the court ordered the defendant to cooperate with defense counsel and warned him that, if he disrupted the proceedings again, he would be held in contempt. At that point, one final conversation between the court and the defendant occurred:

"The Defendant: I'm not going to cause any problems. But, Your Honor—

"The Court: Very good.

"The Defendant: [Y]ou just met me, Your Honor, and you already have an idea of who I am, and I continue to say the same thing—

"The Court: I have no idea who you are sir.

"The Defendant: I continue to say the same thing. This whole . . . almost eighteen months I haven't known anything that's going on with my case, Your Honor. I don't know anything.

"The Court: And simply saying I don't know, doesn't quite frankly help you at this point in time.

"The Defendant: How is that not helping me? I'm not trying to ask for help, but how do I suppose to talk to a jury, get up on the stand when I wasn't—I don't know anything about my defense. It's in my—like, I don't have a defense, Your Honor.

"The Court: Sir, again—

"The Defendant: You just—all right. You just—it's all about this man and he's fighting—he might as well take—he might as well take the sentence that I have.

"The Court: Okay.

"The Defendant: You giving my life to this man right here.

"The Court: Well, what everyone is trying to tell you is you are accused of a crime. You have a right to a trial. You are being given the opportunity for that trial. What I am trying to warn you about is, based on your past behavior this morning, we should have already been jury selecting. Instead, we have continually—you have continually stopped the events by claiming that you don't know what's happening, when it's abundantly clear that you do know what's happening.

"The Defendant: How is that?

"The Court: That is because I'm listening to what you've said."

Despite the court's repeated warnings, the defendant continued to disrupt the remaining jury selection proceedings by making loud comments to Millbrandt and asking the court questions about jury selection. This led the court ultimately to remark: "All right. Counsel, for the last time, and I am not repeating it. If your client interrupts one more time with the loud questioning of you, which is clearly heard throughout the whole courtroom, and possibly infecting the jury, and I would note that he certainly managed to keep quiet and not

interrupt during the time when he needed to. So, in my opinion, this is all a show by him."

We begin by setting forth the standard of review and legal principles that guide our analysis. "We review the court's ruling on a motion for a competency evaluation under the abuse of discretion standard. . . . In determining whether the trial court [has] abused its discretion, this court must make every reasonable presumption in favor of [the correctness of] its action. . . . Our review of a trial court's exercise of the legal discretion vested in it is limited to the questions of whether the trial court correctly applied the law and could reasonably have reached the conclusion that it did." (Citation omitted; internal quotation marks omitted.) *State* v. *Kendall*, 123 Conn. App. 625, 651, 2 A.3d 990, cert. denied, 299 Conn. 902, 10 A.3d 521 (2010).

"[T]he conviction of an accused person who is not legally competent to stand trial violates the due process of law guaranteed by the state and federal constitutions. . . . This rule imposes a constitutional obligation, [on the trial court], to undertake an independent judicial inquiry, in appropriate circumstances, into a defendant's competency to stand trial . . . . [Section] 54-56d (a) codified this constitutional mandate, providing in relevant part: A defendant shall not be tried, convicted or sentenced while the defendant is not competent. [A] defendant is not competent if the defendant is unable to understand the proceedings against him or her or to assist in his or her own defense.

"This statutory definition mirrors the federal competency standard enunciated in *Dusky* v. *United States*, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960) (per curiam). According to *Dusky*, the test for competency must be whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has

a rational as well as factual understanding of the proceedings against him. . . .

"Although § 54-56d (b) presumes the competency of defendants, when a reasonable doubt concerning the defendant's competency is raised, the trial court must order a competency examination. . . . Thus, [a]s a matter of due process, the trial court is required to conduct an independent inquiry into the defendant's competence whenever he makes specific factual allegations that, if true, would constitute substantial evidence of mental impairment. . . . Substantial evidence is a term of art. Evidence encompasses all information properly before the court, whether it is in the form of testimony or exhibits formally admitted or it is in the form of medical reports or other kinds of reports that have been filed with the court. Evidence is substantial if it raises a reasonable doubt about the defendant's competency . . . . The trial court should carefully weigh the need for a hearing in each case, but this is not to say that a hearing should be available on demand." (Citation omitted; footnote omitted; internal quotation marks omitted.) *State* v. *Jordan*, 151 Conn. App. 1, 30–32, 92 A.3d 1032, cert. denied, 314 Conn. 909, 100 A.3d 402 (2014).

The defendant claims that his convictions should be reversed, and a new hearing ordered to determine whether a competency evaluation is required, because the court in the present case failed to conduct an adequate, independent inquiry into his competency and, thus, violated his due process rights. In support of his claim, the defendant principally relies on *State* v. *Dort*, 315 Conn. 151, 106 A.3d 277 (2014). Specifically, he claims that "the extent of the 'inquiry' conducted by the court was to review a stale competency evaluation and unilaterally interpret [the defendant's] behavior as obstinate and dilatory. As in *Dort* . . . this is insufficient to satisfy the court's constitutional mandate."

Because the facts of this case are markedly different than those in *Dort*, we are not persuaded.

In *Dort*, our Supreme Court affirmed this court's reversal of the defendant's judgment of conviction following the trial court's denial of the defendant's request for a competency hearing. *State* v. Dort, supra, 315 Conn. 153–55. As in the present case, the defendant in *Dort* was found competent to stand trial after an earlier competency evaluation was done. Id., 156. Before the start of jury selection, however, defense counsel requested a second competency evaluation. Id., 156–57. In requesting that evaluation, defense counsel provided several detailed representations to the court regarding why further inquiry into the defendant's competency was required. Id., 156–59. Specifically, defense counsel told the court that his client had a fundamental misunderstanding as to "what can be put forward as a defense in this case" and "the seriousness of the charges in light of the defense." (Internal quotation marks omitted.) Id., 158. Defense counsel also informed the court that "attempting to extrapolate the relevant information from [the defendant] in order for [counsel] to go forward with his defense is virtually impossible" and that the current circumstances were not merely a tactical disagreement between him and the defendant. (Internal quotation marks omitted.) Id. When pressed by the court for more details, defense counsel asserted that the defendant lacked a sufficient understanding of certain facts that were highly relevant to the case.[4] Id., 159.

[4] Defense counsel specifically stated: "And there's been things he's seized upon, including the fact that there's . . . an alleged gun. And he's been informed that that's not whether the gun is operable or whether it's a rubber gun or it's made of wood—that does not constitute a defense. I cannot for the life of me extrapolate much more in the way of facts from him at this juncture. I don't know whether it's because he's seizing up today or what . . . but I need the information that he's talking about because the charges have just changed and now that's not an issue." (Internal quotation marks omitted.) *State* v. *Dort*, supra, 315 Conn. 174–75.

The court then reviewed the earlier competency report and, based largely on that report, denied the defendant's motion for a competency evaluation after finding that the statements made by defense counsel in support of the motion did not constitute substantial evidence that would give rise to a concern regarding the defendant's competency. Id., 175. In denying the defendant's motion, the court did not canvass the defendant regarding his competency or consider the defendant's behavior in court. Id., 176. The court also denied the defendant's request to address the court regarding his competency to stand trial. Id., 159–60. The defendant then appealed to this court.

On appeal, we reversed the trial court's judgment of conviction, holding that the court had abused its discretion by disregarding defense counsel's assertions that the defendant was not competent without conducting any further inquiry into the defendant's competence. *State* v. *Dort*, 138 Conn. App. 401, 412, 51 A.3d 1186 (2012), aff'd, 315 Conn. 151, 106 A.3d 277 (2014). We specifically concluded that the court's inquiry into the defendant's competence was insufficient because the court never made "any reference to the defendant's behavior or any relevant communications with the defendant" and "also refused the defendant the opportunity to address the court on [the issue of competency]." Id.

The state then appealed to our Supreme Court. On appeal, the Supreme Court affirmed this court's reversal of the judgment of the trial court, albeit on different grounds. *State* v. *Dort*, supra, 315 Conn. 178. The court focused on whether the allegations made by the defendant in support of his motion for a competency evaluation constituted substantial evidence of mental impairment such that further inquiry into the impairment was required by the trial court and, if so, whether the court sufficiently conducted such an inquiry. Id., 169–70. The

court then concluded that "[t]he statements made by defense counsel in support of the defendant's motion for a competency hearing represent the sort of specific, fact laden allegations that, if true, would constitute substantial evidence of mental impairment on the part of the defendant." Id., 178. Accordingly, the court concluded that the trial court abused its discretion when it rejected defense counsel's statements and instead relied solely on the "seven month old competency report." Id.

The court also rejected the state's argument that the trial court properly relied on its own observations of the defendant instead of relying on counsel's representations. Id., 182. The court held: "Although we agree with the state that a trial court need not automatically defer to the opinion of defense counsel on the matter of the defendant's competence when the trial court sees evidence contradicting those representations before his or her own eyes; see, e.g., *State* v. *DesLaurier*, [230 Conn. 572, 589–90, 646 A.2d 108 (1994)]; we disagree that the defendant was canvassed here, and we note that the trial court did not deny the defendant's motion on the basis of its own in-court observations regarding the defendant's behavior." Id.

The facts of this case are distinguishable from those in *Dort* in two important respects. First, in the present case, unlike in *Dort*, defense counsel failed to make any specific or detailed factual representations in support of his motion for a competency evaluation. Instead, defense counsel stated only that the defendant had "repeatedly indicated to me he doesn't understand what's happening" and that defense counsel therefore believed that the defendant "does not apparently have the ability to assist in his own defense, nor understand the charges against him." These representations were vague in nature and unsupported by any particular allegations that might have constituted substantial evidence of the

defendant's lack of competency. Trial courts are only required to conduct an independent inquiry into a defendant's competency when the defendant "makes *specific* factual allegations that, if true, would constitute substantial evidence of mental impairment." (Emphasis added; internal quotation marks omitted.) *State* v. *Jordan*, supra, 151 Conn. App. 31. Such specific factual allegations simply do not exist in the present case. Accordingly, the court did not abuse its discretion when it declined to conduct a more thorough independent inquiry than it did into the defendant's competency.

Second, unlike in *Dort*, the court in the present case conducted a thorough inquiry into the defendant's competency by engaging in extensive dialogues with the defendant both before and after Millbrandt moved for a competency evaluation, and it made reference to its observation of the defendant's behavior when discussing the defendant's competency. As we set forth previously in detail, the court and the defendant had several in-depth conversations over the course of the proceedings on November 6, 2019. During these lengthy exchanges, the court was able to speak directly with the defendant and observe his demeanor, as well as take notice of a general pattern of disruptive conduct by the defendant. In addition, the court also reviewed the competency report in the case file and determined that the report confirmed the court's own observations that the defendant was competent to stand trial and that his repeated disruptions and assertions that he did not understand were simply a delay tactic.

Furthermore, even after the court denied the defendant's motion for a competency evaluation, the court continued to take into account the defendant's behavior, including his comments that he was not "playing games" or trying to manipulate the system, as well as the defendant's ability to remain calm and cooperative during the initial stages of jury selection. On the basis of these additional observations, the court again con-

cluded that, the defendant's repeated assertions notwithstanding, it was abundantly clear that the defendant did, in fact, understand what was happening.

Thus, the bases for the court's denial of a competency evaluation in this case were much different than that in *Dort*. In *State* v. *Dort*, supra, 315 Conn. 182, "the trial court did not deny the defendant's motion on the basis of its own in-court observations regarding the defendant's behavior." In the present case, by contrast, the court specifically referenced the defendant's behavior, which it had observed at length, when denying the motion for a competency evaluation. This court has held that relying on such information is sufficient. See *State* v. *Jordan*, supra, 151 Conn. App. 35–37 (court's denial of defendant's motion for competency evaluation was not abuse of its discretion when denial was based on court's review of previous competency report and court's own observations of defendant). This court also previously has held that behavior of a defendant similar to that observed by the court in this case does not require a competency evaluation. See *State* v. *Johnson*, 22 Conn. App. 477, 489, 578 A.2d 1085 (defendant's "obstreperous, uncooperative or belligerent behavior did not obligate the court to order a competency examination," particularly when defendant's behavior showed he had ability to be cooperative but did not want to), cert. denied, 216 Conn. 817, 580 A.2d 63 (1990); see also *State* v. *Paulino*, 127 Conn. App. 51, 66, 12 A.3d 628 (2011) ("although the defendant did admit that he often was confused by court procedures, a lack of legal expertise is not indicative of incompetence").

Consequently, contrary to the defendant's claim, the court was not required to accept defense counsel's bald assertion that the defendant lacked the capacity to understand the proceedings and assist in his own defense. First, it is clear from the transcript of the November 6, 2019 hearing that the court did consider defense counsel's allegations regarding the defendant's

competency. It simply was unpersuaded by those allegations, in large part because the court had been able to observe and talk with the defendant during the hearing. On the basis of the court's own observations of and interactions with the defendant, it was reasonable for the court to give less weight to defense counsel's representations regarding the defendant's competency. Second, we are unpersuaded by the defendant's argument that his counsel's opinion regarding his competency was entitled to greater weight because the motion for a competency evaluation was made after a brief recess during which counsel had an opportunity to talk privately with the defendant. Following the recess, defense counsel provided the court with no specific factual allegations concerning the defendant's lack of competency. Furthermore, the court engaged in an extensive dialogue with the defendant after the recess and specifically referred to its observations of and interactions with the defendant when it denied the defendant's motion.

We also reject the defendant's argument that the court should not have considered the defendant's prior competency evaluation because it was one year old. In *State* v. *Jordan*, supra, 151 Conn. App. 36–37, the defendant made the same argument. In response, this court noted: "The defendant . . . has not cited, and we have not found, any case law that establishes a bright line rule as to when a competency report becomes stale. *State* v. *Mordasky*, 84 Conn. App. 436, 447, 853 A.2d 626 (2004). Rather, the court's inquiry when deciding whether to order another competency evaluation is whether the defendant's condition has materially changed since a previous finding of competence." (Internal quotation marks omitted.) *State* v. *Jordan*, supra, 37. As was true of the defendant in *Jordan*, in the present case, the defendant failed to produce any evidence that demonstrated that his condition had changed since the 2018

evaluation. Moreover, as previously noted in this opinion, the 2018 competency report was not the only source of information on which the court relied when making its decision. Accordingly, the court's reliance, in part, on the 2018 competency report does not undermine our conclusion that the court did not abuse its discretion in denying the defendant's motion for a competency evaluation.

The defendant also argues that, by relying on the previous competency report to deny his motion, the court ignored and discounted the defendant's prior history of mental impairment. We disagree. The report specifically discussed the defendant's mental health history, and there is nothing in the record to indicate that the court did not consider that portion of the report in denying the defendant's motion.

Finally, the defendant argues that the court erred when it failed to canvass the defendant before denying his motion. There are two problems with this argument. First, it assumes that there was no canvass of the defendant in the present case. As set forth previously in this opinion, the court had extensive discussions with the defendant from which it could form an opinion as to the defendant's competency. During these discussions, the defendant initially stated that he was not ready to go to trial, had not had sufficient time to meet with his counsel, who he did not believe was prepared for trial, and had questions about the jury selection process. He also asked whether the cases were going to be tried separately. Thus, he demonstrated that he understood what was happening but just did not want to go forward with jury selection on a consolidated trial that day. It was only after the court told the defendant that jury selection was going forward that he began stating that he did not understand what was happening. The court then engaged in further discussions with the defendant before defense counsel made his motion for a compe-

tency evaluation, which the court denied. Although the court did not specifically ask the defendant if he understood the nature of the charges against him and whether could assist in his own defense, it simply is inaccurate to say that the court did not canvass the defendant. Second, in *Dort*, the Supreme Court made clear that some form of a canvass of the defendant was required because defense counsel had made "specific, fact laden allegations that, if true, would constitute substantial evidence of mental impairment on the part of the defendant." *State* v. *Dort*, supra, 315 Conn. 178. In the present case, no such allegations were made.

In sum, for the foregoing reasons, we conclude that the court did not abuse its discretion by denying the defendant's motion for a competency evaluation or conducting a further inquiry of its own before denying the motion.

II

The defendant next claims that the court erred when it granted the state's motion to join for trial the charges in the two separate informations. Specifically, the defendant argues that joinder was improper under the second *State* v. *Boscarino*, 204 Conn. 714, 723, 529 A.2d 1260 (1987) factor because the conduct alleged in the domestic violence case was "of a brutal or shocking nature, far in excess of the allegations underlying the interfering with an officer charge [in the hospital case]." The defendant further argues that insufficient jury instructions were given to cure the prejudicial effect of the joinder. We agree that the court erred in joining the charges in the two separate informations, but we also conclude that, under the circumstances of this case, the court's instructions to the jury were sufficient to cure any prejudice caused by the joinder.

The following additional facts and procedural history are necessary to our resolution of this claim. On September 23, 2018, the state filed a motion for joinder of

the charges in the two informations, claiming that the "charges involve discrete, easily distinguishable factual scenarios . . . the crimes are not violent in nature and do not concern brutal or shocking conduct on the defendant's part . . . the incidents are consecutive events . . . and . . . the trial will not be complex." On November 6, 2019, the defendant filed an objection to the motion, asserting that joinder was "inappropriate as it would result in significant and substantial prejudice to the defendant [and] allow the jury to hear repetitious allegations concerning violent conduct and might allow the jury to conclude guilt based on what amounts to propensity evidence."

Also on November 6, 2019, the court, *Klatt*, *J.*, held a hearing on the state's motion. At the hearing, the prosecutor conceded that the evidence in the two cases was not cross admissible but argued that joinder was nonetheless proper. Defense counsel disagreed and argued that joinder of the two cases would "amount to propensity evidence, thus allowing the jury to conclude that, because [the defendant] is charged in two informations occurring on the same date, or two separate incidents occurring on the same date, that he is essentially a bad person." The court then conducted an analysis under *State* v. *Boscarino*, supra, 204 Conn. 722–24, and concluded that joinder would not substantially prejudice the defendant because (1) the charges were discreet and based on easily distinguishable facts, (2) the crimes, although violent in nature, were not shocking to the conscience, and (3) joinder would not result in a lengthy or complicated trial. The charges in the two informations were then joined for presentation at a single trial. On appeal, the defendant challenges only the court's conclusion as to the second *Boscarino* factor.

We first set forth the standard of review and legal principles that guide our analysis. "The principles that govern our review of a trial court's ruling on a motion

for joinder . . . are well established. Practice Book § 41-19 provides that [t]he judicial authority may, upon its own motion or the motion of any party, order that two or more informations, whether against the same defendant or different defendants, be tried together. . . . In deciding whether to [join informations] for trial, the trial court enjoys broad discretion, which, in the absence of manifest abuse, an appellate court may not disturb. . . . The defendant bears a heavy burden of showing that [joinder] resulted in substantial injustice, and that any resulting prejudice was beyond the curative power of the court's instructions. . . .

"A long line of cases establishes that the paramount concern [when joining informations] is whether the defendant's right to a fair trial will be impaired. Therefore, in considering whether joinder is proper, this court has recognized that, where evidence of one incident would be admissible at the trial of the other incident, separate trials would provide the defendant no significant benefit. . . . Under such circumstances, the defendant would not ordinarily be substantially prejudiced by joinder of the offenses for a single trial. . . . Accordingly, we have found joinder to be proper where the evidence of other crimes or uncharged misconduct [was] cross admissible at separate trials. . . . Where evidence is cross admissible, therefore, our inquiry ends.

"Substantial prejudice does not necessarily result from [joinder] even [if the] evidence of one offense would not have been admissible at a separate trial involving the second offense. . . . Consolidation under such circumstances, however, may expose the defendant to potential prejudice for three reasons: First, when several charges have been made against the defendant, the jury may consider that a person charged with doing so many things is a bad [person] who must have done something, and may cumulate evidence against him . . . . Second, the jury may have used the evidence of

one case to convict the defendant in another case even though that evidence would have been inadmissible at a separate trial. . . . [Third] joinder of cases that are factually similar but legally unconnected . . . present[s] the . . . danger that a defendant will be subjected to the omnipresent risk . . . that although so much [of the evidence] as would be admissible upon any one of the charges might not [persuade the jury] of the accused's guilt, the sum of it will convince them as to all. . . .

"[Accordingly, the] court's discretion regarding joinder . . . is not unlimited; rather, that discretion must be exercised in a manner consistent with the defendant's right to a fair trial. Consequently, [in *State* v. *Boscarino*, supra, 204 Conn. 722–24, our Supreme Court] identified several factors that a trial court should consider in deciding whether a severance or [denial of joinder] may be necessary to avoid undue prejudice resulting from consolidation of multiple charges for trial. These factors include: (1) whether the charges involve discrete, easily distinguishable factual scenarios; (2) whether the crimes were of a violent nature or concerned brutal or shocking conduct on the defendant's part; and (3) the duration and complexity of the trial. . . . If any or all of these factors are present, a reviewing court must decide whether the trial court's jury instructions cured any prejudice that might have occurred." (Citation omitted; internal quotation marks omitted.) *State* v. *McKethan*, 184 Conn. App. 187, 194–96, 194 A.3d 293, cert. denied, 330 Conn. 931, 194 A.3d 779 (2018).

Before turning to the merits of the defendant's joinder claim we address the state's argument that the claim was not properly preserved for appellate review. The state argues that the claim is unpreserved because (1) "the defendant never contested the state's representation of the facts as they relate to the second *Boscarino*

factor" and (2) "when [T] testified at trial, the defendant never moved to sever based on the supposed change in factual circumstances, namely, the more shocking or brutal nature of the 'domestic violence' case allegations." We disagree and conclude that this claim was preserved.

The state is correct that, as summarized above, the defendant never specifically addressed the second *Boscarino* factor in either his written objection or at the hearing. The court, however, in its ruling on the state's motion for joinder, did address that factor, stating in relevant part: "The crimes, while they are violent in nature, are certainly not so shocking to the conscience that the second factor would be triggered." Because the court addressed the issue now raised on appeal, the claim was properly preserved for appellate review. See *State* v. *McKethan*, supra, 184 Conn. App. 194 n.2 (defendant's challenge to second *Boscarino* factor was preserved even though defendant did not specifically challenge factor before trial court because court addressed second factor in its ruling). Furthermore, the fact that the defendant did not move to sever the two cases after T testified does not undermine our conclusion that the defendant's claim is preserved. Again, because the trial court specifically addressed the violent nature of the defendant's charges in its ruling on the state's motion for joinder, the claim is preserved. See id. ("Unlike the trial court in [*State* v.] *Snowden*, [171 Conn. App. 608, 157 A.3d 1209, cert. denied, 326 Conn. 903, 163 A.3d 1204 (2017)], the trial court in this case specifically addressed the violent nature of the defendant's murder charge in its ruling, which the defendant presently challenges on appeal. We therefore conclude that the defendant's claim is preserved for appellate review.").

We now move to the merits of the defendant's claim. We agree with the defendant that the second *Boscarino*

factor weighs against joinder and that the court consequently abused its discretion when it joined for trial the charges in the two informations.

"Whether one or more offenses involved brutal or shocking conduct likely to arouse the passions of the jurors must be ascertained by comparing the relative levels of violence used to perpetrate the offenses charged in each information." (Internal quotation marks omitted.) *State* v. *Payne*, 303 Conn. 538, 551, 34 A.3d 370 (2012). The domestic violence case was based on allegations and evidence that the defendant struck, bit, strangled, spit at, and grabbed T, and, at one point, threw her onto the kitchen floor and hit her in the mouth so hard that she began to bleed. In the hospital case, however, far less violence was involved. Although the defendant did bite a hospital employee during that incident, that was the only violence committed and the incident was described by the hospital's security supervisor as "[j]ust another day at work. Unruly patient and just honestly another day at work." Because the defendant's conduct in the domestic violence case was significantly more brutal and shocking than his conduct in the hospital case, we conclude that the second *Boscarino* factor weighs against joinder. See *State* v. *Ellis*, 270 Conn. 337, 378, 852 A.2d 676 (2004) (defendant's abuse of one victim was substantially more egregious than his abuse of other victims and, therefore, joinder was improper under second *Boscarino* factor). Accordingly, the court erred when it found that the second *Boscarino* factor was not triggered and, thus, abused its discretion when it joined for trial the charges in the two informations.

Our analysis of this claim, however, does not end here. Having concluded that joinder of the defendant's two cases was improper, we must decide whether the court's jury instructions cured any potential prejudice. In assessing any prejudice to the defendant it is

important to note that any prejudice to the defendant could have occurred only with respect to the charges in the hospital case, which was the case that involved substantially less egregious allegations. By contrast, the fact that the jury heard evidence regarding the hospital case was not prejudicial to the defendant, under the second *Boscarino* factor, in the domestic violence case because the allegations in the domestic violence case were more shocking and brutal. See *State* v. *Payne*, supra, 303 Conn. 554 n.19. Consequently, we must determine whether the joinder of the charges in the two informations prejudiced the defendant in the hospital case.

"On appeal, the burden rests with the defendant to show that joinder was improper by proving substantial prejudice that could not be cured by the trial court's instructions to the jury. . . . [A]lthough a curative instruction is not inevitably sufficient to overcome the prejudicial impact of [inadmissible other crimes] evidence . . . where the likelihood of prejudice is not overwhelming, such curative instructions may tip the balance in favor of a finding that the defendant's right to a fair trial has been preserved." (Citation omitted; internal quotation marks omitted.) *State* v. *McKethan*, supra, 184 Conn. App. 198.

In the present case, the court instructed the jury as follows with regard to the charges against the defendant:

"The defendant here is charged with ten counts in two separate informations. The defendant is entitled to and must be given by you, a separate and independent determination of whether he is guilty or not guilty as to each count. Each of the counts charged is a separate crime. The state is required to prove each element in each count beyond a reasonable doubt.

"Each count must be deliberated upon separately. The total number of counts charge[d] does not add to the strength of the state's case. You may find that some evidence applies . . . to more than one count, in more than one information. The evidence, however, must be considered separately as to each element in each count. Each count is a separate entity.

"You must consider each count separately and return a separate verdict for each count. This means you may reach opposite verdicts on different counts. A decision on one count does not bind your decision on another account. Now, again, as I have indicated, the defendant is charged in two separate informations."

The court further instructed the jury on the two separate counts of interfering with an officer as follows:

"Now, interfering with an officer. The defendant is charged in two separate counts with interfering with an officer. . . . Now, I will remind you of my previous instructions on multiple charges during your deliberations.

"The defendant is charged with two counts of interfering with an officer. While the elements are the same, each of the counts charged is a separate crime. The state charges that separate incidents occurred at different times, in different locations, and with three distinct complainants. Each count must be considered separately, and must be given by you a separate and independent determination of whether [the defendant] is guilty or not guilty as to each count."

The defendant argues that these instructions were insufficient because, despite the court's repeated instruction that each count was to be considered separately, the court never instructed the jury that the evidence in both cases was not cross admissible, and, thus, that the jury could not consider the evidence in the domestic

violence case in determining the defendant's guilt in the hospital case.

Although we agree that it is better practice for a trial court to give a specific instruction that the evidence is not cross admissible, we conclude that the jury instructions given in this case were adequate because the risk of prejudice was very low. See *State* v. *McKethan*, supra, 184 Conn. App. 199 (court's repeated instructions to jury that each count must be considered separately cured prejudice caused by joinder because risk of prejudice was not overwhelming). We reach this conclusion for two reasons. First, the instructions given by the court in the present case, with one exception, were very similar to those given by the trial court in *McKethan*, which this court determined were sufficient to cure any possible prejudice resulting from the erroneous joinder. Id. The one difference between the instructions in this case and those in *McKethan* is that, in this case, the court instructed the jury that it may find that some evidence applies "in more than one information." That single statement should not have been made by the court because the state conceded that the evidence supporting each information was not cross admissible. Nevertheless, we cannot conclude that the defendant was prejudiced by this error. The error was an isolated occurrence outweighed by the court's repeated instructions to the jury that it must consider each count against the defendant separately. Moreover, the defendant did not object to the statement after the court made it. In fact, on appeal the defendant has not claimed any error as a result of this statement.

Second, although the defendant's state of mind was at issue regarding the hospital incident, there was no dispute as to the events that occurred during that incident. The defendant himself testified at trial that he threw himself off of the stretcher and bit a hospital employee while receiving treatment at St. Mary's and, at oral argument before this court, the defendant again

conceded that the events of the hospital incident were not in dispute. Given that what happened at the hospital is undisputed, we conclude that it is highly unlikely that the violent nature of the facts adduced in the domestic violence case could have prejudiced the jury's verdict as to his state of mind during the hospital incident. This conclusion is strengthened by the fact that the jury acquitted the defendant of charges in both cases, including of the more serious charge of assault of a police officer in the hospital case, which highlights the limited prejudicial impact that joinder had. See *State* v. *Davis*, 286 Conn. 17, 37, 942 A.2d 373 (2008) ("by acquitting the defendant of all of the offenses charged in [case A], the jury evidently was able to keep the three cases separate and did not blindly condemn the defendant on the basis of the evidence adduced in [case B]"), overruled on other grounds by *State* v. *Payne*, 303 Conn. 528, 549, 34 A.3d 370 (2012); see also *State* v. *Atkinson*, 235 Conn. 748, 766, 670 A.2d 276 (1996) ("by returning a verdict of not guilty on the charge of possession of a weapon in a correctional institution . . . the jury evidently was able to separate the two cases and did not blindly condemn the defendant on his participation in the murder"); *State* v. *Gerald A.*, 183 Conn. App. 82, 123 n.21, 191 A.3d 1003 ("[w]e conclude that acquittal of the charges related to [one victim's] allegations demonstrates that the jury properly considered each information separately"), cert. denied, 330 Conn. 914, 193 A.3d 1210 (2018); *State* v. *Rodriguez*, 91 Conn. App. 112, 120–21, 881 A.2d 371 ("Although the jury found the defendant guilty of all the counts of burglary, attempt to commit burglary, larceny and criminal trespass that it considered, it found the defendant not guilty of one count of breach of the peace in the second degree. That acquittal demonstrated that the jury was able to consider each count separately and, therefore, was not confused or prejudiced against the defendant."), cert.

denied, 276 Conn. 909, 886 A.2d 423 (2005). But see *State* v. *Boscarino*, supra, 204 Conn. 724 (acquittals in joined cases did not "establish that the results in the four cases, had they been separately tried, would have been the same").

Although we conclude that the court's instructions, on the specific facts of the present case, were sufficient, as noted previously in this opinion, it would have been preferable for the court expressly to have informed the jury that the evidence adduced by the state with regard to the domestic violence case was not admissible as proof in the hospital case, and to have informed the jury that the cases had been consolidated solely for the purpose of judicial economy. See *State* v. *Delgado*, 243 Conn. 523, 536 n.13, 707 A.2d 1 (1998) (advising that better practice when cases have been joined is to explicitly instruct that evidence in one case is not admissible as proof in separate case). Giving such an instruction further minimizes any potential prejudice that might come with joining charges in separate informations and serves to underscore for the jury that it must consider the evidence in each case separately.[5]

In sum, for the reasons we have explained, we conclude that, even though the court erred by joining the defendant's two cases, the jury instructions that the court gave sufficiently cured the risk of prejudice to

[5] Our review of the Connecticut Judicial Branch's model criminal jury instructions reveals that the model instructions on multiple informations do not contain the language that we have suggested here. See Connecticut Criminal Jury Instructions 2.6-11, available at https://www.jud.ct.gov/JI/Criminal/Criminal.pdf (last visited June 3, 2022). Accordingly, we encourage the Criminal Jury Instruction Committee to consider adding language to the model instructions directing that, where cases have been joined but the evidence is not cross admissible, the jury cannot use evidence from one case to reach its result in another. The committee may find the jury instructions discussed in *State* v. *Boscarino*, supra, 204 Conn. 719 n.6, and *State* v. *Iovieno*, 14 Conn. App. 710, 722 n.7, 543 A.2d 766, cert. denied, 209 Conn. 805, 548 A.2d 440 (1988), to be helpful examples of such instructions.

the defendant and, therefore, preserved the jury's ability to fairly and impartially consider the offenses charged in the jointly tried cases. We therefore conclude that the court did not abuse its discretion in consolidating the two informations for trial.

The judgments are affirmed.

In this opinion the other judges concurred.

JEFFERSON SOLAR, LLC *v.* FUELCELL ENERGY, INC., ET AL.
(AC 44777)

Elgo, Cradle and Alexander, Js.

Syllabus

The plaintiff, an energy company, sought to recover damages for, inter alia, an alleged violation of the Connecticut Unfair Trade Practices Act (CUTPA) (§ 42-110a et seq.), in connection with an alleged false bid certification submitted by the defendants, competing energy companies, in an attempt to secure a long-term clean energy contract with a utility company. As part of the bidding process, the defendants were required to demonstrate that they had full control over the property for the proposed energy facility. The plaintiff alleged that the city of Derby, in executing an option agreement to lease certain land to the defendants, failed to comply with the city charter and with statutory notice requirements, which effectively invalidated the defendants' option agreement. The plaintiff claimed it suffered damages in lost revenue that it would have received in securing the contract but for the defendants' false bid certification that was ultimately chosen. Thereafter, the defendants filed a motion to dismiss the complaint on the ground that the plaintiff lacked standing to pursue its CUTPA claim, which the trial court granted. On the plaintiff's appeal to this court, *held*: the trial court did not err in concluding that the plaintiff lacked standing to maintain its CUTPA action against the defendants, as the plaintiff's claims were remote and indirect because, if the defendants' knowingly submitted a false bid and the option agreement was unlawful and without legal effect as the plaintiff alleged, the utility company that was a party to the energy facility contract would have been a directly injured party and would have been best suited to seek a remedy for the harm; moreover, although the plaintiff claimed that it was certain to have received the contract in question if the defendants lacked the necessary site control, because that contention was not alleged in the operative complaint and was

undermined by the plain language of the request for bids, which stated that the utility company retained discretion in awarding shared clean energy facility contracts and reserved the right to reject any or all offers, the plaintiff's purported injuries were purely speculative.

Argued March 1—officially released June 14, 2022

Procedural History

Action to recover damages for, inter alia, a violation of the Connecticut Unfair Trade Practices Act, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the court, *Young, J.*, granted the defendants' motion to dismiss and rendered judgment thereon, from which the plaintiff appealed to this court. *Affirmed.*

Thomas Melone, for the appellant (plaintiff).

Proloy K. Das, with whom were *Jennifer M. DelMonico* and, on the brief, *Terence J. Brunau*, for the appellees (defendants).

Opinion

PER CURIAM. The plaintiff, Jefferson Solar, LLC, appeals from the judgment of the trial court granting the motion to dismiss filed by the defendants, FuelCell Energy, Inc. (FuelCell), and SCEF1 Fuel Cell, LLC (company). On appeal, the plaintiff claims that the court improperly concluded that it lacked standing to maintain an action under the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq. We affirm the judgment of the trial court.

"A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction. . . . In deciding a jurisdictional question raised by a motion to dismiss, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing

them in a manner most favorable to the pleader. . . . [W]hen the complaint is supplemented by undisputed facts established by affidavits submitted in support of the motion to dismiss . . . the trial court, in determining the jurisdictional issue, may consider these supplementary undisputed facts and need not conclusively presume the validity of the allegations of the complaint. . . . Rather, those allegations are tempered by the light shed on them by the [supplementary undisputed facts]. . . . If affidavits and/or other evidence submitted in support of a defendant's motion to dismiss conclusively establish that jurisdiction is lacking, and the plaintiff fails to undermine this conclusion with counteraffidavits . . . or other evidence, the trial court may dismiss the action without further proceedings." (Citations omitted; internal quotation marks omitted.) *North Sails Group, LLC* v. *Boards & More GMBH*, 340 Conn. 266, 269–70, 264 A.3d 1 (2021).

This case concerns the procurement of a long-term agreement for a clean energy facility. Appended to the defendants' motion to dismiss, as an exhibit to the affidavit of Frank Wolak, senior vice president of sales at FuelCell, was a request for production (request) jointly issued by Eversource Energy and the United Illuminating Company (United Illuminating) on April 30, 2020, for a contract to sell energy pursuant to the shared clean energy facility program codified in General Statutes § 16-244z. All such contracts require approval by the Public Utilities Regulatory Agency (PURA). See General Statutes § 16-244z (a) (2).

Pursuant to the terms of the request, "bids that [did] not include . . . proof of site control" would "not be considered." Section 4.4 of the request provides, as a prerequisite to eligibility, that a bidder must submit a "Bid Certification Form, including the affidavit from the owner of the project site and the applicable documentation demonstrating that the Bidder has control

of the generation site, or an unconditional right, granted by the property owner, to acquire such control . . . .'' Section 2.4.1 further specifies what is required for ''Proof of Site Control,'' stating in relevant part: ''The Bidder must demonstrate that it has control of the generation site, or an unconditional right, granted by the property owner, to acquire such control. . . . In order to be considered to have site control for generation, the Bidder must provide copies of executed documents between the Bidder and [the] property owner showing one of the following: (a) that the Bidder owns the site or has a lease or easement with respect to the site on which the [facility] will be located . . . or (b) that the Bidder has an unconditional option agreement to purchase or lease the site . . . .''

The plaintiff and the company each submitted bids in response to the request. The company proposed a 2.8 megawatt fuel cell facility on land owned by the city of Derby (city) and located at 49 Coon Hollow Road (property). Its bid included the affidavit of Richard Dziekan, the mayor of the city, in which he attested that the company had ''control of the generation site, or an unconditional right . . . to acquire such control.''[1] That bid also included a copy of an option to lease agreement between the city and FuelCell regarding the property (option agreement), as well as an assignment of that option from FuelCell to the company (assignment).[2] The company's bid ultimately was selected for a project in United Illuminating territory.

The plaintiff thereafter commenced the present action against the defendants. The operative complaint is dated October 22, 2020, and contains two counts.[3] In count one, the plaintiff sought a declaratory ruling that the option agreement ''does not provide the defendants

[1] A copy of the company's bid was submitted as an exhibit to Wolak's affidavit in support of the defendants' motion to dismiss.

[2] The company is a subsidiary of FuelCell.

[3] This action was commenced by service of process on November 2, 2020.

with any legally enforceable rights" due to the city's alleged failure to comply with the requirements of the city charter and General Statutes § 7-163e. In count two, the plaintiff alleged that the defendants had submitted "a false bid certification" in violation of CUTPA as a result of the city's alleged failure to comply with the requirements of the city charter and § 7-163e "prior to executing" the option agreement.

On December 10, 2020, the defendants filed a motion to dismiss the action, alleging, inter alia, that the plaintiff lacked standing.[4] That motion was accompanied by Wolak's affidavit and copies of the request, the company's bid, the option agreement, and the assignment. On December 21, 2020, the plaintiff filed an objection to the motion to dismiss, but did not submit counteraffidavits or any other evidence.

On February 18, 2021, the court ordered "all briefing, documentation and affidavits" related to the motion to dismiss to be filed by March 19, 2021. In accordance with that order, both parties filed supplemental briefs on March 19, 2021. At that time, the plaintiff offered the affidavit of its attorney, Thomas Melone, who averred

[4] Because the issue of the plaintiff's standing implicates the subject matter jurisdiction of the court; see *Rodriguez* v. *Kaiaffa, LLC*, 337 Conn. 248, 274, 253 A.3d 13 (2020); "all other action in the case must come to a halt until such a determination is made." (Internal quotation marks omitted.) *Igersheim* v. *Bezrutczyk*, 197 Conn. App. 412, 420, 231 A.3d 1276 (2020). For that reason, the plaintiff's subsequent filing of an amended complaint on December 21, 2020, was improper. As this court has noted, "our Supreme Court has explicitly held that the court cannot consider any amended pleading before ruling on the motion to dismiss. See *Federal Deposit Ins. Corp.* v. *Peabody, N.E., Inc.*, 239 Conn. 93, 99, 680 A.2d 1321 (1996) (inappropriate for court to consider amended third-party complaint rather than initial complaint, when acting on state's motion to dismiss for lack of subject matter jurisdiction); *Gurliacci* v. *Mayer*, 218 Conn. 531, 545, 590 A.2d 914 (1991) ('[b]y considering the motion to amend prior to ruling on the challenge to the court's subject matter jurisdiction, the court acted inconsistently with the rule that, as soon as the jurisdiction of the court to decide an issue is called into question, all other action in the case must come to a halt until such a determination is made')." *Igersheim* v. *Bezrutczyk*, supra, 420.

that the plaintiff had provided notice of the action to the city. The defendants also submitted additional documentation.[5] In its "further objection" to the motion to dismiss, the plaintiff stated in relevant part: "The foundation of the plaintiff's challenge rests on the nonbinding option [agreement] executed between [the defendants] and the [city]. . . . The [city] failed to engage in any competitive process for its disposition of a real property interest, violating its city charter and [§] 7-163e."

By memorandum of decision dated April 30, 2021, the court granted the motion to dismiss. The court first concluded that the plaintiff's request for a declaratory ruling was not ripe for adjudication, as "PURA [had] not yet approved the [company's] bid . . . ." The court then concluded that the plaintiff lacked standing to bring its CUTPA claim against the defendants, as its alleged injuries "are remote and indirect." Accordingly, the court rendered a judgment of dismissal, and this appeal followed.

On appeal, the plaintiff claims that the court improperly concluded that it lacked standing to maintain the CUTPA action alleged in count two of its complaint.[6] We do not agree.

[5] The defendants appended six documents to their March 19, 2021 filing. Exhibit A is a copy of the January 22, 2021 notice from PURA informing the parties that it had denied the plaintiff's challenges to the bid submitted by the company because they "do not rise to the level of a programmatic deficiency . . . ." Exhibits B and C are notices from PURA regarding its "Review of Statewide Shared Clean Energy Facility Program Requirements," while Exhibit D is the "Shared Clean Energy Facility ('SCEF') Tariff Terms Agreement Subscriber Organization" dated January 22, 2021. Exhibit E is a twenty-two page document titled "The United Illuminating Company Shared Clean Energy Facility Rider Subscriber Organization Terms and Conditions," and Exhibit F is a research report from the Office of Legislative Research dated October 1, 2018, on energy procurements.

[6] In this appeal, the plaintiff does not contest the propriety of the court's determination that the request for a declaratory ruling set forth in count one was not ripe for adjudication.

"The issue of standing implicates a court's subject matter jurisdiction and is subject to plenary review." *Channing Real Estate, LLC* v. *Gates*, 326 Conn. 123, 137, 161 A.3d 1227 (2017). "To establish standing to raise an issue for adjudication, a complainant must make a colorable claim of direct injury." *Connecticut Associated Builders & Contractors* v. *Hartford*, 251 Conn. 169, 178, 740 A.2d 813 (1999). "The requirement of directness between the injuries claimed by the plaintiff and the conduct of the defendant also is expressed, in our standing jurisprudence, by the focus on whether the plaintiff is the proper party to assert the claim at issue. . . . [I]f the injuries claimed by the plaintiff are remote, indirect or derivative with respect to the defendant's conduct, the plaintiff is not the proper party to assert them and lacks standing to do so. [When], for example, the harms asserted to have been suffered directly by a plaintiff are in reality derivative of injuries to a third party, the injuries are not direct but are indirect, and the plaintiff has no standing to assert them." (Citations omitted.) *Ganim* v. *Smith & Wesson Corp.*, 258 Conn. 313, 347–48, 780 A.2d 98 (2001). As our Supreme Court has explained, "notwithstanding the broad language and remedial purpose of CUTPA, we have applied traditional common-law principles of remoteness . . . to determine whether a party has standing to bring an action under CUTPA." (Footnote omitted.) *Vacco* v. *Microsoft Corp.*, 260 Conn. 59, 88, 793 A.2d 1048 (2002).

Connecticut courts "employ a three part policy analysis . . . [in applying] the general principle that plaintiffs with indirect injuries lack standing to sue. . . . First, the more indirect an injury is, the more difficult it becomes to determine the amount of [the] plaintiff's damages attributable to the wrongdoing as opposed to other, independent factors. Second, recognizing claims by the indirectly injured would require courts to adopt

complicated rules apportioning damages among plaintiffs removed at different levels of injury from the violative acts, in order to avoid the risk of multiple recoveries. Third, struggling with the first two problems is unnecessary [when] there are directly injured parties who can remedy the harm without these attendant problems." (Internal quotation marks omitted.) *Connecticut Podiatric Medical Assn.* v. *Health Net of Connecticut, Inc.*, 302 Conn. 464, 469–70, 28 A.3d 958 (2011).

It is undisputed that the company, as part of its bid, submitted both the affidavit of Mayor Dziekan, in which he attested that the company had "control of the generation site, or an unconditional right . . . to acquire such control," and a copy of the option agreement between the city and FuelCell, which option was assigned to the company. Those materials demonstrate that the company's bid comported with the requirement, set forth in §§ 2.4.1 and 4.4 of the request, that a bidder submit proof "that it has control of the generation site, or an unconditional right, granted by the property owner, to acquire such control."

The plaintiff's quarrel is not with the adequacy of the company's bid, but rather its legitimacy. In its complaint, the plaintiff alleged that the city's failure to comply with the "bid process" requirements of § 22 of the city charter and § 7-163e rendered the option agreement "unlawful," "without legal effect," and "void and illusory." The plaintiff further alleged that, as a result of the city's failure to comply with those requirements, "the [option agreement] does not provide the defendants with the unconditional right required by the [request] requirements." For that reason, the plaintiff alleged that the defendants had submitted "a false bid certification" in violation of CUTPA, which allegedly caused the plaintiff to suffer "an ascertainable loss of money because [it] will lose the revenue from the [shared clean energy facility program] that it would

have received but for [the] defendants' submission of a false bid certification."

In its memorandum of decision, the trial court noted that, if the option agreement was unlawful and without legal effect as the plaintiff alleged, and the defendants did not have control of the site, the defendants "will be unable to fulfil their obligations under the contract. Presumably, the project would then be the subject of another [request for production], in which the plaintiff most strenuously asserts it will prevail. The direct recipient of any injury resulting from false certification would be [United Illuminating], the beneficiary of the project. [United Illuminating] would presumably have at least one cause of action against the defendants. Additionally, the real party with purported unclean hands is [the city], which is claimed to have ignored its own city charter in order to furnish the option to lease to the defendants. The plaintiff has not brought an action against [the city], nor does it appear that the plaintiff has standing to maintain such an action. The plaintiff's claims are remote and indirect. If there is a potential victim of the defendants' alleged duplicity, it is [United Illuminating], not the plaintiff. The plaintiff lacks standing to bring the CUTPA claim."

We concur with that reasoning. If the defendants knowingly submitted a false bid, as the plaintiff alleges, the utility company that was a party to the contract for the shared clean energy facility would be a directly injured party and would be best suited to seek a remedy for the harm. Moreover, although the plaintiff on appeal claims that it was "100 percent certai[n]" to receive the shared clean energy facility contract in question if the defendants lacked the necessary site control, that contention is not alleged in the operative complaint and is undermined by the plain language of the request. On its first page, the request states: "EVERSOURCE AND [THE UNITED ILLUMINATING COMPANY] RESERVE

THE RIGHT TO REJECT ANY OR ALL OFFERS OR PROPOSALS." Section 1.8 of the request further provides in relevant part that "[t]he [utility] [c]ompanies will evaluate all conforming Bids . . . however, the [utility] [c]ompanies make no commitment to any Bidder that it will accept any Bid(s)." Section 3.1.3 further confirms that the utility companies retain discretion in awarding a shared clean energy facility contract, stating: "Bids that are not selected as winning Bids may remain active on 'standby.' If one or more Bidders who were selected . . . do not execute the [s]tandard [a]greement, the next lower cost Bid *may* be offered an award." (Emphasis added.) See *A. Dubreuil & Sons, Inc.* v. *Lisbon*, 215 Conn. 604, 610–11, 577 A.2d 709 (1990) (observing that use of word "shall" in contract signifies mandatory directive while use of word "may" generally "imports permissive conduct and the use of discretion" and "is an indication that the parties expressly intended something other than [a] mandatory" obligation); 17A C.J.S. Contracts § 428 (2022) ("[i]n the construction of contracts, the word 'may' ordinarily is regarded as permissive, rather than mandatory"). Because the utility companies, by the plain terms of the request, retained discretion in awarding shared clean energy facility contracts and reserved the right to reject any or all offers, the plaintiff's purported injuries are purely speculative. See, e.g., *State* v. *Dixon*, 114 Conn. App. 1, 9, 967 A.2d 1242 ("aggrievement or standing to appeal requires something more than conjecture or speculation of injury"), cert. denied, 292 Conn. 910, 973 A.2d 108 (2009); *Goldfisher* v. *Connecticut Siting Council*, 95 Conn. App. 193, 198, 895 A.2d 286 (2006) ("mere speculation that harm may ensue is not an adequate basis for finding aggrievement").

We, therefore, agree with the trial court's determination that the plaintiff lacked standing to maintain its

CUTPA action against the defendants. For that reason, the court properly granted the motion to dismiss.

The judgment is affirmed.

DANIEL WINE *v.* WILLIAM MULLIGAN ET AL. (AC 44261)

Alexander, Suarez and Sheldon, Js.

Syllabus

The incarcerated plaintiff sought to recover damages from the defendants, employees of the Department of Correction, alleging, inter alia, that the defendants improperly confiscated materials in his outgoing mail in violation of his constitutional right of access to the courts. The defendants filed a motion to strike the complaint, arguing that the conduct alleged did not constitute a violation of his constitutional rights and because the plaintiff failed to allege the specific personal involvement of four of the defendants in the conduct claimed to constitute a violation. The trial court granted the defendants' motion to strike and rendered judgment thereon, from which the plaintiff appealed to this court. *Held* that the plaintiff could not prevail on his claim that the trial court erred in granting the defendants' motion to strike: the plaintiff's complaint failed to allege the specific personal involvement of the defendants C, M, S and T in the actual confiscation of his mail, and, therefore, the plaintiff could not prevail on his claim as to those defendants because he failed to assert that they personally were involved in the alleged violation; moreover, the court properly granted the defendants' motion to strike as to the defendant W because, although the plaintiff alleged that W confiscated his mail, he failed to allege that he suffered any actual injury as a result of such confiscation; furthermore, because the plaintiff did not allege that the materials were being mailed to his attorney or to the court, he failed to plead that the confiscation hindered his efforts to pursue a legal claim or that his access to the courts was frustrated or impeded by their confiscation.

Argued February 15—officially released June 14, 2022

Procedural History

Action to recover damages for the alleged violation of the plaintiff's constitutional rights, and for other relief, brought to the Superior Court in the judicial district of

Hartford, where the court, *Cobb*, *J.*, granted the defendants' motion to strike the plaintiff's complaint; thereafter, the court, *Noble*, *J.*, granted the defendants' motion for judgment and rendered judgment thereon, from which the plaintiff appealed to this court. *Affirmed.*

Daniel Wine, self-represented, the appellant (plaintiff).

Jacob McChesney, with whom, on the brief, were *William Tong*, attorney general, and *Clare E. Kindall*, solicitor general, for the appellees (defendants).

Opinion

PER CURIAM. The self-represented plaintiff, Daniel Wine, appeals from the judgment of the trial court rendered after it granted the defendants'[1] motion to strike his complaint. On appeal, the plaintiff contends that the court erred in granting this motion because the stricken complaint adequately stated a claim that the defendants had violated his constitutional right of access to the courts. We disagree, and, accordingly, affirm the judgment of the trial court.

The record reveals the following facts and procedural history. At all times relevant to this appeal, the plaintiff was incarcerated at the MacDougall-Walker Correctional Institution (MacDougall). In July, 2019, the plaintiff initiated the present action pursuant to 42 U.S.C. § 1983.[2] The plaintiff alleged in his complaint that, on

[1] The defendants in this action are five Department of Correction employees: Rollin Cook, the then Commissioner of Correction; William Mulligan, the warden of MacDougall-Walker Correctional Institution; Peter Sacuta, a correction officer; Shaila Tucker, a counselor; and Correction Lieutenant Roy Weldon.

[2] The universe of legal claims triggering the right of access to the courts includes "civil rights actions—i.e., actions under 42 U.S.C. § 1983 to vindicate basic constitutional rights." (Internal quotation marks omitted.) *Lewis* v. *Casey*, 518 U.S. 343, 354, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996).

January 25, 2019, the defendants improperly confiscated materials in his outgoing mail,[3] and that such improper confiscation violated his constitutional rights of access to the courts and to equal protection of the law. Specifically, the plaintiff alleged that Rollin Cook, the then Commissioner of Correction, was responsible for the overall operation of the Department of Correction's correctional facilities, which included MacDougall. The plaintiff alleged that he had written to Correction Lieutenant Roy Weldon requesting an informal resolution regarding the confiscation of his mail. In his claim against William Mulligan, the warden of MacDougall, the plaintiff alleged that Mulligan was "legally responsible for the operation of [MacDougall] and for the welfare of all the inmates in that prison." The plaintiff alleged that he also had written to Mulligan requesting an informal resolution regarding the confiscation of his mail. The plaintiff claimed that he had a conversation with Peter Sacuta, a correction officer, regarding the confiscated materials. The plaintiff alleged that Sacuta told him that "any material containing [Uniform Commercial Code] material will be confiscated as unauthorized information by him at the time he is making copies or doing notary."[4] The plaintiff

[3] The plaintiff alleged that the confiscated materials related to three different legal matters: (1) a visitation application concerning his three minor children; (2) an action alleging that a therapist treating his children had violated the "copywritten/copy trademark/trade name" of his children; and (3) documents necessary to "restart" a non-profit organization. All of the confiscated materials were addressed to the plaintiff's sister, "who has power of attorney for [his] business and legal matters . . . ."

[4] In the memorandum in support of their motion to strike, the defendants contended that "the plaintiff's descriptions of his civil lawsuits appear to be the type of legal harassment regularly engaged in by so-called 'sovereign citizens.' . . . 'The sovereign citizens are a loosely affiliated group who believe that the state and federal governments lack constitutional legitimacy and therefore have no authority to regulate their behavior.' . . . Such individuals believe that they can free themselves of government control 'by filing [Uniform Commercial Code] financing statements, thereby acquiring an interest in their strawman,' and thereafter demand that others 'pay enormous sums of money to use the strawman's name.' " (Citations omitted.)

further alleged that he handed a manila envelope containing his materials to Shaila Tucker, a counselor, and asked her to seal the envelope but she declined to do so, stating that "the mailroom may want to check it." Finally, the plaintiff alleged that Weldon seized his outgoing mail on January 25, 2019. The plaintiff sought an injunction and compensatory and punitive damages.

On August 22, 2019, the defendants filed a motion to strike the plaintiff's complaint for failure to plead a valid cause of action and failure to state a claim upon which relief could be granted. In the memorandum in support of their motion to strike, the defendants argued that the plaintiff's complaint was legally deficient because the conduct alleged did not constitute a violation of his constitutional rights, and that the plaintiff failed to allege the specific personal involvement of four of the defendants in the conduct claimed to constitute a constitutional violation. The defendants argued that "only [Weldon] was alleged to have confiscated the plaintiff's outgoing mail" and, therefore, the plaintiff had failed to adequately allege a § 1983 claim against Cook, Mulligan, Sacuta, and Tucker. As to the plaintiff's claim that the defendants had violated his right of access to the courts, the defendants first argued that the materials confiscated from the plaintiff did not relate to a challenge of any of the plaintiff's criminal convictions or resulting sentences, or to any alleged violation of his constitutional rights, as required to establish a viable access to the courts claim. The defendants further argued that the plaintiff's allegations were legally insufficient because he failed to set forth any claim that he suffered any injury in fact as a result of the defendants' allegedly unconstitutional conduct. As to his equal protection claim, the defendants argued that the plaintiff's complaint was legally deficient because it failed to allege any disparate treatment by them of similarly situated individuals or that the confiscation

of his outgoing mail was not rationally related to the Department of Corrections' "security protocol or some other legitimate penological interest."

On January 29, 2020, the court granted the defendants' motion to strike the plaintiff's complaint "[f]or the reasons stated in the defendants' memorandum."[5] On February 26, 2020, the defendants filed a motion for judgment, which the court granted on March 9, 2020. This appeal followed. On appeal, the plaintiff claims that the court improperly granted the defendants' motion to strike because he sufficiently alleged a violation of his right of access to the courts in his complaint.[6]

We begin our analysis with the standard of review. "Because a motion to strike challenges the legal sufficiency of a pleading and, consequently, requires no factual findings by the trial court, our review of the court's ruling on the [defendants' motion] 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. . . . Thus, [i]f facts provable in the

[5] We note that, generally, a trial court should not adopt as its decision the moving party's memorandum of law. See, e.g., *Hartford* v. *Tucker*, 8 Conn. App. 209, 214 n.10, 512 A.2d 944 (1986) ("[w]e must note our concern with the trial court's adoption and incorporation by reference in its memorandum of decision of the city's fifty-nine page trial brief 'as the basis for its decision,' rather than finding its own facts and making independent conclusions"). Although we continue to discourage a trial court's adoption of a moving party's memorandum as the basis for its decision, its use of that procedure in this case does not affect our resolution of the claims raised on appeal.

[6] The plaintiff raised a distinct claim related to the court's striking of his equal protection claim. Because, on appeal, the plaintiff failed to adequately brief his equal protection claim, we deem that claim abandoned. "We repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly." (Internal quotation marks omitted.) *Traylor* v. *State*, 332 Conn. 789, 804–805, 213 A.3d 467 (2019).

complaint would support a cause of action, the motion to strike must be denied. . . . Moreover, we note that [w]hat is necessarily implied [in an allegation] need not be expressly alleged. . . . It is fundamental that in determining the sufficiency of a complaint challenged by a [defendants'] motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted. . . . Indeed, pleadings must be construed broadly and realistically, rather than narrowly and technically." (Internal quotation marks omitted.) *Piccolo* v. *American Auto Sales, LLC*, 195 Conn. App. 486, 489–90, 225 A.3d 961 (2020).

We next set forth the legal principles relevant to our resolution of the plaintiff's appeal. To state a viable claim for denial of access to the courts against an individual defendant pursuant to § 1983, the plaintiff must allege the personal involvement in the alleged denial of access of that particular defendant. See *Tangreti* v. *Bachmann*, 983 F.3d 609, 618 (2d Cir. 2020) (plaintiff "must plead and prove that each [g]overnment-official defendant, through the official's own individual actions, has violated the [c]onstitution" (internal quotation marks omitted)); *Davis* v. *Goord*, 320 F.3d 346, 351 (2d Cir. 2003) ("a plaintiff must allege that the defendant took or was responsible for actions that hindered [a plaintiff's] efforts to pursue a legal claim" (internal quotation marks omitted)); *Wright* v. *Smith*, 21 F.3d 496, 501 (2d Cir. 1994) ("[i]t is well settled in this Circuit that personal involvement of defendants in alleged constitutional deprivations is a prerequisite to an award of damages under § 1983" (internal quotation marks omitted)).

Upon our thorough review of the pleadings, we conclude that the plaintiff's complaint failed to allege the specific personal involvement of the defendants Cook, Mulligan, Sacuta, and Tucker in the actual confiscation of his mail. Therefore, as the defendants advanced in

their motion to strike and accompanying memorandum in support of their motion, the plaintiff cannot prevail on his claim pursuant to § 1983 against these four defendants because he failed to assert that they personally were involved in the alleged violation. See, e.g., *Tangreti* v. *Bachmann*, supra, 983 F.3d 618.

We next address the plaintiff's allegations against Weldon. It is well established that all incarcerated individuals have a constitutional right of access to the courts that is "adequate, effective, and meaningful." *Bounds* v. *Smith*, 430 U.S. 817, 822, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977); see also *Washington* v. *Meachum*, 238 Conn. 692, 735, 680 A.2d 262 (1996). A review of United States Supreme Court jurisprudence consistently establishes that states are required to "shoulder affirmative obligations to assure all prisoners meaningful access to the courts." *Bounds* v. *Smith*, supra, 824. In *Bounds*, the United States Supreme Court held that "prison authorities [are required] to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." Id., 828. The Supreme Court explained, however, that "while adequate law libraries are one constitutionally acceptable method to assure meaningful access to the courts, our decision . . . does not foreclose alternative means to achieve that goal." Id., 830. The required assistance "may take many forms and *Bounds* . . . guarantees no particular methodology but rather the conferral of a capability—the capability of bringing contemplated challenges to sentences or conditions of confinement before the courts." (Internal quotation marks omitted.) *Cooke* v. *Commissioner of Correction*, 194 Conn. App. 807, 829, 222 A.3d 1000 (2019), cert. denied, 335 Conn. 911, 228 A.3d 1041 (2020).

Additionally, to state a viable claim that his right of access to the courts has been violated, the plaintiff must

allege that, as a result of a specific defendant's conduct, he suffered an actual injury. "Insofar as the right vindicated by *Bounds* is concerned, meaningful access to the courts is the touchstone . . . and the inmate therefore must go one step further and demonstrate that the alleged shortcomings . . . hindered his efforts to pursue a legal claim." (Citation omitted; internal quotation marks omitted.) *Lewis* v. *Casey*, 518 U.S. 343, 351, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996). "Mere delay in being able to work on one's legal action or communicate with the courts does not rise to the level of a constitutional violation." (Internal quotation marks omitted.) *Davis* v. *Goord*, supra, 320 F.3d 352; see id. (plaintiff's access to courts claim failed because he did not allege that "interference with his mail . . . caused him to miss court deadlines or in any way prejudiced his legal actions"). Furthermore, "the injury requirement is not satisfied by just any type of frustrated legal claim. Nearly all of the access-to-courts cases in the *Bounds* line involved attempts by inmates to pursue direct appeals from the convictions for which they were incarcerated . . . or habeas petitions . . . . [T]his universe of relevant claims [was extended] only slightly, to 'civil rights actions'—i.e., actions under 42 U.S.C. § 1983 to vindicate 'basic constitutional rights.' " (Citations omitted.) *Lewis* v. *Casey*, supra, 354. The right of access to the courts "does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims. . . . Impairment of any other litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration." (Emphasis omitted.) Id., 355; see also *Cooke* v. *Commissioner of Correction*, supra, 194 Conn. App. 828–29.

Although the plaintiff alleged that Weldon confiscated his mail, he failed to allege that he suffered any

actual injury as a result of such confiscation. Because he did not allege that the materials were being mailed to his attorney or to the court, the plaintiff failed to plead that the confiscation "hindered his efforts to pursue a legal claim" or that his access to the courts was "frustrated or was being impeded" by their confiscation.[7] *Lewis* v. *Casey*, supra, 518 U.S. 351, 353, 355. Again, as the defendants argued in their motion to strike and accompanying memorandum in support of their motion, the plaintiff's failure to allege that he suffered an actual injury as a result of the defendants' allegedly unconstitutional conduct defeats his claim that he was entitled to relief under § 1983 on the basis of such conduct.

Therefore, we conclude that the plaintiff's claims against each defendant were properly stricken.

The judgment is affirmed.

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[7] The plaintiff alleged that the confiscated materials were being sent to his sister, a third party, and not to the plaintiff's attorney or to the court. As a result, we need not address the merits of whether the confiscated documents related to legal actions that fall within the "universe of . . . claims" recognized by the courts to support a denial of access to the courts claim. *Lewis* v. *Casey*, supra, 518 U.S. 354–55; see also *Cooke* v. *Commissioner of Correction*, supra, 194 Conn. App. 828–29.

MEMORANDUM DECISIONS

CONNECTICUT APPELLATE REPORTS

VOL. 213

MEMORANDUM DECISIONS

BOBBIE L. ADAMS III *v.* KARLENE M. DEAL ET AL.
(AC 44567)

Alvord, Prescott and DiPentima, Js.

Submitted on briefs May 25—officially released June 14, 2022

Plaintiff's appeal from the Superior Court in the judicial district of New London, *Calmar, J.*; *Knox, J.*

Per Curiam. The judgment is affirmed.

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NOTICES

Notice of Administrative Suspension of Attorneys

ORDER: The following list of attorneys having been presented by the Client Security Fund Committee pursuant to Practice Book Section 2-79(a) for purposes of placing those attorneys so listed on administrative suspension from the practice of law for failing to pay the client security fund fee for calendar year 2021, due June 15, 2021, as required by Practice Book Section 2-70, and it appearing from the records of the Client Security Fund Committee that the following attorneys have not paid the fee for said calendar year, it is hereby ORDERED that the following attorneys are deemed administratively suspended from the practice of law in this state until such time as payment of the fee, and a reinstatement fee of $75.00, is made. Pursuant to Practice Book Section 2-79(a), such suspension shall be effective upon publication of the list in the Connecticut Law Journal.

By the Court,
Hon. Susan Quinn Cobb
Date: June 2, 2022

Juris No. Name

427859 JOAN AANAVI
406061 DAVID P ABATEMARCO
403792 DAVID VARNUM ABBOTT
401145 ROSS MARTIN ABELOW
412907 JONATHAN DAVID ABRAHAM
432720 JACOB JOHN ABRAMS
407575 VICTOR H ABRAVAYA
410442 CRAIG THOMAS ABRUZZO
300205 GREGORY DONALD ABT
421811 JOSEPH PAT ACCETTURO
405049 F RANDOLPH ACKER
420533 STEPHEN M ACKLEY-ORTIZ
300209 CHARLOTTE MARY ACQUAVIVA
307315 JANE M ADAMO
309653 CHRISTINE ANNE ADAMS
306707 ELIZABETH SQUIER ADAMS
433876 ERIN ELIZABETH ADAMS
305826 ROBERT T ADAMS
411557 THEODORE MONAHAN ADAMS
306842 LINDA LARSON ADAMSON
416025 AMY MARIE ADORNEY
402449 ARTHUR AFFLECK
409887 OLIVER A AGHA
308689 KRISTI M AGNIEL
429011 BARBARA K AGOSTINO
408583 BARRY DANIEL AHEARN
410853 CHRISTOPHER JAMES AHEARN
428132 DENISE B AHERN
300226 FRANCIS MICHAEL AHERN
300227 MARIO A S AHMAD
437108 HYUNJOO AHN
430311 NICHOLAS AHUJA
300229 L JEFFREY AKER
401362 JOSEPH MICHAEL ALBERO
300231 FELIX ALBERT
421817 CHRISTOPHER O ALBIZU
411235 TINA E ALBRIGHT
411898 DAVID ALDERMAN
404799 LORI ANN ALESIO
435774 DAVID JAMES ALEXANDER
405563 HEIDI J ALEXANDER
421309 JEFFREY MICHAEL ALEXANDER
305338 THOMAS KACZMARCYK ALEXANDER
303558 VALERIE ALEXANDER
300244 JAMES ALFORD
440871 GABRIELLA ALI-MARINO
430316 ALEXIS LYNN ALIRE
300248 JOHN MALCOLM ALLAN JR
426460 COREY J ALLARD
405297 FRANK PAUL ALLEGRETTI
403975 FRANK E ALLEN
415141 OTIS GEORGE ALLEN
407861 KAREN MCCLINCH ALONSO
413938 LORI JEAN ALPERT
426572 JOSE LUIS ALTAMIRANO
300267 LAURENCE PAUL ALTERMAN
306709 LISA MILLER ALTMAN
410967 DONNA L ALVAREZ
413166 AMR ALY
436772 JENNIFER MEGHAN AMBROSE
402121 EDWARD ANTHONY AMBROSINO
416325 JEFFREY RUSSELL AMBROZIAK
404802 FRANCIS C AMENDOLA

403271 MADELENE CLARE AMENDOLA
421313 ANTHONY AMETRANO
406959 LINDA R ANDERS
432349 KEVIN JAMES ANDERSON
410243 JANET AGOGLIA ANDOLINA
302657 CHRISTINE I ANDREW
303884 KAREN E ANDREWS
401363 HOWARD F ANGIONE
413720 BRIAN MARTIN ANSON
428954 TONY ANTHONY
415759 PENNY H ANTHOPOLOS
402202 RONALD H ANTONIO
403272 RICARDO A ANZALDUA-MONTOYA
000750 PAUL J APARO
404353 MORTON APFELDORF
300316 STUART H APPELBAUM
428552 ALBERT S AQUINO
401365 JOHN ALBERT ARANEO
424684 JOSEPH J ARCATA III
420181 ALAIN ARMAND
439706 JOHN DAVID ARNOLD
411560 JEFFREY F ARONIS
403853 DAVID MARK ARONOWITZ
420541 JEANNE REGAN ARONSON
418199 R CRAIG ARONSON
418762 NOREEN DEVER ARRALDE
431643 TAMARA SHYAMA ARZT
423219 RAYMOND L ASAY
425911 LAUREN M ASHBROOK
409455 JOHN LAWRENCE ASHELFORD
407362 LAURA ANN ASINAS
300344 GREGORY T ATKINSON
303153 LYNN ATKINSON
424687 MACKENS PHILIP AUDENA
426494 LINDSAY A AUGER
423220 HANS HENRY AUGUSTIN
415678 ANNALEI AVANCENA
307829 ARLENE FRANCIS AVERY
437116 GRACE GLORIA AVILES
423221 SI AYDINER
427955 CINDY AZOULAY
403068 NAT JOHN AZZNARA
305815 ERIC M BABAT
404328 LANCE B BABBIT
418575 EMILE JOACHIM BABIN III
433887 LOUIS W BACH
415023 RIK ANDREW BACHMAN
406030 CHRISTOPHER ANTHONY BACOTTI
405060 DAVID M BADAMI
411239 PATRICIA GAIL BADE
428966 KRISTINA SCURRY BAEHR
408768 DAVID G BAGHDADY
408159 JEFFREY STEPHEN BAGNELL
420548 DARREN D BAHAR
421831 PAULA J BAILEY
402049 DENISE ANNE BAILEY-LAROUCHE
401152 MICHAEL BAIN
102816 TODD R BAINER
438006 JOSEPH C BAIOCCO
420539 CAROLINE ANDROSKI BAIRD
427903 FARAMARZ BAJOGHLI
439002 ARIANNA COLETTE BAKER
429651 DAVID EDWARD BAKER
412920 DAVID MICHAEL BALABAN
401153 MARILYN BALCACER
420550 AIMEE-JOAN CAPARAS BALDILLO
409713 DANIEL BALINT
405542 ANTHONY ALONZO BALL
431351 ANNE BALLA
308953 KEN E BALLANTYNE
305374 DIANA CHRISTINE BALLARD
309543 ROGER SCOTT BALLENTINE
405302 EMILY LYNN BALLER
412563 SUSAN M BANKS
427787 BRANDON EVERETT BANNOCK
306655 ROBERT A BARAD
102373 MARY ELIZABETH BARAN
303493 ROBERTA JILL BARBANEL
419083 GEORGE PAUL BARBARESI
408910 STEPHEN JOSEPH BARBER
410756 STEPHEN BARD
409305 CYNTHIA L BARDALES
438601 ESMERALDA BARDHOLLARI
307101 JUDITH BARES
414369 SPENCER ZANE BARETZ
425897 COURTNEY LYNN BARGER
434609 RACHEL LAUREN BARMACK
424696 ANANYA BARMAN
419557 JAMES STODDARD BARNES
300802 THOMAS JOSEPH BARNES
301187 JOSEPH WILLIAM BARNETT
413173 LISA MARIE BARNETT
405062 BRADFORD JAY BARNEYS
417823 CELIA M BARNUM
428493 STEPHEN ROCCO BARRESE
301197 EDWARD V BARRETT
433425 JAMES ARTHUR BARRETT
420182 ERIKA M D BARRIE
301201 AUDREY BARRIS
002215 JOHN F BARRY JR
401369 KEVIN MATTHEW BARRY
306204 LISA JOAN BARRY
419558 NATALIA MAUREIRA BARTELS
002262 PETER J BARTINIK
401154 MICHAEL JOSEPH BARTLEY
419924 NICOLE BARTNER
418204 CRAIG ALAN BARTON
411780 JOHN MARSHALL BARTON III
428062 JESMIN K BASANTI
413939 JANET BASHFORD
415529 GREGORY L BASS
415900 JENNIFER R BASSETT
414509 IVETTE BASTERRECHEA
307936 ANITA D BASTIKS
400447 CHRISTINE A BASTONE
309044 MARY BATTIS
421214 JULES G BAUGHNS
309601 SUSAN R BAUMEL
403762 MELISSA WEISS BAUSANO
421839 PAUL S BAVIER
309460 TIMOTHY ANDREW BAXTER
002570 BRIAN E BAYUS
413270 VIRGINIA L BEACH
427965 KATE ANN BEARDSLEY

408621 AMY LOUISE BEAUCHAINE
430722 AMY MARIE BEAUDOIN
407368 JAMES JOSEPH BEAUDREAU III
418206 DEREK MATTHEW BEAULIEU
305376 MICHAEL F BECHER
412288 THEODORE ANDREW BECHTOLD
301256 CAROLYN ELIZABETH BECK
401155 DANIEL SCOTT BECKER
428061 AMY J BEECH
408817 ROBERT LIEBERT BEERMAN
439896 EGZON BEHA
428979 BRIAN LOGAN BEIRNE
437895 ALESSIA TAMARA BELL
426520 ANGELA CHRISTINE BELL
427972 GENEA ODESSA BELL
415684 KAREN J BELL
003130 SHERRY F BELLAMY
310017 ROBERT VINCENT BELTRANI
301304 DANIEL P BEN-ZVI
424179 JEFFREY R BENEDICT
403492 MICHELLE DIANE BENESKI
406966 THOMAS JAMES BENISON
408916 WILFREDO BENITEZ
307938 JOEL B BENJAMIN
436795 FARAH LEILA BENSLIMANE
427119 NICHOLAS A BERARDIS JR
436796 ADAM IAN BERCOWETZ
101171 DINA R BERGER
405746 KENNETH ALAN BERGER
412808 JUDITH BERGER-EFORO
428984 KAREN MICHELE BERGGREN
401156 STEVEN STANFORD BERIZZI
413724 MARNIE GILLA BERK
308962 RICHARD J BERKA
408109 ALISON BETH BERKLEY
406763 ROBERT JOSEPH BERKOWITZ
301318 STEVEN H BERKOWITZ
411432 BRADLEY WOLFE BERMAN
421324 PETER B BERNIER JR
406093 ANDREW HOWARD BERNSTEIN
308668 HAROLD F BERNSTEIN
405745 MARK R BERNSTEIN
411372 MEREDITH L BERNSTEIN
004037 NORMAN J BERNSTEIN
004062 SAMUEL J BERNSTEIN
305381 ADAM SAMUEL BERSIN
308492 M EDWARD BERTHIAUME JR
418208 MATTHEW LAWRENCE BERZOK
411248 EDWARD JAMES BETCHER
430003 KAREN BEZNICKI
424712 LUIGI BIANCO
411433 G THOMAS BICKFORD
413057 ROBERT HUNTER BIDEN
004387 JOHN P BIGDA
406969 DANIEL BILDNER
409717 JONATHAN PRIM BILLER
101938 WILLIAM A BINGHAM
420568 WAYNE BINOWSKI
407374 JAMES PETER BIONDOLILLO
414838 ROBIN M BISCHOF
421849 AISHA BIVENS
004699 BREWSTER BLACKALL
100290 HARRY BLACKBURN
413806 SEAN GREGORY BLACKMAN
004730 EDWARD BLAIR
301396 RUSSELL J BLAIR
309006 RICHARD BLAKE
308439 H JAMES BLAKESLEE
430349 KRYSTYNA MARIE BLAKESLEE
301401 DONALD H BLANCHARD
307939 MAUREEN T BLANEY
403574 DAVID IAN BLEE
306239 JUDITH A BLEI
301410 STUART JAY BLENNER
308378 PETER J BLESINGER
417456 MICHAEL JAMES BLESSING
411250 DEVRA ANNE BLOCK
411435 NANCY J BLOCK
413553 MARK JOEL BLOOM
423724 MICHELE BLOSSER
418159 IVAN K BLUMENTHAL
402847 JAMES BOAK
100635 DAVID BODINE
420784 LAURA BOEHRINGER
309011 CORNELIS MARK BOELHOUWER
426790 JOSEPH J BOGDAN
301439 GLENN NED BOGDONOFF
425843 HEIDI ELIZABETH BOGHOSIAN
419569 ALLISON MARY BOGOSIAN
408625 MARCO THOMAS BON TEMPO
306507 JOSEPH MICHAEL BONASSAR
415401 ANDREW FRED BONITO
409862 GAIL BONNER
420043 LAURA MARIE BOOKER
301926 JOEL ANTHONY BOONE
430355 JED EMMET BORKEN
005218 JOSEPH S BORKOWSKI
102472 JOHN K BOSEE
421859 BRETT J BOSKIEWICZ
411592 TERESIA LINNETTE BOST
401157 THOMAS MICHAEL BOWERS
101762 ALLEN P BOYARSKY
102218 WILLIAM H BOYD
423254 DANA REDWAY BOYLAN
403927 WAYNE M BOYLAN
005443 ROBERT H BOYNTON
303118 JOAN LESLIE BOZEK
420213 TYLYN L BOZEMAN
422767 JAMES J BRACKEN IV
421231 BECKY L BRADLEY
407145 LAURA L BRADLEY
372444 SHARON LEONE BRAIS
401381 PETER BEVIER BRANDOW
420579 JEFFREY LAWRENCE BRANDT
404539 LAURA MARIE BRANK
410255 MEREDITH NORMINGTON BRASCA
421330 ANNEMARIE LEONARDINI BRAUN
430363 JULIA ELIZABETH BRAUN
101597 ROBERTA E BRAUNSTEIN
409419 LONNIE BRAXTON II
413726 JON WILDER BRAYSHAW
307941 ANTONIO BRAZ
421862 CHRISTOPHER MICHAEL BRECCIANO

307942 PAUL JOHN BREDICE
441278 BRANDON JOHN BREINER
301535 IRVING AARON BREITOWITZ
424188 LIORA BRENER
301575 DANIEL EDWARD BRENNAN
417627 KATHERINE S BRENNAN
418718 LESLIE BRENNAN-SOMPS
401384 DAVID MARSHALL BRENSILBER
303159 SHEILA J BRENT
309023 VINCENT PAUL BRESHNAHAN JR
429014 ERIC ANDREW BRESLOW
408039 KEVIN MICHAEL BRESNAHAN
410014 CRISTY LYNN BRESSON
404754 LAURA ULRICH BRETT
101251 LAWRENCE S BRICK
401385 JANEANN BRITT
405197 TRACY LOMBINO BRITTIS
306453 ISABELLE FARRELL BRITTON
420524 CHARLSA D BROADUS
306873 JAMES P BROCHIN
305534 DEBORAH MAXINE BRODER
433911 JULIE ANNE BRODER
400984 SUSAN W BRODKIN
440589 RACHEL E BRODY
308782 SUSANNE BRODY
309024 CARRIE ANN BRODZINSKI
402850 JANET ADELE BROECKEL
401387 JOHN GERARD BROETSKY
305335 SHARON BRONTE
403784 PATRICIA CYNTHIA BROOKE
428606 JASON EVERETT BROOKS
006511 LYNN ALAN BROOKS
404318 WAYNE NORRIS BROOKS
436174 WILLIAM R BROOKS II
302211 RICHARD DAVID BROOME
305854 SAMUEL BROQUE
430164 ALICIA J SANGIORGIO BROTHERS
435072 JOSHUA PHILIP BROUDY
403536 CLAUDE MOTT BROUILLARD
403294 ARTHUR F BROWN III
402706 AVERY LOUIS BROWN
403326 CAROLYN DUNPHEY BROWN
301600 CHRISTOPHER VANDYCK BROWN
407385 ERIC JOHN BROWN
421868 KEITH M BROWN
101586 LUCILLE E BROWN
427129 MELISSA JEAN BROWN
301607 MICHAEL K BROWN
414517 SANDRA FAE BROWN-BREWTON
429728 CHRISTOPHER M BROWNE
418770 CHARLES BRIAN BRUNDAGE
306306 CHIRSTOPHER J BRUNO
416865 EDWARD C BRUNO
410988 GWENDOLYN KISHA BRUNSON
409237 PETER F BRUSH
406976 LISA LOUISA BRYANT
429023 SANDRA LYNN BRYANT
439671 MELISSA COLLEEN BRYSON
405973 ROBERT NICHOLAS BUA
305113 ROBERT ALAN BUCCI
410788 THOMAS W BUCCI JR
405548 BRANDON BUCKINGHAM
423263 COLLEEN MARIE BUCKLEY
411077 REGINA HILLMAN BUCKLEY
423264 RICHARD EARL BUCKLEY
102257 PERRY C BUDDINGTON
417659 BRYAN T BUDNIK
306549 GREGORY P BUFTHITIS
403296 GLENN MILLS BUGGY
307121 PAUL D BUHL
400988 ANDREA LOUISE BULL
404831 ERIC BUONAMASSA
411789 CATHLEEN ELIZABETH BURGESS
370547 PETER H BURKARD
370548 BRIAN F BURKE
303390 EILEEN BURKE
370550 JOHN A BURKE
429028 JOHN FRANCIS BURKE
304131 JUNE ANNE BURKE
437732 MICHAEL JOSEPH BURKE
305858 THOMAS ALBERT BURKE
424745 DENIELLE M BURL
007495 STEPHEN BURLINGAME
102010 EILEEN P BURLISON
401397 JAMES A BURROWS
007528 WALTER L BURROWS JR
303162 JUDITH A BUSCH
412293 SMITA G BUTALA
370589 NANCY L BUTTERFIELD-SCHONS
420027 CARI J BUXBAUM
411581 JAMES I BYER JR
301003 STEPHANIE FOUNTAIN BYNUM
404251 CHRISTOPHER J BYRNE
408252 JAMES P BYRNE
432753 MEGAN ROSE BYRNE
417358 STEVEN BYRNE
419009 ELIZABETH BYRNE-CHARTRAND
422775 MEGAN A BYRNES
430377 LISA BYRNS
421335 JANEEN MARCIA BYRON
431249 STEPHANIE CABRAL
424191 ANTHONY R CACCAMO
101742 JEFFREY P CADOUX
414521 CARMIA NICHEL CAESAR
412931 MARCO JOHN CAGGIANO
431727 ERIKA D CAGNEY
420143 SUSANNE MARIE CAHILL
300465 DAVID M CAIN
301975 LAURIE GRELE CAIN
407601 MARJORY CAJOUX
422776 AMY MARIE CALABRESE
424751 PETER ANTHONY CALATOZZO
410461 JOHN DAVID CALDER
418593 CHRISTOPHER T CALIO
415655 DAWN SEARS CALLAGHAN
423274 BRIAN ROBERT CALLAHAN
421881 TRAVIS WILLIAM CALLAHAN
403584 ERIN MARIE CALLAN
100751 ROSALIE CALVE
418910 GEORGE M CAMERON
413898 DAVID RICHARD CAMPBELL
421337 GOLDEN CAROLE CAMPBELL
405344 JEANMARIE CAMPBELL
406777 KATHLEEN ELIZABETH CAMPBELL

428033 LATRICE CAMPBELL
428045 LINDA SIMMONS CAMPBELL
310070 M VICTORIA CAMPBELL
303862 MARK A CAMPBELL
411583 MICHAEL RENWICK CAMPBELL
309657 VICTORIA CAMPBELL
404837 CHRISTINE ELIZABETH CAMPIONE
401309 DAWN RUSSO CAMPSON
409509 MARY ANN CANDELARIO
307694 MARIANNE CANDITO
405207 RENEE MAYERSON CANNELLA
300508 JAY STUART CANTOR
307425 BONNIE LYNN CANTY
306877 BRENDAN THOMAS CANTY
309037 ELIZABETH BLANCHE CAPEN
427137 LAUREN ROBERTA CAPLAN
008320 LEWIS E CAPLAN
410263 BRUCE STEVEN CAPLIN
008340 MICHAEL R CAPORALE JR
304118 MARILYN J CAPOZZI
407234 ANDREW JULIUS CAPPEL
417243 PATRICIA A CAPPETO
421021 AMANDA L CAPPILLO
303164 DENNIS WALTER CARAHER
428015 CHRISTOPHER MICHAEL CARAPELLA
421883 MARK R CARBUTTI
433434 KEITH ANTHONY CARDOZA JR
407849 BRETT CAREY
008478 L GERALD CAREY
008485 FRANCIS J CARINO
419272 JENNY ANN CARLES
406780 DON ANTHONY CARLOS JR
300537 ALLYN MYLES CARNAM
404064 BETH A CARPENTER
300541 DANIEL EDGAR CARPENTER
306332 CHRISTOPHER R CARPENTIERI
418429 PETER CARPIO
431253 JOSHUA RICHARD CARRAFA
418953 GRETCHEN A CARROLL
306333 JOSEPH FRANCIS CARROLL JR
008654 KEVIN L CARROLL
008727 JOHN J CARTA JR
008772 ARTHUR F CARTER
308417 JOHN HENRY CARTER JR
402015 MARTIN LUTHER CARTER
414147 MICHAEL RICHARD CARTER
008782 WILLARD R CARTER
402174 JAMES RICHARD CARTIGLIA
442151 ROBERTO MONTERIO CARUSO
441203 JOSEPH GERARD CASACCIO
412294 LAURA JEAN CASARANO
400689 STEPHEN CHARLES CASE
422779 BARBARA ANNE CASEY
401412 JOANNE KILDUFF CASHIN
306662 GEORGE JOHN CASPAR III
102077 THOMAS P CASPER
406781 AVI D CASPI
401413 ROBERT JOHN CASSANDRO
427899 KATHLEEN A CASSIDY
100299 RAUL C CASTELLS
433435 RACHEL ANN CASTIGNOLI
440503 JOSEPH JONATHAN CASTRIANNI
303865 FRANK ANTHONY CATALANO JR
421893 ANNE FLORENCE CATAPANO
414203 JENNIFER M CATTIER
402713 JOSEPH JUDE CAVALLARO
430399 JESSICA CAVALLO
400691 CHARLES JOSEPH CAVANAUGH
409899 JANET DENISE CEBULA
409730 VIKTORIA KAROLINA CECH-VINHAIS
412408 JOHN DOUGLAS CECHINI
417470 JEFFREY D CEDARFIELD
430400 ADAM S CEDERBERG
424766 GINA L CEKALA
413189 CHRIS EDWARD CELANO
403984 IAN EUGENE CELECIA
009025 JOSEPH CELENTANO
403091 ANGELA SOFIA CERINI
420613 STEPHEN ALPHONSE CERRATO
420230 CARRIE LYNN CERRETO
421819 NICOLE ELIZABETH CERRITO
415911 JOSEPH PETER CERVINI JR
309638 CHERYL L CHADWICK
429919 TAMAR ELIZABETH CHALKER
301936 R MARK CHAMBERLAIN
424770 RASHAD V CHAMBERS
431734 JULIANA CHAN
307358 DEBORA CHANDLER
305348 DEBORAH CHANG
428081 EDWARD W CHANG
300614 JIH-KUEI CHANG
413193 SHELLEY C CHAO
429046 JENNIFER KATHRYN CHAPLA
420615 ANDRE KEITH CHARBONNEAU
101447 GARY G CHARLAND
300623 DONALD HOWARD CHASE
303444 JAMES MORRISSON CHASE
307132 MICHELLE SCOTT CHASE
435801 SARAH QAYYUM CHAUDHRY
418152 DAVID CHEN
408563 MEI-WA CHENG
305544 NAN BUDDE CHEQUER
401420 ERIC DAVID CHERCHES
307312 ROBERT D CHEROFSKY
403303 APRIL LYNN CHERRY
009335 LAWRENCE C CHESLER
426423 REBECCA CHEVALIER
417854 MELISSA MARASIGAN CHIA
309050 RANDALL JOHN CHIERA
402249 DEBRA KAY CHIN
403587 BARBARA JEAN CHISHOLM
412584 JOSEPH CHIU
413195 JOANNE DELMASTRO CHIULLI
428044 JESSIE CHOI
428595 DAVID VACCO CHOMICK
427146 H JANE CHON
309051 REGINA CHOU
404082 ARTHUR JIN DONG CHOY
405992 MICHAEL EDWARD CHOY
432774 JANE CATHERINE CHRISTIE
407605 THOMAS ATHANASIUS CHRISTOPHER

427650 MOLLY ELIZABETH CHRISTY
309839 GEORGE RICHARD CIAMPA
414151 ANTHONY CHARLES CICIA
418504 ROBERT JOHN CIPPITELLI
300656 ANTHONY LAWRENCE CLAPES
418600 ARNOLD SCOTT CLARK
413815 GEORGE WESLEY CLARK
309054 GREGORY EDWARD CLARK
309971 ROBERT F CLARK
305392 ROBERT JAMES CLARK
300674 RONALD J CLARK
409656 BENNETT D CLARKE
411262 AMY CHRISTINE CLAUSS
303336 ELIOT R CLAUSS
300685 JAMES A CLAYTON JR
426804 DANIEL MILNER CLEARY
102062 TRACEY GREEN CLEARY
407607 JOHN N CLO
415377 PRIYA SINHA CLOUTIER
420627 DAVID KENNEDY CLUNE
306260 CHRISTOPHER COCCO
300703 JOHN BRYSON COCHRAN
433936 LINDA ANNE CODY
433937 ADAM B COELHO
434671 CHRISTOPHER JOHN COEN
414865 CRAIG JEFFREY COFFEY
400120 CURTISSA R COFIELD
419328 AARON GRAY COHEN
417364 AMY S COHEN
428570 ARYEH B COHEN
102563 DAVID E COHEN
310020 ELLIOT COHEN
414525 JEFFREY EVAN COHEN
404383 JONATHAN REIMAN COHEN
309467 JONATHAN T COHEN
300873 LAWRENCE A COHEN
300874 LORIS L COHEN
418102 MICHAEL ARI COHEN
427150 MICHELE ALEXANDRA COHEN
429058 ROBIN MARCY COHEN
101831 RUDOLPH A COHEN
305550 SUSAN C COHEN-RICH
429060 BRANDI ADELE COLANDER
403471 LISA COLCHETE J S
405772 CYNTHIA LOUISE COLE
427848 DAVID PATRICK COLE
401166 PATRICIA SOPHIA COLELLA
421911 CLAIRE ELISE COLEMAN
102016 DAVID L COLEMAN
413199 GRANETTA MARUTH COLEMAN
307884 JOSEPH P COLEMAN JR
405838 TIMOTHY ASHTON COLEMAN
427151 SIMONE ROSEMARIE COLEY
411794 KIMBERLY ANN COLFER
306986 LUCY ANNE COLLETT
407612 ANN MARIE COLLINS
420629 GARY H COLLINS
010460 MARSHALL R COLLINS
302909 MICHAEL FRANCIS COLLINS
010512 THOMAS W COLLINS
409250 WILLIAM G COLLINS
309533 WENDY STEWART COMP
405559 NEAL C COMSTOCK
429065 SETH JOHN CONANT
010620 MARY GRACE CONCANNON
401180 PATRICIA ANN DAVIS CONDON
426240 SHANNON D CONGDON
426203 ELIZABETH ANNE CONKLIN
307363 ROBERT VINCENT CONKLIN
305552 ELIZABETH E CONLIN
427154 DAVID JOSEPH CONN
417119 JAMES JOSEPH CONNOLLY
428043 THOMAS CONNOLLY
417933 JAMES P CONNORS
309847 CAROL ANN CONNORS-ODEA
406785 KATHERINE MITCHELL CONSTAN
307952 CHRISTOPHER A CONTE
101508 GREGORY M CONTE
415241 JOHN JOSEPH CONVERTITO
414257 JOSEPH MICHAEL CONZA
430421 BRIAN CHRISTOPHER COOK
403594 IVY ILYSSA COOK
010079 B COOMARASWAMI
100059 DAVID W COONEY
408639 ELIZABETH ROSE COONEY
404843 LEONARD BARRY COOPER
306341 STEPHANIE R COOPER
303364 STEVEN D COOPER
424207 ANDREW NICHOLAS COPPO
307955 ANTHONY A COPPOLA
401980 NANCY HASLEY CORBETT
101477 J WALTER CORCORAN
300981 CHARLES MITCHELL CORDEN
300984 WILLIAM JOHN COREY JR
407761 DENISE D CORIN
306686 IRENE CORNISH
309067 THOMAS FRANCIS CORRIE
407617 BRIAN NOEL CORRIGAN
406992 NANCY DENARDO CORRIGAN
426912 VICTORIA MARIE COSENTINO
426658 ANDREW THOMAS COSGROVE
304331 RITAMAE GOBER COSGROVE
310021 LYNNE IWANOWSKI COSTANTINI
428471 LORI ANN COSTELLO
419573 CARRIE B COTE
419599 RAYMOND A COTE
418776 ANTHONY LOUIS COTRONEO
100078 BRIAN COTTER
439715 QUINN AMERLING COTTER
303565 ANTHONY F COTTONE
301000 NEIL PATRICK COUGHLAN
306579 J JEFFREY COUGHLIN
420185 KERRY M COURTNEY
309068 MARSHALL ASHBY COURTNEY
411944 AMY MELISSA COUTANT
413479 CHERYL REYNOLDS COVELLO
417369 JENNIFER L COVIELLO
421927 ANNEMARIE FRANCES CRAIG
307957 SONIA BURGOS CRANNAGE
428136 JASON GETHING CRAWFORD
421299 JUEL R CRAWFORD
411964 VITTORIA ADELE CREA
301055 CATHERINE CRICHTON
102846 LORY A CRISORIO

401173 ROBERT JOHN CRISPI
418162 RALPH JOSEPH CRISPINO
405343 MARY CRITHARIS
420037 CATHERINE RYDER CRITTON
439038 RYAN CRIVELLA
013032 RICHARD J CROMIE
302499 THOMAS L CRONAN III
426489 VINCENT JOHN CRONAN
438832 LISA M CRONIN
410876 MICHAEL JAMES CRONIN
408878 HENRY H CRONK
438861 DWIGHT R CROOKS
403099 JAMES DUNBAR CROSS
409908 MOIRA ANN CROUCH
307775 EUGENE F CROWE
303124 BARBARA E CROWLEY
100781 RALPH C CROZIER
408939 JAY D CRUTCHER
431745 E LEWIS CRUZ
408940 LUIS CRUZ
013167 DAVID CRYSTAL II
435207 STEVEN PHILLIP CUFF
301084 FLOYD CORNELIUS CULHANE JR
301090 PETER F CULVER
013298 RICHARD H G CUNNINGHAM
416044 MICHAEL A CUOMO
306885 WILLIAM EDWARD CURBOW
416831 PHILIP L CURCIO
426713 ALEXANDRA BETTINA CURRAN
410382 BRIAN F CURRAN
424802 JOSEPH K CURRAN JR
409737 M KATE CURRAN
301100 WILLIAM E CURRY JR
419222 ANDREW JOSEPH CURTIN
403119 DEIRDRE FILAN CURTIS
305260 MICHAEL CUSHING
301115 JOHN AUGUST CVARCH
101478 FRANK H CZAJKOWSKI
426477 STEPHANIE ELISSA CZAP
301944 AMY A D ADDETTA
414400 ERNEST NICHOLAS D AGOSTINO
404866 ROCCO F D AGOSTINO
404545 CHRISTINE CLAIRE D ALESSANDRO
430441 ZANDRA D AMBROSIO
403327 JOY MARGARET D AMORE
401203 DOMENICK L D ANGELICA
421939 KELLY BLYTHE D AURIA
015015 S FRANK D ERCOLE
407012 KIM C D SOUZA
420643 DAVID G DAGITZ
403596 NORA JEAN DAHLMAN
309980 MARILYN CERNAK DAIGNAULT
419416 JAMES F DAILY III
402059 BERNARD CHARLES DALEY
408115 DENNIS JOHN DALTON
403949 GEORGE DALTON
370615 HARLON LEIGH DALTON
410041 CYNTHIA ANN DALY
102332 JOHN F DALY III
404852 STEPHEN DALY
307887 PATRICK J DAMANTI
424646 MICHAEL JOSEPH DAMATO
303880 JAMES GRAHAM DAMON III
303879 JENNIFER MARTYN DAMON
427692 AMY LOUISE DANCAUSE
406146 THOMAS M DANEHY
414159 VIRGINIA A DANFORTH
429087 CHRISTA DANGELICA
402128 JOHN JAMES DANIELS
404573 RICHARD LAWRENCE DANIELS
418778 JEFFREY JOHN DANILE
405108 JOSEPH MARTIN DARA
423320 HELENA DARAS
405672 HOLLY QUACKENBUSH DARIN
441817 DANIEL G DAROSA JR
410693 WILLIAM A DARRIN JR
413978 JEAN-MARC MARCEL DAUTREY
307707 PETER F DAVEY JR
412898 VANESSA V DAVEY
405112 BRUCE JONAS DAVID
426591 EVA Y DAVID
409253 JILL ALLISON DAVID
417252 C SIMON DAVIDSON
305413 DAVID FRANCIS DAVIDSON
419610 DONALD NORMAN DAVIDSON JR
427381 HEATHER ELIZABETH DAVIES
427158 JAMES EDWARD DAVIES
403987 BRET JAY DAVIS
301653 GERARD HOWARD DAVIS
410284 HELEN ANNE DAVIS
300815 J DANIEL DAVIS JR
303125 JOSEPH BERNARD DAVIS
308508 LESLIE J DAVIS
302127 STEWART LYNDEN DAVIS
101654 THOMAS J DAVIS JR
409348 OLAYINKA O DAWODU-OGUNDIPE
426538 KYLE C DAWSON
405322 AMY CARRON DAY
301666 HARRY D DAY
411606 MELISSA BETH DAY
424818 SCOTT DAY
428649 PETER JOSEPH DE FRANK
427771 WILLIAM TIMOTHY JOHN DE LA MAR
423322 STEPHEN LANE DE VORE
301669 SHERRY C DEANE
425835 ROSEANN MARIE DEBELLIS
402061 MARK LOUIS DEBENEDITTIS
404855 JEREMIAH A DEBERRY
420654 MONICA LYNN DEBIAK
305291 BRUNO JOSEPH DEBIASI
102210 MERRILLYN DECKER
301680 ELAINE A DEEDY-SINCALI
415243 MICHAEL ANTHONY DEEM
416046 ROBERT PATRICK DEGEN
409739 JANET MIRIAM DEGNAN
417669 FRANK DEGRASSE
411949 ALBERT DEGREGORIS
424819 JEAN-CLAUDE F DEHMEL
101642 PETRA F DEICHMANN
428531 NICOLETTA DEL VECCHIO
371539 ROBERT D DELANEY
305884 ROSS DELANEY
424820 STACEY DELICH-GOULD

414734 WILLIAM BRUCE DELMONICO
424821 CESARIA DEMARCO
410790 RONALD FREDERICK DEMATTEO
300736 TODD M DEMATTEO
428632 ROSEMARY JACQUELINE DEMPSEY
421360 NATALIE A DENNERY
404857 PETER JONATHAN DENNIN
424827 SHERRI THERESE DENTE
302916 ANTHONY JOSEPH DEPAUL
419617 SCOTT E DERBY
309093 MICHAEL DERGARABEDIAN
418611 SOHANKUMAR SURESHINGH DESAI
408823 MARGARET HAMILTON DESAUSSURE
424830 KRISTINA DETMER
302711 ALICE E DETORA
412943 KERRI ANN DEVINE
425893 ROBERT E DEVINE III
413210 ERICKA DEWEY
410669 PATRICIA DEWITT
403604 ANN CECELIA DI BUONO
428702 MATTHEW LIBERATO DI SORBO
307961 KONSTANTINOS MENELAOS DIAMANTI
370268 JOHN DAVID DIAMOND
404858 ROBERTA LYNN DIAMOND
417373 AXEL PHILLIP DIAZ
434027 CAITLIN HOLT DIAZ
405753 ROBERT DIAZ
429937 TRACEY B DICKAU
308432 RICHARD HOLMES DICKER
425916 JOSEPHINE MARIE DICOSMO
426310 M MELCEDITHA DIEGOR
015359 LUCIEN P DIFAZIO JR
429100 LAUREN VICTORIA DILEONARDO
404208 NOREEN ANN DILLMAN
415378 THOMAS J DILLON
405348 LILLIAN DILORENZO
422804 SABRINA JANINE DIMAURO
415405 JOSEPH LEE DIMECH
309099 PATRICIA CORINNE DINEEN
407866 MITCHELL ANDREW DINKIN
102428 JOHN G DIPERSIA
015600 ANDREW M DIPIETRO JR
015621 FRANCIS J DISCALA
370290 MARK ROBERT DISLER
102926 DAWN M DITTMAR
101204 THOMAS M DIVENERE
416117 PHYLLIS MICHELLE DIVINS
415147 LON ERIC DOBBS
301718 MARTIN HENRY DODD
305890 DANIEL LEE DOHERTY
423329 PATRICK F DOHERTY
436541 SANDRA BECK DOMBRO
304089 JOSEPH P DOMBROSKY
430458 JUSTIN CARL DONATELLO
437774 DOMINIC MICHAEL DONATO
401193 STEPHANIE DONATO
309101 JOHN CHARLES DONELKOVICH
408881 JAMES JOSEPH DONNELLAN
430460 ELIZABETH CLAIRE DONOGHUE
370328 DAVID ALLEN DONOHOE
402062 JAMES FRANCES DONOHUE
435966 GARY LEON DONOYAN
401196 ANN-CHRISTINE DORAN
420670 ELISSA KIM DOROFF
411386 RISA ILENE DORSKY
404581 JUDITH DOS SANTOS
306892 MARIO F DOTTORI
370344 CHRISTINE MARIE DOTY
412828 BRYAN CHRISTOPHER DOUGHERTY
305202 HYACINTH V DOUGLAS-BAILEY
421177 JENNIFER ANN DOWD
417486 MIRIAM DOWD
430464 JOHN WILLIAM DOYLE
307484 MARY ANN DOYLE
414399 THOMAS MARTIN DOYLE JR
304602 MARJORIE H DRAKE
426633 RACHEL STOBER DRANOFF
306273 JANET BEA DREIFUSS
429945 JOHN DRESTY III
305892 BARRY MARK DRIESMAN
406099 DENNIS WAYNE DRISCOLL
429946 MAURA ANNE DRONEY
370388 MARIANNE DROST
426697 RAFAEL JOHN DROZ
309742 DAVID VICTOR DRUBNER
101002 LEONARD M DRUCKER
437178 ZACHARY HAIG DRYDEN
403608 F RUSSELL DU PUY III
409145 JANETTE E DUBIN
402867 PAUL R DUBINSKY
417489 SARAH ELIZABETH DUBITSKY
303078 DAVID LEWIS DUBROW
407417 RACHEL MARIAN DUFAULT
414429 SHEILA LAHEY DUFFY
407419 JOHN CONOR DUGGAN
419434 FRANK DUMONT
433964 GARLINCK DUMONT
401200 SHARYN MAITLAND DUNCAN
404141 JAMES J DUNHAM JR
307385 PATRICK SYNAN DUNLEAVY
401355 SHERYL ANN WATKINS DUNLEAVY
102093 RAYMOND B DUNN
435747 BRITTANY ANAIR DUNNE
418440 TIMOTHY DUNPHY
309472 MICHAEL P DUNWORTH
410212 CYNTHIA T DUPONT
406801 RICHARD PETER DUPREY
424216 ROBERT JOHN DURBIN
423342 KIRKANDRE DELGADO DURRANT
413906 FONDA Y DUVANEL
402594 STEPHANIE-AMA EVELYN DWIMOH
309108 JILL ERIKA DWORKIN
406802 CHRISTOPHER DAVID DWYER
407422 JAMES JOSEPH DWYER
407625 DANIEL EDWIN DYER
306586 BENJAMIN I DYETT JR
401202 KENNETH IAN DYM
411398 CAROLENE S EADDY
408257 NANCY LEFFERT EARLE
102798 LYDIA B EARLY
423270 TRACY CAHILL EARLY
429114 BENJAMIN THOMAS EASTMAN

306456 GARY M EATON
309111 TIMOTHY JAMES EATON
403110 BARBARA JAN EBENSTEIN
300001 MARY U EBERLE
300003 MARTIN S ECHTER
423346 ILANA ALEXANDRA ECK
307966 ELIZABETH ANN EDDS
407629 HAROLD NELSON EDDY JR
409524 IRENE MARIA EDDY
421969 KEITH JONATHAN EDELSTEIN
414545 ERIC JAMES EDEN
306230 JETA-LYNN EDWARDS
307665 CHRISTIAN E EDYE
017942 WARREN W EGINTON
300021 PATRICIA A EHLERS
306349 DAVID MICHAEL EHRLICH
405490 RANDI S EISENSTEIN
307388 SUSAN ROBIN EISNER
411446 MONIQUE THERESE EL-MASRY
430474 MYRIAM ELAMRAOUI
400460 LUCY ELDRIDGE
300031 DAVID WAYNE ELKIN
407015 ROBERT SCOTT ELKINS
411612 JESSICA G ELLIOTT
303243 R BRIAN ELLIOTT
300035 THEODORE H ELLIOTT JR
309694 RICHARD MARTIN ELLIS
421971 ROBERT E ELLIS
307891 LAURA H ELSON
427175 STEVEN LAZAR EMANUEL
410488 BRADFORD CORCORAN EMMET
423355 PETER A EMMI
404776 KATHLEEN M ENDRELUNAS
412830 RITA L ENG
303893 MARK CHRISTOPHER ENGEL
102823 CREIGHTON M ENGLISH
409526 DOUGLAS A EPSTEIN
300069 RAFAEL EPSTEIN
406489 ROBERT WILLIAM ERB
413735 JILLIAN LEE ERDOS
407632 JOSEPH PAUL ERIOLE
307158 FRANCES ERLICHSON
420258 THEODORE JAMES ERVIN
432808 DANIEL M ERWIN
018365 DAVID R ERWIN
309115 JOAN ESCOFFERY-RATTRAY
424851 LEIGH DAVID ESKENASI
420686 HEATHER WHITE ESKEY
409748 PETER DAVID ESSER
409402 LISA SPEAR ETHRIDGE
419996 ALICIA FABE
404589 CHRISTOPHER J FAGAN
406033 JOHN K FAHEY
102042 CHRISTOPHER C FAILLE
403065 NISHA ANTONY FALCIGNO
411958 GABRIEL I FALCON
400463 JOHN P FALCONE
305579 LAWRENCE W FALKIN
370452 JOHN HENRY FALSEY
411615 ROBERT ANTHONY FAMIGLIETTI
400464 ROSEMARY FANELLI
421978 ARI FARKAS
308328 ANTHONY PAUL FARLEY
401008 EFFA GUZMAN FARNSWORTH
414407 ASTON FARQUHARSON
408957 LYNN M FARRAND
437188 CHRISTOPHER JAMES FARRELL
410294 KEVIN MICHAEL FARRELL
018854 RICHARD W FARRELL
417756 SLOAN WILLIAM FARRELL
303651 THOMAS J FARRELL
370469 J MICHAEL FARREN
409527 ELIZABETH ANN FAUGHNAN
429750 WILLIAM STANLEY FAULKNER
417420 VICKY FAUPEL
406113 CHARLES JOSEPH FAVATA
307392 JESSE MICHAEL FEDER
423364 STACY LYNN FEDORCHUK
439725 ELLEN PATRICIA FEENEY
370486 STEPHEN PHILIP FEIGIN
415640 AUDREY CATHERINE FELD
303035 RICKI ANN FELDMAN
424858 ROBIN B FELDMAN
370501 ABIGAIL FELICIANO-GOMEZ
436499 ANNA LEORA FELIX
370502 DAVID SHERMAN FELMAN
406808 ARTHUR A FELTMAN
400467 NICOLE LYNN FELTON
307892 CHRISTOPHER R FENELON
306458 KATHLEEN S FENELON
423365 WILLIAM PAUL FENN
440322 WILLIAM JOSEPH FENRICH
411618 DONNA SIOBHAN FENTON
019443 CHARLES P FERLAND
402261 ANGELO G FERLITO
306739 MICHAEL FRANCIS FERNON
427178 BRIDGET ANN FERNQUIST
403117 KAREN ELISABETH FERRARE
065287 MARY FERRARI
423370 JENNIFER CHRISTINA FERRER
413426 LORRAINE FERRIGNO
370633 JOSEPH C FERRUSI
429122 LIV KRISTINA FETTERMAN
019530 LAWRENCE A FIANO
410053 GARY RUDOLPH FIEDLER
406028 NANCY ELIZABETH FIELDING
416193 IAN MATTHEW FIELDS
424223 WALTER LEVI FIELDS JR
300714 JUAN A FIGUEROA
405754 LINDA WANDA FILARDI
407429 KEITH STANLEY FILEWICZ
402874 LAWRENCE JEFFREY FINEBERG
403121 ERIC STUART FINGER
306616 ANDREW FREDERICK FINK
306517 SUSAN BETH FINK
400470 THOMAS JUSTIN FINN
414408 PATRICK T FINNEGAN
309997 SCOTT CRAIG FIRESTONE
408007 JOANNE FIRSTENBERG
409918 LLOYD J FISCHBECK
370673 JOHN P FISCHER
413907 KAHLIA ELENA FISHER
413786 JONATHAN J FITTA
432334 COREY SCOTT FITZGERALD

402185 JAMIE JOHNSON FITZGERALD
303181 PATRICE MARIE FITZGERALD
406810 JAMES GERARD FITZMAURICE
302295 EDWARD B FITZPATRICK III
306355 WARD WILLIAM FITZPATRICK
102007 BRETT FLAMM
421987 JOHN DAVID FLANAGAN
431272 ADAM PAUL FLEISCHER
426668 LAURA ANNE FLEISCHMANN
308121 PETER EMMET FLEMING III
414100 KELLY A FLINT
412644 ANTON F FLIRI
305407 JONATHAN PALTIEL FLOM
302723 FERN FLOMENHAFT
431526 DAVID FLORIN
427028 KIA D FLOYD
406812 ELLEN M FLYNN
101114 THOMAS F FLYNN III
416761 PATRICK MICHAEL FOGARTY
436823 STACY REBECCA FOGARTY
414273 TERRY FOKAS
418273 ROCHELLE F FOLCKEMER
406813 KATHLEEN DENISE FOLEY
419527 JOHN STEPHEN FOLMSBEE
370984 GARY LEVAUNT FORD
404878 KEVIN THOMAS FORDE
308864 DAVID ANDREW FORDIANI
416873 ALBERT JOHN FOREMAN
302419 JAY MERRILL FORGOTSON
400477 ANDREA EVE FORMAN
303423 DIANE PRIOR FORNUTO
424226 JOMO CLAUDE FORRESTER
020625 MATTHEW J FORSTADT
307170 CHRISTOPHER FOSTER
420708 THOMAS JOHN FOTE
307171 SHIRLEY ANN FOUNTAIN
411556 BETH ANN FOURNIER
400479 PATRICIA L R FOWLER
432222 LAWRENCE J FOX
408184 RONALD A FOX
402619 SUSAN ELLEN FOX
407642 ROBERT FRANKLIN FOXWORTH III
370995 JAMES L FOY
436629 JILL FRADIN-RHODES
309748 GREGG ALAN FRADKIN
403622 ELIZABETH BELLO FRANCHINA
424229 DAVID GERARD FRANCIS JR
307172 CHRISTOPHER P FRANCO
416099 LISA M FRANCOMANO
101178 RICHARD FRANK
020761 LLOYD FRAUENGLASS
413082 FRANZ PETER FRECHETTE
020847 ROGER J FRECHETTE
421998 MORISSA STUHLMAN FREGEAU
412360 PETER EVAN FREILICH
371019 IRA FREIMAN
100088 PHILIP FRENCH
020985 RICHARD J FRICKE
441954 DAVID ALLAN FRIEDLANDER
371027 HAROLD J FRIEDMAN
414041 JUDITH HESSION FRIEDMAN
420713 RUTH LYNN FRIEDMAN
421232 THOMAS P FRIEDMAN
423386 MEREDITH JEAN FRIEND
102184 MARTIN H FRIMBERGER
304266 LINDA ANNE FRITTS
429956 CANDICE DESIREE FROST
423390 JOSEPH PAUL FUCCILLO
424875 DANIELA FUDA
407432 ASTRID REGINA FUENZALIDA
433453 CASEY FUNDARO
403626 BRADLEY JOEL FUNNYE
404263 TINA ANN FUOCO
304269 DAVID JOHN FURIE
021160 JOHN B FURMAN
101579 A J FUSCO
405365 DINO FUSCO
407644 EMILIA GABRIELE
423393 MEGAN ELIZABETH GAFFNEY
422823 PATRICK JAMES GAFFNEY
424234 MARK P GAGLIARDI
429139 MICHAEL R GAICO
309639 GREGORY ANTHONY GALBO
429141 JENNIFER ELISE GALIETTE
428646 WYNTER V GALINDEZ
401215 DOUGLAS JUSTER GALL
100774 ELIZABETH A GALLAGHER
426767 WILLIAM JOSEPH GALLAGHER
310047 ANTHONY JOSEPH GALLINARI
303851 SUSAN BOHACS GALLO
426165 DAVID JAMES GALLUZZO
430506 KATHRYN SCARBROUGH GALNER
400739 PATRICIA SULLIVAN GALVIN
100129 DENNIS E GAMACHE
405138 THOMAS MARTIN GAMBINO
021632 KENNETH M GAMMILL
307973 JOHN C GANNON
419340 KAREN GANO
307893 SUSAN J GANZ
431789 TODD G GARBATINI
301969 ELLEN KAYE GARBER
420277 YVONNE FRANCENE GARBETT
414270 ALANA MARIE GARBUS
402880 DANIEL ANTHONY GARDELLA
417684 CHRISTOPHER H GARDEPHE
309610 KAREN RUTH GARDINER
401104 TROY ALAN GARDNER
303012 WILLIAM I GARFINKEL
433584 CHRISTINE ELIZABETH GARG
429144 KUMAR ANKUR GARG
426764 KRISTEN GARLANS
420722 DAVID PAUL GARNER JR
403126 GREGORY PETER GAROFALO
413512 DAVID CHRISTOPHER GAROFOLI
428285 LAWRENCE ARTHUR GARVEY
371070 JEFFREY N GASTER
424238 KEISHA SHANTELL GATISON
435689 SARA GATTIE
101935 DONALD G GAUDREAU
404159 MAX G GAUJEAN
429959 CHRIS GAUTHIER
425914 GRACE GAVIGAN
434377 KIMBERLY GAZES
403629 GLENN ALLAN GAZIN

414557 MELISSA B GEETTER
422007 JOSEPH L GEGENY
427807 LAUREN ELIZABETH GEHRIG
424886 JOHN F GEIDA
411967 PETER GREGORY GEIS
307716 J SUZANNE GEISS
403630 BRUCE HOWARD GELBAND
405068 BRYNN K GELBAND
429147 NICHOLAS S GELFUSO
407256 ROBERTA GELLER
309882 JANE ANDREA GELMAN
423397 COURTNEY ELIZABETH GENGLER
309883 CATHY BRIER GENNERT
403341 ELIZABETH A GENOVA
433989 HEATHER COLE GENOVESE
403128 PAULA JEANNE GENOVESI
400495 JOHANNA MARIE GEOGHAN
422827 MARIA OLIVA GEORGE
419925 TINA JOAN GEORGIADES
422010 CHARALAMBOS GEORGIOU
421381 ROBERT G GERAGE
022149 HAROLD GERAGOSIAN
409871 JOHN JOSEPH GERAH JR
435252 REBECCA LYNN GERARD
437209 ELIZABETH GENEVIEVE GERMANO
303569 BENJAMIN GERSHBERG
306231 LINDA GERSTEL
414415 MICHAEL J GESCHWER
404385 ERIC A GESS
305915 JANETTE ROWE GETZ
302935 ROBERT E GHENT
307856 AL GHIROLI
418185 ALAN MICHAEL GIACOMI
418786 SARA MARIAN GIANAZZA
305916 LESLIE JOAN GIANELLI
414416 THOMAS MICHAEL GIANGRANDE
418166 MICHAEL ANTHONY GIANNASCA
100654 GORDON GIANNINOTO
101913 EDWARD F GIBBONS
408654 SARAH HAMLIN GIBSON
303186 RICHARD W GIFFORD
405575 KELLY GILCHRIST
022369 BRIAN GILDEA
412948 WENDY LISA GILDIN
419665 DESIREE CHRISTINA GILER MANN
405576 PAULA S GILES
400941 CHARLES DAVID GILL JR
418317 TINA GILL
305917 KEVIN WILLIAM GILLEN
400497 NANCY L GILLESPIE
304312 PETER E GILLESPIE
422014 JENNIFER O GILLIS
411634 MATTHEW VINCENT GILLIS
424891 AMANDA BURRELL GILMAN
407436 MATTHEW D GILMOND
101690 SCOTT J GILMORE
400499 LORI J GILMORE-MORRIS
406627 ROGER P GILSON
022674 SIDNEY GIMPLE
302142 KENNETH STUART GINSBERG
420283 DEBORAH A GINTER
418787 ANDREA MICHELLE GIORDANO
301786 ANTHONY VINCENT GIORDANO
405142 JOHN M GIRARDI
420732 LORRAINE MICHELE GIROLAMO
411291 KRIS ANNE GITLIN
419628 KATHRYN KENDALL DUBIN GIUSIO
406568 STEVEN JAMES GLADSTONE
428608 ALEXANDER JOACHIM GLAGE
409927 ELIZABETH ANNE GLASSER
424245 JEFFREY SCOTT GLASSMAN
308298 KENNETH BRIAN GLASSMAN
416838 MARC LORENZO GLENN
410793 MICHAEL RONALD GLICKMAN
400503 BRUCE WILLIAM GLOVER
309998 GARY LEE GLUSKIN
418145 MICHAEL ANDREW GOBA
408963 JAMES JOSEPH GODBOUT
406141 CHRISTOPHER THOMAS GODIALIS
415937 CHRISTOPHER DAVID GOEBEL
414386 MEGAN JANE GOGUEN
309661 CHARLES E GOLDBACH
423409 PETER J GOLDBACH
400505 EVAN M GOLDBERG
403137 GERALD BARRY GOLDBERG
402886 RICHARD L GOLDBERG
418520 MICHELLE L GOLDBERG-CAHN
421389 JACK BENJAMIN GOLDEN
307409 JOHN A GOLDENBERG
403138 STEVEN W GOLDFEDER
307410 MITCHELL GOLDKLANG
371154 CHARLES D GOLDMAN
429155 GABRIEL R GOLDMAN
440063 JENNA M GOLDMAN
405959 MIRI GOLDMAN
409119 MICHELE GOLDMEER
309809 ADAM RICHARD GOLDSMITH
402887 STEVEN BRUCE GOLDSMITH
406817 AIMEE DAVIS GOLDSTEIN
305416 ANDREW SCOTT GOLDSTEIN
416671 BARRIE LYNN GOLDSTEIN
023665 HENRY L GOLDSTEIN
101782 IRVING J GOLDSTEIN
410306 JORDAN MARC GOLDSTEIN
405145 PATRICK EDWARD GONYA JR
304342 MARCELLA GONZALES-PHILLIPS
436827 ANNE NELSON GONZALEZ
403139 BONNIE SUE GOODMAN
417388 LAURIE BETH GOODMAN
309160 LYNN IDA GOODMAN
023882 ABRAHAM I GORDON
407439 ALISON RANDI GORDON
405378 CHERYL ANN GORDON
307413 DANA GORDON
023982 RICHARD M GORDON
439902 SAMANTHA O GORDON
401438 TODD ANDREW GORDON
309163 WILLIAM JAMES GORDON
403344 KEVIN GORI
400747 DAVID JOHN GORMAN
309486 BRENDAN THOMAS GORMLEY
430529 WILLIAM CHARLES GORTON
400748 SHEILA MARIE GOSS
406074 ARLENE KASPER GOTTLIEB

436563 CHARLES JOSEPH GOTTLIEB
424904 NATASHA NELLY GOUEY-GUY
408125 EDWARD MANNING GOULD
404890 MICHAEL N GOULD
405380 OLYMPIA GOUVIS
417506 WILLIAM FREDERICK GOVIER
429161 KATRINA MONIQUE GOYCO
302244 STANLEY GRABIA
405147 ALICIA M GRACE
371190 JAMES JOSPEH GRADY
305926 RICHARD MARC GRAFFAM-RODRIGUEZ
418167 PAULA EVE GRAFSTEIN-SUAREZ
405381 COLLEEN ANN GRAHAM
426768 GEORGIA DAVIES GRAHAM
304693 CHRISTOPHER GRAHAME-SMITH
408826 ERIC M GRANT
419677 SUZANNE ELIZABETH GRAVES
427546 ANTHONY J GRAY
426309 JENNIFER L GRAY
415940 FIONA MARIE GREAVES
412597 CLAUDIA J GRECO
427984 RYAN PATRICK GRECO
401439 GREGORY EDWARD GREEN
409361 KATHERINE GAIL GREEN
441560 SPURGEON GREEN IV
409362 DANIEL S GREENBERG
426311 JEFFREY SCOTT GREENBERG
419902 STACEY FERN GREENBERG
404611 RHONDA ELLEN GREENBLATT
424911 ALBERT R GREENE III
431279 DARIUS CORNELL GREENE
410893 DAVID R GREENE
024536 JAMES W GREENE
428156 SCOTT GERALD GREENE
412963 DIONNE GREENE-PUNNETTE
440914 BRETT ANDREW GREENFIELD
410577 SUSAN MELISSA GREENSTEIN
100995 THOMAS P GRIFFEN
309173 ELIZABETH A GRIFFIN
309174 STEVEN DODD GRIFFIN
400204 THOMAS GRIFFIN
440600 WILLIAM THOMAS GRIFFIN III
371230 FORREST L GRIFFITH III
420290 MICHAEL GERARD GRIMM
430541 NATASHA GRINBERG
309531 SHARYN F GRINDROD
304369 A HOWARD GRIZZARD
403639 LAURENCE ANDREW GROB
427200 JAYE ANN GROCHOWSKI
423419 ALISON B GROGAN
401441 DENNIS WILLIAM GROGAN
371239 GLEN A GROSS
407187 JENNIFER WELSH GROSS
025374 MARK GROSS
415524 STEVEN R GROSS
414564 MICHAEL JOSEPH GROSSANO
301791 DONALD E GROSSFIELD
416064 GREGG H GROSSMAN
308127 JOANN L GROSZEWSKI
309176 KERRY M GROVER
405385 ROBIN ELLYN GRUBER
413951 TERESA A GRUBER
102900 JERRY GRUENBAUM
416959 STEPHEN E GRUENDEL
429175 D FRANCESCA GRUER
306921 ALAN NICHOLAS GUBITOSI
404267 KATHLEEN VOUTE GUDMUNDSSON
416206 MARK GUERRA
402733 GEORGE PAUL GUERTIN
309938 J HANSON GUEST
301793 THOMAS J GUIDERA
371256 RICHARD JOHN GULIANI
428008 ANTHONY DOMENIC GULLUNI
412599 JAY S GUNSHER
414026 ALEXANDER J GUREVICH
404897 CHRISTINA GUST
304477 JAMES B GUST
371263 RAYMOND J GUSTINI
309177 MARK ALAN GUTERMAN
419905 ROBYN A GUTHEIL
307423 DAVID A GUTOWSKI
430544 ERIC BOAHENE GYASI
302526 MARK WROTH GYOROG
420755 TRENTON C HAAS
408322 THOMAS CHRISTOPHER HABERLACK
425910 DAWN MICHELLE HABIB
306368 SALLY ANN HAGAN
025969 THOMAS J HAGARTY
424252 MICHAEL T HAGER
419010 JANE CALLAHAN HAGERTY
403215 MARLENE REISS HAHITTI
371274 SUSAN J HAINE
414870 STACY ANN HAINES
430545 MICHELE ELISSA HALICKMAN
309810 JOHN HENRY HALL JR
405387 KEITH GORDON HALPERIN
410974 JACK ANDREW HALPRIN
416238 ERICA R HALSTEAD
422031 JAMES A HAMILTON
309641 REGINALD WAYNE HAMILTON
427202 BERNARD CHANG HAN
406657 KENNETH SAWKHOON HAN
423429 STEPHEN F HANNIGAN
419684 DAVID ELIAS HANNOUSH
420295 MARTHA BROOKE HANSEN
407056 STEPHEN SCOTT HANSEN
414568 WILLIAM ROCKEFELLER HANSON
401443 JOSEPH DAVIL HARALSON
417507 TRACEY ELISE HARDMAN
416355 JOHN ANTHONY HARLOW III
303369 GREGORY E HARMER
401228 ANNE ELLIS HARNES
410795 LAURETTE AMY HARPER
422843 OTIS T HARPER II
430553 DANIELLE M HARRIS
307981 JAMES PHILIP HARRIS
422844 JAY MARC HARRIS
409271 MICHAEL PAUL HARRIS
407667 BARBARA JANE HART
302530 JUDITH A HART
400512 JULIA DAWN HART

307428 MINDY ELLEN HARTSTEIN
411460 CYNTHIA HARTWELL
371320 BRUCE HASBROUCK
426393 SARA DEE HASKAMP
415154 STEPHANIE HATZAKOS
101820 MARK C HAUSLAIB
303190 CATHERINE M HAVENS
307199 JOHN S HAVERSTOCK
304550 KENNETH W HAYDEN
402119 HAROLD CHRISTOPHER HAYES
026912 JAMES E HAYES
309187 JENNIFER LYNN HAYES
302941 MICHAEL J HAYES
421442 SONJA J HAYES
304552 HELEN HAYNES
309985 ANDREA ROSE HAZELL
435128 JOHN JOSEPH HEALEY
403148 BRIAN MICHAEL HEALY
304555 CHRISTOPHER R HEALY
415248 MATTHEW EDWIN HEALY
429977 MELISSA NYCOLE HEARON
408655 PAUL ANDREW HEBERT
405160 DANIEL H HECHT
304557 DAVID RONALD HECKMAN
410896 DANIEL D HEDIGER
412636 RANDI JEAN HEDIN
416211 STACEY AMES HEENEY
402983 ELLEN ROBERTS HEFTER
440602 SIYA UPENDRA HEGDE
404900 MARK BRIAN HEIDINGER
429187 JENNIFER LOIS HEIGHT
401232 JUDITH KIM HEIMANN
403644 STEVEN PAUL HEINEMAN
100084 WILLIAM J HEINRICHS JR
403645 WARREN STUART HEIT
426602 JULIE CHERI HELLBERG
420772 MELANIE DIAMANT HELLER
027143 PAUL A HELLER
302745 JAMES RICHARD HELMS
430560 IAN SULLY HENDERSON
027210 SAMUEL J HENDERSON
430561 KATE HENNING
416213 ANDREA BIRNBAUM HERBST
413240 MARY CHRISTINE HERDMAN
306754 LENORE SYDNEY HERMAN
425905 ROBERT OVILA HEROUX
422040 DEBORAH ANN HERRINGTON
309189 JONATHAN SCOTT HERRON
309950 JOSHUA GIDEON HERSCHBERG
409543 JENNIFER DALE HERSH
409366 JOSHUA ZALMAN HERSH
411979 ILENE C HERZ
402906 ALLEN JAY HERZFELD
415609 LINDA K HERZNER
027320 JAMES W HESLIN JR
406635 JAMES JORDAN HESS
304566 RICHARD MATHESON HESS JR
422041 MARGARET AMY HETHERINGTON
404624 JENNIFER CHAPIN HICKOX
434024 JENNIFER ELIZABETH DOERR HICKS
411306 ROLAND RICHARD HICKS
422042 RENEE LYNN HILDRETH
401449 CELAYNE G HILL
413565 DONALD BRUCE HILL
407674 THOMAS JOHN HILLGARDNER
424948 CARRIE ELIZABETH HILPERT
100796 RICHARD R HINE
429360 SCARLETT OBADIA HIRSBERG
305426 GLEN D HIRSCH
432859 PETER EPHREM HITT
403362 KHUONG HO
430566 BERTRAND H HOAK JR
430567 HOLLY SHINO HOBART
400759 MARC STEVEN HODES
308736 THOMAS FRANCIS XAVIER HODSON
411274 DEIRDRE E HOEBICH
414183 ROBERT JOSEPH HOEFFERLE
422850 JESSICA LEE HOFF
421411 ROBERT BRIAN SIEGEL HOFF
303037 MARLA J HOFFMAN
414184 PATRICIA LEE HOFFMAN
426428 GREGORY SCOTT HOFFNAGLE
407679 MICHELE ELISABETH HOGAN
432861 AMY LYNN HOLBROOK
400763 BARBARA L HOLDREDGE
423443 BRIAN RICHARD HOLE
410508 PATRICIA ANN HOLLAND
401965 WILLIAM FITZGERALD HOLLAND
407337 LESLIE STEPHEN HOLLO
402910 ROBERT A HOLMES
100611 RICHARD L HOLMS JR
401238 JOSEPH KENNEDY HOLOHAN
412845 BJORN J HOLUBAR
400221 DAVID M HOLZBACH
411980 CHARLES EDWARD HOOD
305622 JAMES J HOOGHUIS
426155 ALISA FAY LEFKOWITZ HOOVER
407941 KIRSTEN C HOPES-MCFADDEN
371480 WILLIAM HAYES HOPKINS
304590 JOHN MICHAEL HORAK
306232 DIANA HORAN
304593 BARBARA R HOROWITZ
305211 DAVID ADAM HOROWITZ
307437 KENNETH PAUL HOROWITZ
406468 DREW FRANCIS HORRELL
306259 HILLIARY H HORROCKS
419289 JEFFREY THOMAS HORVATH
304597 MARTHA MCQUEENY HOSP
305623 ANN M HOTUNG
309439 JANE MARIE HOUDEK
404905 BRIAN THOMAS HOURIHAN
028195 JOHNESE WHITE HOWARD
423889 ALAN J HOWARTH
423890 LIESE GALLAGHER HOWARTH
410313 ROBERT FOLEY HOYT
420030 DEBORAH EHRHART HRYB
417515 STEPHEN MICHAEL HRYNIEWICZ
416877 JAMES JOHN HUBEN
371507 LEE MCCARTHY HUBER
400640 JEANNE HUBER-HAPPY
304606 MEGAN A HUDDLESTON
422053 ROBERT GEOFFREY HUELIN
371511 RANDALL AVERY HUFFMAN

404906 DIANA L HUGHES
405155 JANE ELIZABETH HUGHES
419701 JESSICA MARGUERITE HUHN-KENZIK
429203 DUSTIN RICHARD HUI
429204 JONATHAN LEE HULL
102565 PATRICK T HULTON
405167 CYNTHIA L HUMMEL
408780 JEFFREY KENNETH HUNSINGER
028369 PETER C HUNT
404627 WILLIAM PATRICK HUNT III
434723 ALEX STEPHEN HUOT
028385 LOIS A HUOT
302944 MARC HUREL
405939 STEVEN PAUL HURLEY
309587 ROBERT A HURWICH
412464 ALYSON MOLLOY HUSSEY
407063 STEVEN DAVID HUTENSKY
309889 CLIFFORD C HYATT
431829 CHRISTINE MARIE IACONIS
416218 RAYMOND JOSEPH IAIA
403202 KATHLEEN NICOLE IANNOTTI
426915 GINA REIF ILARDI
413046 MARY INCERTO-TOMLIN
441726 JOSEPH JOHN INDELICATO
409111 VICTORIA M INGBER
404001 WILLIAM ROBERT INGRAM
370013 ROBERT J INTRAVIA
307902 ISTRATE IONESCU II
406955 PHILIP J IOVIENO
413448 KEVIN PATRICK IRWIN
403951 MARC ISAACS
407009 RANDI ISAACS
302946 MARK SAMUEL ISENBERG
403652 STUART MARC ISRAEL
426806 OGNIANA VASSILEVA IVANOVA
301724 TAKA IWASHITA
413243 ROBERT JAMES JABLONSKI
424967 CHRISTOPHER FREDRICK JACK
410723 ALLISON LOUISE JACOBS
370186 BARRY JACOBS
423451 HENRY ELI JACOBS
303476 JEFFREY L JACOBS
427212 MICHAEL J JACOBS
408269 RICHARD PATRICK JACOBSON
401241 BETH JAYE JACOBWITZ
309891 NANCY TRENT JAKUBIK
307442 ANDREW L JALOZA
416360 DAVID WILLIAM JAMISON
414423 DAVID JAY JANOW
370090 DEBORAH DARMSTAETTER JANS
303919 DIANE MARIE JANULIS
405758 FRITZ GERALD JEAN
427946 MICHAELLE JEAN-PIERRE
302250 WILLIAM THOMAS JEBB II
305628 RUTH JEBE
029478 S ROBERT JELLEY
431386 FRANK MICHAEL JENKINS
301704 DEBRA MALONE JENNINGS
430584 SAMUEL ALLAGASH JENNINGS
102882 JOHN KINCAIDE JEPSON
403504 MEDINA K JETT
429987 FINCEY JOHN
300763 BEVERLY JOHNS
436255 LORA REGINA JOHNS
424269 ALBERT JAMARJ JOHNSON
100006 ALBERT R JOHNSON JR
406031 ALLEN HERBERT JOHNSON JR
309642 ANGELA MAIORANO JOHNSON
101364 COLIN D JOHNSON
102304 KATHY A JOHNSON
402430 KIMLA JOHNSON
412848 LANCE JOSEPH JOHNSON
421416 LOUISE ANNA JOHNSON
401244 MAUREEN WROBBEL JOHNSON
408982 REBECCA L JOHNSON
102601 RICHARD R JOHNSON
029754 ROBERT C JOHNSON
426637 CAVELLE CLAIRE JOHNSTON
370134 KARL DONALD JOHNSTON JR
370136 RICHARD B JOHNSTON
427706 DEBORAH L JOKINEN
440574 JONATHAN IRWIN JONAS
305629 DOLORES ARLENE JONES
370141 DONALD T JONES
437239 EMILY THERESE LOUISE JONES
415945 ERIC HAROLD JONES
422606 LESLIE E JONES
302405 LESLIE O JONES
308139 BARBARA ELAINE JORDAN
428571 JEROME MARTIN JORDAN
403095 KATHY MARY JORDAN
309833 MAUREEN ANNE JORDAN
431832 CHERYL C JOSEPH
030056 RICHARD J JOSEPH
302543 TAFFY JOWDY JR
400772 CAROLYN ANN JOY
418642 EDWARD MICHAEL JOYCE JR
403159 BRIAN MICHAEL JUDGE
437240 NICOLE LYNNE JUPIN
371929 KURT R KABOTH
416963 PAUL KACHEVSKY
030129 EDWARD KACZMARCYK
439734 AVERY AUGUSTINE KAHN
411466 RICHARD NOAH KAHN
030225 MITCHEL E KALLET
308202 MOIRA EMIKO KAMGAR
030298 JUDITH KAMPF
411026 DANIEL JOSEPH KANE
402272 RHODA B KANET
435848 JONATHAN SCOTT KANIA
417551 MANISHA HEMISH KAPADIA
430596 JASON L KAPLAN
303195 ROBERT KAPUSTA JR
428572 SHEELA GOPA KAR
422860 PANAGIOTIS KARAHALIOS
412972 PETER WILLIAM KARDARAS
406023 ORI J KAREV
301807 JAMES L KARL II
435849 JOANNA IVY KARLITZ
030525 JOHN S KARLS
309701 KAREL SUE KARPE
429223 KULJEET SINGH KASURI
429224 STAVROS KATSETOS

409548 ALAN J KATZ
403791 BENNETT KATZ
424282 EDDAN ELIZAFON KATZ
030710 MORTON N KATZ
305949 SHERYL ELLEN KATZ
309758 LINDA S KAUFMAN
306470 ANTHONY STEVEN KAUFMANN
302546 JODY L KAVA
400518 TERRANCE LOUIS KAWLES
303687 DEBORAH R KEARNS
434042 SEAMUS MICHAEL KEATING
411662 COLLEEN MARY KEEGAN
101392 RAYMOND J KEEGAN
415025 CHRISTOPHER P KEENAN
427432 MELANIE CARRIE KEENE
425937 GLENN WILLIAM KEIDERLING JR
305357 JEFFREY ROBERT KEITELMAN
309894 STUART NELSON KEITH
306382 LOUISE ANN KELLEHER
406840 MATTHEW KELLER
404915 RICHARD ALAN KELLER
433857 BRENDAN PATRICK KELLEY
102802 KENNETH T KELLEY
307862 CORNELIUS P KELLY
415413 DAVID JOHN KELLY
100079 JAMES KELLY
417696 KARIN DAI KELLY
304830 MARGARET ANN KELLY
416076 PAUL J KELLY
307682 BARRY LEE KELMACHTER
304831 GAIL M KEMP
427220 BRIAN WILLIAM KEMPER
400483 HILARY JOY KEMPNER
306471 JOHN HOWARD KENAGA
304834 RALPH L KENDALL JR
411826 LISA DOUGHERTY KENNA
403161 BRENDAN KENNEDY
413252 JOHN BAILEY KENNELLY
410514 MARY CAMERON KENNY
407913 THOMAS LOUIS KENT
414293 KIM ELISA KERBER
417271 MICHAEL DAVID KERN
437799 SUSAN PENDLETON KERR
372014 WILLIAM J KERRIGAN
404920 STEVEN ALAN KERSCHENBAUM
305635 MICHAEL KESTENBAUM
414294 RUSSELL JAY KESTENBAUM
407690 ALBERT KHAFIF
418416 SARA AZARM KHORAMI
101355 LINDSEY C KIANG
302379 PENLEY TOFFOLON KIDD
429232 RICHARD EDWARD KIELBANIA
421840 KATHLEEN KIELY KIELY-BECCHETTI
420803 EVANS H KILLEEN
425812 JASON ALEXANDER KILLHEFFER
101411 THEODORE R KILLIAM
031512 BRUCE M KILLION
426707 ELINOR J KIM
419426 LIONEL YOUNG KIM
426549 MEENAH KIM
426758 SUSAN KIM
403416 LISA KIMMEL
306763 JULIE MARIE KINCH
407693 CHRISTOPHER GENE KING
307995 EDWARD LARKIN KING
304840 JOHN SPALDING KING
405178 RICHARD A KING
400780 SHAWN MICHAEL KING
411669 WILLIAM SPENCER KING
423483 AMIE M KINGMAN
411987 DAWN KIRBY
417338 CHARLES GORDON KIRKMAN JR
304843 RANDY A KIRSCH
031760 LINDA C KLATT
304850 LEWIS MITCHELL KLEE
406035 ADAM HY KLEIN
419438 JESSICA KLEIN
407783 JULIE ANN KLEIN
405412 MARC DAVID KLEIN
417397 ILYA KLEYNERMAN
306828 LISA W KLINE
411471 JORDAN LEE KLINGSBERG
303090 PETER A KLOCK
412885 SARAH SCOVA KLUG
420312 MARK ROBERT KNALL
425737 RAMON KEITH KNAUERHASE
411670 PATRICK SULLIVAN KNIGHTLY
420314 KIMBERLY MEREDITH KNISPEL
409674 JAMES CHARLES KNOX
305958 LYNNE M KNOX
430616 ROBERT ELIAS KOCHISS
428664 BEN R KOCIUBINSKI
429247 PATRICIA NICOLE KOCSONDY
308537 RICHARD A KOHLBERGER
404928 NICHOLAS G KOKIS
416081 JOHN ANDREW KOKOLAKIS
427935 CATHERINE LAKE KOLLET
304865 MARK J KOLOVSON
403666 ROBERT NEIL KOLTUN
032105 DANIEL I KONOVER
102045 RICHARD S KORRIS
400524 ALAN L KORZEN
417607 CATHLEEN A KOSHYKAR
400790 CHARLOTTE GOLDSTEIN KOSKOFF
303073 KAREN ELIZABETH KOSKOFF
307214 NANCY MCCALLUM KOSTAL
372072 WILLIAM THEODORE KOSTURKO
410753 THOMAS KOTTLER
425003 RAYMOND JOSEPH KOTULSKI
411990 JAN EDWARD KOWALSKI
411473 KATHY KOWLER
422110 PETER KOZIOLKOWSKY
422097 KATHLEEN HAE KYUNG KRAFT
405367 LISA MICHELLE KRAL
435292 ALEXANDER JOSEPH KRANTZ
420817 PHILOMENA ANN KRASINSKI
411991 THOMAS J KRATOCHVIL
404275 SALLIE BETH KRAUS
307493 STEVEN WILLIAM KRAUS
032402 HELEN KRAUSE
421178 CHRISTOFFEL KREDIET
414191 MARK JAMES KREMIN
417273 DAVID PATRICK KREPPEIN

413261 JOHN RICHARD KROGER
422603 AMANDA ROSE KRONIN
402324 GARY THOMAS KROPKOWSKI
304885 BEN MICHAEL KROWICKI
422869 ROY HANS KRUEGER
032675 MARTIN B KRULEWITZ
420820 TRICIA LYNN KRUPNIK
000505 FREDERIC D KRUPP
402921 MICHAEL W KRUTMAN
408784 PETER GEORGE KRUZYNSKI
434613 BETH KUBLIN
426317 JAKUB KUCHARZYK
407170 STACY TICK KUDLER
412554 ERIC WARD KUHN
372101 EDWARD ROBERT KUMP
430631 JUSTIN DEREK KUMPULANIAN
419306 JAYA SINHA KUMRA
412135 ROBIN A KURANKO
423497 CHRISTOPHER TYNER KURTZ
411830 ERIK LOUIS KUSELIAS
405666 PATRICIA CAROL KUSZLER
431480 COBY STOCKARD KUTCHER
405185 KENNETH JOHN KUTNER
401026 EDWARD KWAKU KWAKWA
410521 THOMAS O KWON
426663 RICHARD O LABRECQUE
413096 CHRISTOPHER JOHN LACADIE
437258 DAVID MARTIN LACHANCE
421430 JAMEN MICHAEL LACHS
301819 DEBORAH BALCH LACIVITA
403386 GREGORY B LADEWSKI
413264 KEVIN LADIEU
101003 RICHARD W LAFFERTY
415417 MARK L LAFONTAINE
303702 THOMAS K LAGAN
411474 JOHN F LAGRATTA
404276 ANDREW ROBERT LAITMAN
372366 KEITH D LAKEY
417425 DANA LAMACCHIA
417316 MARA SULLIVAN LAMANNA
305641 TERRY LAMANTIA
408129 GREGORY ROSS LAMARCA
422873 KRISTEN M LAMBERT
431601 ALEKSANDER LAMVOL
305005 DAVID SCOTT LANDMAN
307670 JEANNINE JULIANN LANE
372374 KARL D LANGE
412318 LOU ANN LANGFORD
307497 DONNA J LANZETTA
404059 MARILYN RUTH LAPIDUS
302557 DOUGLAS M LAPIN
372379 GREGORY PAUL LAPOINTE
410102 GUSTAVUS ADOLPHUS LARGE
435301 YESHAYA A LARKIN
307141 MARY KATHRYN LAROSE
406848 STUART JAMES LAROSE
305435 BRADLEY P LARSON
410524 JOHN PATTON LASALA
421434 JAIME LATHROP
425019 DANIEL MILTON LAUB
401479 JOHN CHARLTON LAUTERBACH JR
301821 MARY ANN LAWLOR
421435 CRAIG RICHARD LAWRENCE
102367 HOWARD A LAWRENCE
402751 SUSAN JEAN LAWSHE
413459 JASON MARC LAZAR
432891 WILLIAM FREDDY LAZCANO
400794 ROBERT HUGH LAZUK
417468 AMY LAZZARO
411676 MARY M LEACH
411327 ADAM CHARLES LEARMAN
416882 PATRICK WILLIAM LEARY
417533 STEVEN BRUCE LEAVITT
435193 JENETTE LEBEL-SALOMONE
429262 SARAH LEBERSTEIN
405420 MICHAEL A LEBIT
372413 ALAN LEBON
407083 MARC ANDREW LEBOWITZ
401481 STEVEN MARK LECHER
400532 MARK ELLIOT STEVEN LECHTER
425023 CAROLYN AMY LEDER
440451 EVE NATHALIE LEDERMAN
102594 LINDA LEDERMAN
420840 MARY-ELIZABETH LEDUC
420316 DAVID A LEE
308421 DUCAN ROGERS LEE II
372423 ELWYN CORNELIUS LEE
425799 KYUMIN KEVIN LEE
408131 MARGARET LEE
372425 PETER MARK LEE
413158 SUSAN SOOYEON LEE
412555 SOPHIE VAN TIL LEEDHAM
407084 MAURA BETH LEEDS
418795 JOHN JOSEPH LEEN
100113 SANDRA VILARDI LEHENY
415787 ROSEMARY DESMOND LEITZ
434060 JULIA JOYCE LELEK
438160 ALISON RENEE LEMIRE
306936 RAYMOND JOSEPH LEMLEY
423514 TARA FRANCES LENICH
310049 GREGORY ALOYSIUS LENIHAN
402274 DONNA D LEOCE
424294 MINDY SUZANNE LEON
101732 SUZAN GROSSBEFG LEONARD
416768 GEORGE M LESNETT
403057 ELIZABETH TRECHSEL LESNIEWSKI-
408147 RENEE SIMON LESSER
408605 PAOLA MICHELE LEVATO
430651 ALISA T LEVIEN
034011 DAVID M LEVIN
418817 CHRISTINE NOELLE LEVINE
401482 JEFFREY M LEVINE
438800 STEPHANIE RACHEL LEVINE
402186 STUART MORTON LEVINE
308206 TEDD S LEVINE
425032 RON LEVINER
426574 ANDREW CRAIG LEVINSON
403673 PHYLLIS B LEVITAS
425874 SHERI M LEVSON
404322 DEBORAH MARA LEVY
400542 SAMUEL J LEVY
415891 JONATHAN LEWIS
401535 NANCY R LEWIS

307512 RONALD LEWIS
427647 JULISSA LEZCANO
307224 MORTON H LIBBEY JR
423521 LEIGH A LIEBERMAN
402327 HAL LIEBES
401130 EVELYN HOPE LIEBKE
400543 BRADLEY NATHAN LIEBMANN
417280 JAMES THOMAS LIELL
303076 RICHARD ARTHUR LIESE
418115 IAN ROLAND LIFSHUTZ
429272 AMY LYNNE LIKOFF
372489 JOHN RENATUS LILLIENDAHL III
101025 JOHN E LILLIS
404224 CATHERINE KWANG-CHIN LIN
300755 WALLACE E LIN
422131 JOSIAH SCOTT LINDSAY
416869 LISA K LINDSAY
306773 ALAN PAUL LINK
306634 JOAN SUZANNE LINKER
306583 LISA RUTH LIPMAN
401486 MATTHEW ERIC LIPMAN
302776 DAVID A LIPS
308600 ALLEN S LIPSON
436504 ANDREW GEORGE LIPTON
411336 JEFFREY H LIPTON
303939 RITA C LISKO
409282 DONALD LOWELL LISKOV
420857 SANDRA LEE LITTLETON
305056 RICHARD ELIOT LITVIN
403171 FRANCES LIU
400804 JAIME G LLUCH
414197 JOSEPH A LO PICCOLO
405196 THOMAS SALVATORE LOBUE
430657 TINA ANN LOCASTO
307514 JOHN FRANCIS LOCCISANO
410909 MICHAEL A LOCKABY
439635 NAWA ARSALA LODIN
306775 DANIEL ADAM LOEWENSTERN
415956 DAVID LOGLISCI
034515 FRANK P LOMBARD
441540 AUBREY LEE LOMBARDO
305061 THOMAS EDWARD LOMBARDO
437931 JULIA VICTORIA LONDON
403401 DONNA-MARIA LONERGAN
307226 MARGET ELAINE LONG
402931 JOANN MARIE LONGOBARDI
407253 MARILYN LOPEZ-HADDAD
411913 FREDERIC HENRY LORD
305066 THOMAS SUMNER LORD
034576 DAVID B LOSEE
404657 LORI LYNN LOUCKS
307516 MARK JOHN LOUGHRAN
309245 VIRGINIA LOUGHRAN
414431 PAMELA BENNETT LOUIS
417283 JANE MAUREEN LOVE
409554 JOHN J A M LOVELESS
419594 SARA CLINTON LOWENSTINE
405187 JULIE LANGER LOWITZ
405198 MARC J LOWITZ
441674 MARVETTE ERICA LOWRIE
305617 BARBARA LUBIN
102989 R JACK LUCAS
425047 TRAVIS D LUCAS
303002 CHARLES E LUCENO
403176 GREGG DREW LUCHS
430013 KAREN JOE LUCIEN
428665 ROBERT ARIC LUCKRITZ
305074 TERRENCE PETER LUDDY
307766 ALEXANDER M LUDLOW
417851 ADA MICHELE LUGO OLIVERAS
309766 CHARLES K LUK
309972 LEON K LUK
409377 ROSALYN EVE LUKACS
441048 ALEXANDER LEE LUM
419762 ALEXANDER LUMELSKY
305078 ANNE ELIZABETH LUPICA
401489 ROBERT THOMAS LUPO
372540 ROBERT MICHAEL LUPOLI
406855 EDWARD T LUSSEN
441845 RACHEL MERYL LUST
401260 STEVEN EDWARD LUST
303715 JOHN MICHAEL LUTZ
402932 MICHAEL NICHOLAS LYGNOS
418247 GEORGE J LYMAN
408997 RICHARD JEFFREY LYMAN
034852 DANIEL E LYNCH
411029 NANCY DAVIS LYNESS
441050 MEGHAN M LYON
402276 EDWARD JOSEPH LYONS
305653 LOIS M LYONS-GIBSON
400548 JOHN BRADFORD MACAULAY
440084 IAN WILLIAM MACBETH
308967 ROBERT P MACCHIA
305799 MARCY FERN MACDONALD
416429 MARCELA LOPEZ MACEDONIO
306312 JAMES JOSEPH MACHOWSKI
406858 KEVIN MACKAY
420866 KERRI LYNN MACKENZIE
438816 NATALIE MARIE MACKIEL
421444 ANNE MARGARET MACKLE
404941 DAVID CAMERON MACLEAN JR
102890 RICHARD E MACLEAN
406458 HEATHER MARIE MACMASTER
407095 ELIZABETH ANNE MAFALE
417285 PAUL-ANTHONY LEECHIU MAGADIA
404942 WILLIAM ANTHONY MAGLIANO
416037 KELLY ANNE MAGNUSON
307003 JEFFREY G MAGUIRE
407717 KATE ELIZABETH MAGUIRE
408136 LISA K MAGUIRE
414305 RAJ R MAHALE
419769 DEBORAH A MAHER
035376 JOHN J MAHON
306940 DEBORAH LOUISE MAHONEY
308973 MARY ANN MAHONEY
412607 TIMOTHY JOHN MAHONEY
418950 KELLY PATRICIA MAI
408790 SUSAN SALLARD MAIGNAN
408287 HIROE RUBY MAKIYAMA
418798 ANTHONY MICHAEL MAKRIDES
409953 CORI LEAVITT MALABY
309903 SEDRICK G MALCOLM
419077 ELIZABETH A MALDONADO

410799 ROBERT PETER MALEWSKI
408276 ANJU MALHOTRA
401036 MARK RIDER MALINA
425060 MELISSA BETH MALLAH
407488 BRETT L MALOFSKY
035547 CRAIG D MALONE
420871 STEFANIE JOSEPHINE MALONE
302318 CHRISTOPHER JOHN MALONEY
407826 JENNIFER CHRISTIE MALONEY
440220 LAUREN N MALONEY
413394 RICHARD R MAMMON
417791 JOHN ORESTE MANCINI
432382 ANDREA ANDREA MANCUSO
406861 GAYLE A MANDARO
307018 MICHAEL JOSEPH MANFREDA
307019 ALBERT MANFREDONIA
417707 EMILY CAROLYN MANN
410675 MONROE YALE MANN
307021 JAMES LUCIAN MANNELLO
404663 JENNNIFER ABBE MANNER
308209 HILLARY JAYNE MANTIS
416097 JOSEPH PATRICK MANZI
310067 RALPH MARCARELLI
100125 JOSEPH D MARCELLO
433496 M NICOLE MARCEY
412005 ADAM TROY MARCHUCK
418535 ANNA LINDA MARCIANO
307026 FRANK J MARCO
425732 MARK WILLIAM MARCONE
408100 JOEL MARCUS
404945 REYNA ELIZABETH MARDER
102782 JOAN ECKENWALDER MARGENOT
101776 MARC J MARGOLIUS
408329 RICHARD A MARGULIES
308980 THERESA ANN MARI
372836 RALPH ALFRED MARIANI
309989 SARAH MOODY MARIANI
036064 TERENCE D MARIANI
426619 JOSH ST JOHN MARINELLI
436289 MICHAEL ALBERT MARINO
308981 MICHAEL RICHARD MARINO
412608 NORA CONSTANCE MARINO
429298 MATTHEW E MARKOFF
303950 MARIE E MARKOWITZ
405761 MICHAEL KRAMER MARKS
309973 MARY ANN MARLOWE
408599 GAIL MARR
403178 STEVEN ERIC MARSHALL
302567 THOMAS R MARSHALL
419772 SEBESTYEN QUENTEN MARTENS
101403 MARTHA RAFFERTY MARTI
306955 B DIANE MARTIN
302220 CYNTHIA ANN MARTIN
406709 DIANE LYNNE MARTIN
036427 DONALD L MARTIN
407491 JAMES A MARTIN
406554 JOSEPH MICHAEL MARTIN
426266 KELLY ANN MARTIN
103013 SARA R MARTIN
401495 ALEIDA MARTINEZ-MOLINA
428143 PETER DOMINIC MARTINO
100780 PAUL J MARZINOTTO
401132 DEBORAH M MASON
417404 JONATHAN G MASON-KINSEY
415255 ARIANA MASS
036618 WILLIAM J MASSIE JR
428647 LISA MARIE MASSIMI
412006 MARIA MASSUCCI
427254 GWEN STEWART MASTERS
402765 RICHARD MATHER
432435 ERYN LYNDSEY MATHEWS
426456 JUDKINS COOPER MATHEWS
408592 AUGUST JOSEPH MATTEIS JR
100335 EDWARD MATTISON
372873 MARSHALL MATZ
423547 GUY MAURICE
403415 KENT D MAWHINNEY
423779 MELISSA MAXIM
407726 JODI MICHELE MAXON
413519 ELIZABETH MAXWELL-GARNER
431890 CALVIN KUSHNIR MAY
400945 WILLIAM JOSEPH MAYO
308989 MICHAEL JOSEPH MAZZEI
411691 SHARON MC CONVERY
400275 PATRICIA C MCALLISTER
414307 CASEY ANNICE MCARDLE
407099 ANDREW JOSEPH MCCABE
422154 THOMAS EUGENE MCCABE
407728 ROBERT KEVIN MCCAFFERTY
404950 MARY ELIZABETH MCCAFFREY
308213 STEPHEN W MCCAFFREY
309665 JAMES F MCCANN
415513 ANDREW C MCCARTHY III
410912 AUDREY HILDA MCCARTHY
403544 DENNIS PATRICK MCCARTHY
307058 DONALD J MCCARTHY JR
405877 GARY JAMES MCCARTHY
420335 GEORGIA EULALEE MCCARTHY
404014 JUSTIN BRIAN MCCARTHY
404666 PEGGY LEWIS MCCARTHY
303053 TERESA MCCARTHY-VADIVELOO
307063 JOHN E MCCAULEY
411488 MOIRA MADELINE MCCOLLAM
102383 VALERIE L MCCORD
404116 MARCIA MCCORMACK
420886 TARA MCCORMICK
404668 ROBERT E MCCRACKEN JR
305668 HUGH G MCCRORY JR
372897 HARRY R MCCUE
428101 DAVID MARTIN MCCULLOUGH
400562 DIAN KERR MCCULLOUGH
414602 MONIQUE DURANT MCCURLEY
412462 KAREN CURESKY MCCUSKER
307233 DOUGLAS J MCDADE
409602 DOUGLAS CHARLES MCDERMOTT
102948 CHRISTOPHER J MCDONALD
302319 MATTHEW JAMES MCDONALD
412463 GUY MADDEN MCDONOUGH
433499 ANDREW JOSEPH MCELROY
300761 GARTH W MCELYA
305670 MICHAEL FRANCIS MCENENEY
309075 DIANE CROSSON MCENROE
401269 MARK TRESHAM MCENROE
308993 MIRIAM KATHLEEN MCENROE

406570 PATRICIA MCEVOY
406119 JAMES PETER MCGEVNA
431302 DANIEL PATRICK MCGINN
421457 BARRY B MCGOEY
308994 PETER GERARD MCGONAGLE
306397 JANET GERTRUDE MCGOVERN
405829 FRANK A MCGOWAN JR
415963 PATRICK JOHN MCGRATH
424872 REBECCA FREEDMAN MCGRATH
405596 BRUCE MARTIN MCGUIRE
429312 SARAH MCGUIRE
308995 THOMAS JOSEPH MCGUIRE
417544 FRANCIS STEPHEN MCGURRIN
410538 SUSAN LYNN MCINTOSH
420891 JOHN ARNOLD MCINTYRE
438175 ANDREA NICOLE MCKAY
404477 ANN MIZNER MCKAY
401606 JOSEPH F MCKEON JR
414437 MICHAEL JOHN MCKEON
404537 MARY BORDEN MCKERNAN
409382 SCOTT STEPHEN MCKESSY
402945 CHRISTINE MCLAUGHLIN
409383 ROGER LEE MCLAUGHLIN
041378 MICHAEL S MCLAURIN
415256 JOHN E MCLEAN
431319 ASHLEY MCLEOD
102047 KATHLEEN A MCLEOD
441062 DEVIN L MCMAHON
423553 KEENAN-MARIE MCMAHON
408674 BRIAN PATRICK MCMANUS
309519 WILLIAM E MCMANUS
413441 DAWN MCNAMARA
307699 BRUCE J MCNEIL
407937 RUTH ANNE MCQUADE
305361 THERESA M MCSWEENEY
414438 LAWRENCE JOSEPH MCSWIGGAN
042000 ALAN D MCWHIRTER
411007 CHRISTOPHER KENNETH MEAD
419298 JUSTIN PATRICK MEAGHER
414610 ALEXANDRA DANIELLE MEASE-WHITE
405440 OMID EDWARD MEHRFAR
416374 SAMIR BHARAT MEHTA
404680 CHRISTINA MELADY
419787 JOHN PAUL MELE
412182 BRADFORD C MELIUS
307239 MARK P MELLY
307093 MATTHEW ELIOTT MELMED
430703 STEPHANIE MICHELLE MELOWSKY
415007 CRAIG FRED MELTZER
037228 L SCOTT MELVILLE
303395 MARK MELZER
411351 DIANE C MEMINGER
309974 ELIO RAFAEL MENA
101646 SUSAN L MENDE
372964 CARLOS MENDEZ-PENATE
100089 RICHARD A MENO
430713 AURELIA M MENSH
372965 GORDON GALE MENZIES
405684 GEORGE JOHN MERCER
037395 JOHN F MERCHANT
418121 SUSAN BETH MERCHANT
426343 KRISTY M MERINGOLO
403183 GABRIEL ANTHONY MERO
423563 SARAH CURRIER MERRILL
422168 DENIS-ANDREI MESINSCHI
411493 CYNTHIA KULAS MESSEMER
309708 GILBERT EVANS MESTLER
405442 JOHN LAWRENCE MEUNKLE
438641 CHRISTOPHER ANDREW MEYER
427264 LANCE H MEYER
037689 JOHN MEYERHOLZ
309613 MARGARET A MEYERING
102979 ROBERT M MEYERS
415005 STEVEN DAVID MEYERS
400571 MICHAEL C MEYERSON
411494 JENNIFER MARIA MIANI
037758 THOMAS P MIANO
037761 GARY R MICHAEL
417792 BENJAMIN WOODWARD MICHELSON
429322 MARGARET MOOG MIDDLETON
439684 JOHN THOMAS MIDGETT
037845 SOCRATES H MIHALAKOS
407294 SUSAN PODGWAITE MIKOS
409006 MICHAEL MARTIN MILAK
303959 ROBERT A MILANA
037927 LOUIS A MILANO JR
404959 DONALD ALEXANDER MILES
037948 MICHAEL S MILES
432921 YANA L MILES
410333 ERIC PETER MILGRIM
426672 BRIAN JAY MILITZOK
403424 LINDA TERESA MILLARES
420346 CHRISTOPHER J MILLER
400826 ELISABETH ANNE MILLER
426792 GLENN MILLER
100061 GRANT H MILLER JR
403185 HOWARD MARC MILLER
420347 JESSICA L MILLER
423570 MEGAN ELIZABETH MILLER
303730 RICHARD ALLEN MILLER JR
435114 S SCOTT MILLER
407737 THOMAS JERROLD MILLER
307240 JAMIE L MILLS
426300 SARAH CUTTING MILLS
100308 DANIEL MILLSTONE
429327 JULIE M MILNER
412094 PATRICIA JANE MINARD
308021 FRANCIS ANTHONY MINITER
415967 THOMAS JOHN MINOTTI
406091 ODISSEAS MIRIANTHOPOULOS
433507 BRIANNE NELSON MITCHELL
307547 GLENN MATTHEW MITCHELL
424317 JOSEPH PATRICK MITCHELL
301836 LESLIE K MITCHELL
409824 MARCUS LOVELL MITCHELL
409008 WILLIAM PAUL MITCHELL
373016 PETER M MITERKO
431764 ELIZABETH CHRISTINE MITHANI
308025 MICHAEL JAY MITTEL
300765 NEAL C MIZNER
428496 ROBERT N MIZRAHI
420167 RICHARD ADAM MLYNEK

408065 MARJORIE MODESTIL
038415 ROBERT E MODI II
308027 MYRA DELAPP MOFFETT
422177 ANNE MOGILEVICH
430176 ALISON BEARDSLEY MOHR
300839 ROBERT L MOKS
301837 NEIL STUART MOLBERGER
308029 CHARLES JOHN MOLL III
309821 KENNETH J MOLLOY
401713 JOSEPH D MONACO
413111 PAUL EDWARD MONAGHAN JR
433508 MEGAN DIANNE MONAHAN
308030 THOMAS J MONAHAN
038538 TIMOTHY F MONAHAN
406459 CHRISTOPHER MICHAEL MONE
038575 JOSEPH MONIZ
416232 ALEJANDRO MONROY
425899 PATRICE SUZANNE MONTALTO
423577 LUIS J MONTALVO
419937 RICHARD MONTANEZ
430724 LESLIE HAUSNER MONTANILE
420908 PETER MATTHEW MONTANO
407595 EUGENIA MONTEMARANO
373026 MARSHALL DEAN MONTGOMERY
429334 BONGSEOB MOON
433981 EILEEN M MOORE
408140 MELISSA S MORALES
418123 KATE E MORAN
102134 EDWARD MORELLI
309769 JAMES HENRY MORENO
401502 JOELLE ANNE MORENO
403078 EILEEN A MORGAN
308554 JOHN T MORGAN
308402 PATRICK J MORGAN
306307 ROBERT PAUL MORGAN
421104 MELISSA W MORIN
101803 EDWARD B MORLEY
306269 MARIA GIOVANNA MORRA
308044 FRANCINE J MORRIS
415211 JOHN E MORRIS JR
402590 MICHELLE MORRIS
404681 THEODORE CONRAD MORRIS
430033 DANIEL PATRICK MORRISSEY
425111 JACOB CONRAD MORROW
440512 ADAM RM MORTILLARO
438184 DANIEL MICHAEL MORTON
411697 TYEDANITA MOSAKU
426682 SHARON ANN MOSCA
402144 KEITH OVID MOSES
305688 KEVIN L MOSLEY
408839 BETH RACHEL MOSS
406886 MICHAEL JAY MOSS
418328 RONALD JOSEPH MOSS
373070 JOHN A MOTTALINI
411496 WILLIAM FRANCIS MOUGHAN JR
413656 CATHERINE MUMMERT MOUNT
433511 JACQUELYN L MOUQUIN
417292 SHERIF K MOUSSA
406555 DANIEL GEORGE MOUZON
430034 ATOSSA MOVAHEDI
425114 IFRAJ HANA MUHAMMAD
420528 TIMOTHY MICHAEL MULDOON
101500 MARY-ANNE MULHOLLAND
418805 THOMAS J MULLANEY
402591 DAVID JOHN MULLEN
418544 KIMBERLY ANN MULLER
407109 DANIEL TERENCE MULLIN
423587 KATHLEEN M MULLINS
427272 JOHN MORLEY MUNRO
373952 ALFRED E MUNROW
412014 SETH MURASKIN
101602 DENNIS C MURPHY
101300 DENNIS C MURPHY
307831 ELIZABETH GEAN MURPHY
423592 EMILY BROOKE MURPHY
039870 JOHN F MURPHY JR
308141 JOSEPH FRANCIS MURPHY
400296 MICHAEL J MURPHY
409011 CHRISTINA MONTALTO MURRAY
305993 MICHAEL W MURRAY
404724 MORNA ANN MURRAY
305994 SUSAN AMELIA MURRAY
434616 MATTHEW ALBERT MUSANO
308895 CAROLINE CHINETTI MUSMANNO
406681 SCOTT ALAN MUSSELMAN
439151 MATTHEW JEFFREY MUTTART
308061 MARK ANTHONY MUZZILLO
411032 SETH MICHAEL MYERS
420355 STEVEN M MYERS
409787 RICHARD NACCA
309453 MICHAEL E NAFTOLIN
409564 JEFFREY CHARLES NAGLE
400590 PAUL JOHN NAJARIAN
302175 PETER A NALEWAIK
401405 CAMILLE CANIGLIA NANNI
418806 CLEMENT JOSEPH NAPLES
417411 EDWARD F NARROW
423596 JOSHUA MORDECHAI NASSI
414623 ANA-CRISTINA NAVARRO
434764 JULIO NAVARRO
302795 VICKRAM FRANCIS NAZARETH
427275 JOHN PATRICK NEALON
412468 LESLIE NEIDITZ
042475 GRANT NELSON
413890 MARRIANNE NELSON
412019 THOMAS S NEMEC
426690 JASON G NEROULIAS
427278 MELISSA ANN NESHEIM
418173 KAREN ELIZABETH NETHERSOLE
434766 JENNIFER NICOLE NETROSIO
408348 SUSAN E D NEUBERG
306270 SUSAN R NEVAS ESQ
431930 DONALD L NEVINS
420923 KENNETH A NEWBY
410548 JAMES SAMUEL NEWFIELD
408740 KENNETH NEWMAN
307250 BRUCE GILBERT NICHOLLS
423603 ELLEN MARGARET NICHOLS
302259 GEORGIA L NICHOLS
413298 E DAVID NICHOLSON
403815 CATHERINE ANNE NICOLAY
407744 STACEY DAWN NIDITCH
300166 CHRISTINE MARIE NIEDERMEIER
404229 PAUL EDWARD NIESOBECKI

409789 THOMAS HENRY NIKKEL
417560 JAY MARTIN NIMAROFF
310028 WARREN CHARLES NITTI
043080 CHRISTOPHER NOBLE
402411 PETER A NOBLE
412844 FRANCES C NOLAN
400474 KATHLEEN E NOLAN
043123 THOMAS F NOONAN
308230 PAMELA J NORLEY
401279 MICHAEL ANTHONY NORMOYLE
309250 JUDITH A NORRISH
305701 OKSANA NOSAL
431403 ADAM MICHAEL NOSKA
423606 CHERYL LYNN NOVAK
043321 WARREN K NOVICK
420259 ELZBIETA NOWAKOWSKI
427281 NATALIE GRACE NOYES
309666 MARK J NUZZOLO
400593 MAURICE NYBERG
407747 FERN ELIZABETH O BRIEN
419360 JENNIFER A O BRIEN
416851 KAREN O BRIEN
409966 KELLI MARIE O BRIEN
305703 MARGARET MARY O BRIEN
405461 JOHN DANIEL O BYRNE
407511 RICHARD ALLAN O CONNELL
043937 WILLIAM P O CONNELL JR
430042 JOHN STEWART O CONNOR
417929 KATHLEEN P O CONNOR
407512 KEVIN JAMES O CONNOR
405602 MICHAEL LIAM O CONNOR
410554 WILLIAM EMERSON O FARRELL
408066 LINDA PATRICIA O GORMAN
401283 PATRICIA O HAGAN-SCHOEN
305290 EDWARD VINCENT O HANLAN
413001 JANE R O HARA
423612 MARK DAVID O HARA
432945 STEPHEN O LOUGHLIN
306404 SYLVIA N O MARD
303515 JOHN W O MEARA
423614 JOANNA D O NEILL
414072 BRIAN CHARLES O SHAUGHNESSY
405221 SUSAN ELIZABETH O SHAUGHNESSY
417415 AMY MAURA O SHEA
302802 MICHAEL JOSEPH O SULLIVAN
409297 ANDREW CHARLES OATWAY
102484 DAVID E OBAROWSKI
306855 MARK WILLIAM OBERLATZ
420364 INNOCENT IKECHUKWU OBI
413457 JOANNE MARY OBRIEN
404978 LIZA ELLEN OCONNOR
309646 WESLEY MICHAEL ODELL
410339 RITA MARLENE ODIN
419361 STANLEY ODUKWU
300774 CHARLES ANTHONY OGNIBENE
305707 KEVIN OGRADY
436643 GREGORY O OGUNSANYA
425133 NAOTO OKURA
402778 STEPHEN JOSEPH OLDAKOWSKI
044290 EUGENE C OLEARY
414446 IRINA A OLEVSKY
428480 CAROLINE PILLSBURY OLIVER
422200 JOSEPH PATRICK OLIVIERI
307557 RICHARD JOSEPH OLIVIERI
431406 RUTH J OLIVO
428064 RACHEL MARIE OLSON
101698 CATHERINE S ONEGLIA
410841 CHRISTOPHER NEAL ORACHEFF
417250 ELIZABETH CORWIN ORAM
439530 LOGAN FRANCIS OREILLY
306080 MARCIA GUY ORENSTEIN
416282 DANIEL LEE ORIGLIA
427527 ALIA ORNSTEIN
440105 JE QUANA SENEBRA ORR
405781 JEFFREY LYNDON ORRIDGE
430043 MITZCHKA BASMAN ORTIZ
410139 GUY E ORTOLEVA
415816 ZACHARY OSBORNE
418808 NILS GUSTAVE OSTERBERG
412331 SALLY OTOS
414318 MEGAN JULE OUCHTERLONEY
423621 CHARISE RENE OVALLE
044742 WILLARD J OVERLOCK
414876 M LESLIE III OWEN
407115 CEM OZER
305087 ANTHONY J PACCHIA
305708 MARCOS A PAGAN III
305327 MARK A PAGANI
414448 ADAM LAWRENCE PAGET
422917 SON YOB PAK
411718 ANTHONY MICHAEL PALAZZOLO JR
413963 CYNTHIA JOANNA PALERMO
425791 SHARI PALEY
406473 WAYNE GEOVAUGN PALMA
301733 PETER C PALMER
431841 MARTIN WILLIAM PALMIERI
410341 CHRISTOPHER CHARLES PANARELLA
372572 ROBERT M PANISCH
414796 JEFFREY LOUIS PANZO
407989 NICHOLAS JAMES PAPPAS
426717 ELIZABETH ANN PARCELLA
411366 LAURENCE DENNIS PAREDES
419364 MICHAEL ERNEST PARHAM II
409593 ANDREW I PARK
411506 JENNY PARK
416383 JIN WOO PARK
439000 MIECHA PARKER
414320 FRANKLIN MICHAEL PARLAMIS
426664 DAVID FREDERICK PARTRIDGE
405994 SCOTT DAVID PARVEN
430761 CHARLES CARLETON PASCAL
408217 DIANE MARIE PASQUARETTA
412875 JEFFREY MICHAEL PASQUERELLA
422212 ELIZABETH PASQUINE
400557 JUDITH MARRONE PASSANNANTE
401286 JOHN T PATAFIO
426512 YOGENDRA B PATEL
406926 JOANNE S PATRICK
419220 JENNIFER COSSIFOS PATRISSI
407291 BONNIE LYNNE PATTEN
306007 TERESA MARY PATTEN
406893 JOHN J PATTERSON

400601 PAUL DAVID PATTON
302594 DAVID IRA PAUKER
303140 BETTE L PAUL
306010 LORRAINE R PAULHUS
428018 ALEXANDER SHOCKLEY PAULSON
411034 GEORGE FRANCIS PAVARINI III
305301 DOROTHY M PAVLICA
401505 SHERRI N PAVLOFF
424328 JUSTIN MICHAEL PAWLUK
045666 JASON E PEARL
045688 ROGER J PEARSON
415822 CHRISTINE CAROLE PEASLEE
307567 TODD ANDREW PECHTER
308901 CHRISTINE B PECK
308821 LAWRENCE MILTON PECK JR
402282 JOYCE D PEDERSEN
101332 FRANCISCO PEDRAZA
405467 LAWRENCE BENEDICT PELLEGRINO
411367 RICHARD JOHN PELLICCIO
309497 JOHN ANTHONY PELOSI
421485 ELISA J PENSAVALLE
102787 JILL A PENZA
406895 ELLEN P PEPPARD
372615 EDWARD W PEPYNE JR
046028 PETER G PERAKOS
434630 KATHERINE L PERDUTA
402221 WILLIAM GABRIEL PEREZ
372619 PATRICIA B PERKINS
428096 E JAMES PERULLO
426689 PAULA PESCARU
415979 CONSTANCE C PETERS
401511 GEORGE CHRISTY PETERS
408606 MARK STERLING PETERS
303091 EMIL FREDERICK PETERSEN III
434131 EMILY ANN PETERSON
420481 JOANNA PETERSON
428054 SARAH ELAINE PETERSON
401056 DAVID BRYAN PETSHAFT
306795 MARIE ROSE PEYRON
404299 DAVID MARTIN PFEIFFER
303980 NEAL LAWRENCE PHENES
428459 JENETHA G PHILBERT
412376 TALI PELED PHILIPSON
404300 ELAINE CONSTANTINA PHILIS
404052 ANNE PAPPAS PHILLIPS
303587 LYNDELLE TOLLIVER PHILLIPS
101594 STEPHEN G PHILLIPS
402095 MARIA PICCIUCA
306035 RICHARD A PICCOLA
412977 ANNE MARIE PIEDADE
306039 RICHARD PILE-STROTHER
405723 CALEB MCIVOR PILGRIM
372649 ROBERT HARRY PILPEL
439757 LUKIANA PILYUGIN
439349 JULIE VASSAR PINETTE
414324 COSTANZA PINILLA
302976 RONALD J PIOMBINO
306410 JOSEPH ANTHONY PISCINA
303981 DEBORA A PITMAN
102774 WILLIAM K PITMAN
412878 JANET DIANA PITTER
304980 LUKE M PITTONI
302261 ROBERT J PLANTE
426809 SAMANTHA LAUREN PLITNICK
403709 LAWRENCE R PLOTKIN
436887 JAY D PLUMLEY
400607 JEFFREY L POERSCH
401292 GEORGE JOHN POLES
425165 DAVID RYAN POLGAR
310030 DAVID MICHAEL POLLACK
404302 JESSICA GLASS POLLACK
303422 ANTHONY CHARLES POLVINO
372669 JOHN JAMES POMEROY
309992 LAUREN KAYE POPPER
420029 BRIAN D JR PORCH
412615 PAUL L PORRETTA
410486 JEANNE DONOVAN PORTER
401515 MILLER TIMOTHY PORTERFIELD
305463 SALVATORE D PORZIO
414210 IVAN MILES POSEY
405235 BARRY A POSNER
421720 JOY MARIE POSNER
407121 BARBARA C POTTER
422926 JEFFREY ERIC POTTER
306797 MARIA MADELEINE POTTER
047493 RUSSELL F POTTER JR
372684 WILLIAM MICHAEL POUDRIER
410440 PETER T POULOS
423648 MATTHEW STEPHEN POULTER
310050 KIM DENISE POWE
428641 BRIAN M POWERS
047615 JOHN J POWERS
418130 DAVID PETER POWILATIS
429405 PATRICIA A POWIS
409028 HENRY KWASI PREMPEH
410344 JOEL C PRESS
309789 MARTHA WATTS PRESTLEY
422928 JAMES PHILIP PRICE
403675 VALERIE A PRICE
413759 ANDRES GUSTAVO PRIETO
428107 GUY PRIMOR
416394 RICHARD ABRAHAM PRIMUS
401296 PATRICIA E PRINCE
433527 TERESA PRINCIPE
431413 A ADAM PRIZIO
306054 STEPHEN E PROSTANO
417764 RACHEL MARIE PROULX
372690 JOHN PROVAN
305247 JOHN SCOTT PRUDENTI
425172 RICHARD JOHN PUCHOWICZ
047824 MATHEW A PUGLIESE
402458 MATTHEW GERARD PULETZ
304058 THEODORE CONSTANTINE PULOS
413475 VINCENT THOMAS PUMA
417765 SUSAN MARY PUNCH
427298 FRANK A PURCARO
400613 JOSEPH FRANCIS PUSATERI
425174 JOHN MICHAEL PUZZIO
413012 ERICA OMES QUARTARONE
435900 MEGAN LESLIE QUATTLEBAUM
303760 CAROLYN K QUERIJERO
403211 STEVEN J QUESTORE
403212 STEPHEN JOHN QUINE

408101 WILLIAM JAMES QUINLAN
372358 JAMES A QUINTON
402285 MICHAEL QUIRINDONGO
303987 FRANK ANTHONY RACANO
405477 ADAM JAMES RADER
048565 FRANK RAFFA JR
400860 ROY JOSEPH RAFOLS
432714 ELIZABETH M RAGAVANIS
433529 JANET MARIE RAHEB
413312 DAVID HOWARD RAISNER
429412 JILL HARRI RAKOFF
308414 DONN A RANDALL
309291 PAMELA JEAN RANDBY
422930 JENNIFER L RANDO
410928 ELIZABETH RANKIN
412032 REGINALD MICHAEL RASCH
404992 ANTHONY LOUIS RAUCCI
408689 STEVEN ALAN RAUCHER
413014 RONALD JOHN RAUSCHENBACH
422931 JUDITH D RAWCLIFFE
418176 GWENDOLYN RAWLS
419366 MATTHEW ALLEN RAY
410156 STEPHANIE WALKER RAYMOND
309714 JAIME M RECABO
402828 ROBERT J RECIO
410559 ROBERT LOUIS REDA
429416 ADAM PHILLIP REDDER
437341 APURVA ADLA REDDY
411513 JEFFREY BRUCE REDNICK
400427 JOHN T REDWAY
372331 GILBERT J REGAN
415982 ROSE MAY REGISTRE
423658 CHRISTINE REHAK
308251 ROY E REICHBACH
410157 SYLVIA DENISE REID
407971 GRACE ELIZABETH REIDY
307575 PATRICK G REIDY
407760 DAVID M REILLY
406903 JOHN ROBERT REILLY
417417 JUSTIN M REILLY
407128 ALLISON REILLY-BOMBARA
402356 NAOMI DEVORAH REIN
306313 ELEANORE BEULAH GERST REINER
303211 DANIEL REITENBACH
304988 MICHAEL P REITER
416239 JOHN MICHAEL REITWIESNER
400619 DIANNE RELLA
424344 DANIEL VICTOR REMER
372351 PAUL CHARLES REMUS
409569 DWIGHT H RENFREW JR
306654 STEPHEN MICHAEL RENNA
413966 KAREN ANNE RENNIE-QUARRIE
403217 DAVID SCOTT RETTIG
402339 ARCADIO JORGE REYES
430790 ALEX SYLVAN REYNOLDS
439897 CONOR DWYER REYNOLDS
412333 JENNIFER MELISSA REYNOLDS
304967 ROBERT NOLAN REYNOLDS JR
421499 ARTHUR DAVID RHEINGOLD
306225 PAMELA BONNIE RIBAK
403457 EDWARD JOSEPH RICCOBENE
306800 CARLOTTA ELIZABETH WICK RICE
401138 ALPHIE JOSEPH RICHARD
428676 CANDICE MICHELLE RICHARDS
416123 DAVID LAUREN RICHARDS
309297 SUSAN LAURA RICHARDSON
420979 DANIEL JOHN RICHERT
429423 CHRISTOPHER THOMAS RICHTARICH
413480 STEPHEN JOHN RIEBLING
416777 CHRISTOPHER MARSHALL RIES
414650 CONSTANCE LYNN RIESS
306802 DAVID MITCHELL RIEVMAN
417372 DOROTHY RIGGIO
422241 SAMANTHA LISA RILEY
305470 CHARLES C RIM
308780 CATHERINE ALICE RINALDI
050335 JAMES P RING
408896 KEVIN THOMAS RIORDAN
427669 NICOLE C RIORDAN
401299 ALAN SETH RIPKA
434786 ADAM DUANE RISER
420531 ANDREA RISOLI
405243 ELLEN POBER RITTBERG
404997 RICHARD RIVERA
413761 SHELLEY ANN RIVERA
372261 DAVID HENRY RIVERS
308647 CHRISTOPHER J RIXON
410808 JOANNA IRENE RIZOULIS
401301 JOHN MICHAEL RIZZO
406098 DONALD NICHOLAS RIZZUTO
402981 ROBIN I ROACH
426430 SUZETTE MCTIGUE ROAN
303992 JAMES MICHAEL ROBBINS
305728 SUSAN ILENE ROBBINS
420981 REGINA F ROBERT
307582 ALAN ROBERTS
430801 CHASITY VAREE ROBERTS
418681 JEFFREY HOWELL ROBERTS
101546 LEWIS J ROBERTS
306139 KEVIN R ROBINSON
405584 MARY A ROBINSON
422246 RICHARD E ROBINSON
426702 TAMMY J ROBINSON
401302 TODD NATHAN ROBINSON
431315 KYLE A ROCHA
420983 TIMOTHY MICHAEL ROCHE
430802 PATRICIA MARIE ROCOURT
414104 EINAR M ROD
415985 JOHN M RODIA
415117 ANGELES T RODRIGUEZ
303396 SABINO RODRIGUEZ III
372223 ROGER M RODWIN
403799 R P ROECKER
404306 DEBBIE LYNN ROFFMAN
439585 SCOTT JARED ROG
426439 WILLIAM FRANCIS ROGEL
420384 HEIDI BETH ROGERS
300849 ILENE S ROGERS
431975 PATRICK JOSEPH ROHAN
402340 THOMAS EDWARD ROHAN JR
431317 HEATHER MAIREAD ROHDE
422962 SHARINA TALBOT ROMANO
308256 JILL A ROMER

407764 PATRICK NICHOLAS RONA
437354 ASHKON ROOZBEHANI
407298 DEIRDRE CAHILL RORICK
426723 AMYE M ROSA
304929 PETER J ROSA
301736 JERRY P ROSCOE
405487 EDWARD LAWRENCE ROSE
051145 JOHN ROSE JR
402342 KEITH ANTONIO ROSEBORO
428150 BENJAMIN ERIC ROSEN
372194 HARRIET B ROSEN
401527 FREDERIC ROSENBERG
404144 GLEN LOUIS ROSENBERG
405413 LISA KOFF ROSENBERG
436356 RACHAEL ROSENBERG
401526 STEVEN LAWRENCE ROSENBERG
402343 ALAN ASA ROSENFELD
304939 DAVID ERIC ROSENGREN
427456 JOHN BUTTLER III ROSENQUEST
429438 JESSICA ROSENRAICH
372206 DAVID Z ROSENSWEIG
430808 MAXWELL DAVID ROSENTHAL
424357 AMY THOMAS ROSS
405493 ANTHONY J ROSS
308257 BARBARA DANETZ ROSS
420387 LENWOOD M ROSS JR
372171 MALCOLM A ROSS
407526 ROBERT PHILIP ROSS
402148 ANGELA MARIE ROSSITTO
307468 TANINA ROSTAIN
410568 IAN ROBERT ROTH
051910 KATALIN ROTH
409488 LINDA ROTH
417577 MICHAEL A ROUSSOS
426646 MONCIE ROWTHER
052095 JEFFREY A ROZEN
415263 JAMIE LYN RUBIN
414812 STEVE RUBINSHTEYN
422257 ERIC WILLIAM RUBINSTEIN
438659 THEODORE JOHN RUCCI
307764 JEFFREY KEITH RUCKER
307272 KEITH BRIAN RUDICH
305737 WILLIAM PETER RUFFA
372147 SANFORD L RUGEN
404446 SARAH RUMAGE
420993 ANTONETTE RUOCCO
309317 JOSEPH L RUSCITO
414655 JAMES JOSEPH RUSH
303145 MARY ANN RUSH
052364 WILLIAM B RUSH
400635 DANIELE RUSKIN
402414 ALLAN DAVID RUSSELL
427306 JESSE DAVID RUSSELL
419848 KEVIN MICHAEL RUSSELL
303279 MATTHEW MORISON RUSSELL
425798 MYCHEL KEMA RUSSELL-WARD
411384 EILEEN M RUSSO
439762 JOCELYN MARIE RUSSO
372159 RICHARD WOODSON RUTHERFORD
414458 SUZZETTE BAGAYBAGAYAN RUTHERFO
052471 ARNOLD RUTKIN
421493 HOLLY L RUTKO
414217 ANTHONY REJEAN RUTLEDGE
052498 ATHERTON B RYAN
052551 DANIEL B RYAN
432477 DANIEL RICHARD RYAN JR
430818 LEIGH H RYAN
411278 TARA C F RYAN
305740 THOMAS J RYAN
101206 THOMAS J RYAN III
408738 ELIZABETH A RYCHLING
303032 KATHLEEN A SABO
052770 THOMAS SACCO
052779 STEPHEN P SACHNER
418403 JENNIFER L SACHS
052935 KALMAN A SACHS
409803 PETER WILLIAM SACHS
422259 JENNIFER ALISE SADAKA
428615 KEVIN RYAN SAHAIRAM
440255 MICHAEL DAVID SAILY
305475 ELYN R SAKS
303282 RICARDO SALAMAN
411518 KAMIL MARC SALAME
407533 EILEEN SALATHE
425203 RACHEL E SALAZAR
415892 MATTHEW SALIBA
426603 ELIZABETH SALSEDO
406912 LEE JAY SALTZMAN
053355 FRANK SALZ
408742 CATHERINE ALICIA SAMMARTINO
430825 JANE SAMPEUR
413765 TEJASH V SANCHALA
419369 BETZABETH SANCHEZ
303424 JONATHAN SANCHEZ-JAIMES
302054 JON LESLIE SANDBERG
402798 MARK DAVID SANDERS
413022 DOUGLAS ROY SANSTED
100687 ALFRED SANTANIELLO JR
421000 MICHELLE L SANTORO
400880 CARLOS MANUEL SANTOS
403468 ROBERT A SANVILLE
305477 JUDITH A SARATHY
426504 PAUL A SARKIS
407138 CHRISTOPHER JOHN SASSO
101727 DAVID SAUER
372129 BRIAN LANCE SAUERTEIG
409312 STEVEN R SAUNDERS
421514 MICHAEL JOHN SAUV
373940 LAURENCE ARTHUR SAVAGE
402799 RICHARD PAUL SAVITT
423683 ROBERT A SCALERA III
426673 ROBERT VERNE SCALISE
407534 JENNIFER LYNN SCHANCUPP
434172 JEFFREY WOLF SCHATZ
303033 ELIZABETH J SCHEFFEE
305342 SCOTT NEAL SCHELL
410354 TRISHA RENEE SCHELL-GUY
409133 DONALD JOSEPH SCHELLHARDT
408072 JOHN K SCHERER
404349 MARSHALL M SCHERER
407139 HARRY BENJAMIN SCHESSEL
308572 THOMAS SCHEUER
308085 PAULA L SCHIFFER

304763 ELIZABETH SCHLAFF
424362 RUTH M D SCHLEIFER
405254 ALAN THOMAS SCHMIDLIN
419853 BRIAN T SCHMIDT
054532 NANCY L SCHMIDT
410355 MELANIE CAREN SCHNOLL-BEGUN
371871 RALPH F SCHOENE
424364 STEPHEN MATTHEW SCHONHOFF
403729 GREGG BARNET SCHOR
054675 ROBERT A SCHPERO
306810 PAUL ROBERT SCHREYER
427309 ZACHARY GERMANO SCHUCK
101661 DAVID L SCHULMAN
309028 KATHLEEN BRADY SCHULTE
427928 JESSICA MICHELE SCHUR
401536 ALAN GREGORY SCHWARTZ
309345 DAVID ARLEN SCHWARTZ
403731 DAVID M SCHWARTZ
055042 DWIGHT OWEN SCHWEITZER
438514 DONALD J SCIALABBA
415993 ROBERT A SCOFIELD
407212 CAROL A SCOTT
419259 HEATHER M SCOTT
309573 JACK RALPH SCOTT
308919 MARK SCOTT
438234 MICHAEL HATHAWAY SCOTT
055419 HOMER G SCOVILLE
402223 ROBERT PHILIP SCOVILLE
406917 CRYSTAL LIZETTE SCREEN
414662 SABRINA ELAINE SEAL
409146 DOUGLAS MITCHEL SECULAR
308785 JOHN MICHAEL SEDENSKY
402130 SUSAN M SEDENSKY
427312 BEN VINING SEESSEL
410388 MIGUEL ANGEL SEGARRA
412937 MICHELLE SEIDEMAN
427855 ALLISON SEIDMAN
055757 RICHARD H SEIDMAN
309350 VANESSA RAE SEIDMAN
302378 EILEEN SCHOR SEIGER
371908 PETER M SEIGLE
414336 GREGORY JOSEPH SEITZ
412886 SENGAL MICAEL SELASSIE
421011 STEVEN JOSEPH SELBY
417585 LORI SEMRAU
415842 HOLLY M SENA
304790 WILLIAM S SEPLOWITZ
440933 VALERY CURY SEPULVEDA
421519 PATRICIA ANN-MARGARET SERAFINN
439263 JOHNATHAN P SEREDYNSKI
422273 MICHAEL PAUL SERFILLIPPI
410357 GEORGE E SERMIER
402463 GLENN M SERRANO
404730 WADE A SEWARD
400885 PETER F SEXTON
371928 SAMUEL JAMES SFERRAZZA
060759 THERESA M SGUEGLIA
440940 TREVOR MICHAEL SHACKETT
418302 WALTER AMBROSE SHALVOY JR
309354 DENISE L SHANE
304731 ELLEN M SHANLEY
309677 LANCE PAYNE SHANNON
371799 TERENCE P SHANNON
414337 ANDREW IRWIN SHAPACK
309915 DAVID MARK SHAPIRO
407147 DAWN CAREN SHAPIRO
423699 ERIC LEE SHAPIRO
402288 WARREN JAY SHARE
428494 VARSHA MATHUR SHARMA
437850 COLLEEN B SHAUGHNESSY
406115 LAURENCE SHAW
410844 CARRIE ANNE SHAY
402151 ELIZABETH PLANTZ SHAY
310052 GEORGE MICHAEL SHEA
056735 WILLIAM T SHEA
407939 CHARLES R SHEARD
417868 DOUGLAS D SHEEHAN
414224 THOMAS MARK SHEEHAN
416246 STEVEN CARL SHEINBERG
435396 MONA SHELAT V
304741 PHILIP ARTHUR SHELTON
430851 HEMA V SHENOI
373780 HENRY LONGDON SHEPHERD III
407305 FELICE DIANE SHERAMY
423925 FRANK A SHERER III
412776 VICTOR SHERMAN
405263 PAUL ANTHONY SHERRINGTON
436370 MALIKA B SHETH
410935 WEI SHI
304750 DAY R SHIELDS
057333 ALAN H SHIFF
426755 DAVID ERIC SHIFREN
433249 JOHN K SHIN
407149 SUSAN CHUNG-WON SHIN
424370 VICTORIA S SHIN
426414 ROBYN L SHINDLER-RASHID
421965 NYDIA SHIPMAN
439201 DYLAN THOMAS SHIRLEY
057530 I FREDERICK SHOTKIN
436493 ROBERT ALLAN SHRAGE
415845 STEFANIE LEE SHUB
420157 CLAIRE LOUISE SHUBIK
427844 JULIA MARGARET SHULLMAN
307605 TERI L SHULMAN
413049 ALEXANDRA M SHULTZ
306626 JEFFREY S SHUMEJDA
057619 IRVING B SHURBERG
408073 CHRISTOPHER MARC SHUST
418558 DANIELLE LEE SICARI
057702 JOSEPH A SICILIANO
304724 GREGOIRE ROBERT SIDELEAU
403227 HOWARD FREDRICK SIEGEL
307607 JOSHUA D SIEGEL
430082 RANDI ALISON SIEGEL
427901 ALEXIS C SIEKMAN
417037 JULIETTE SIGNORE
057775 IGOR I SIKORSKY JR
427997 LAHNY ROSE SILVA
426583 KAREN ESTHER SILVER
426336 FELIX H SILVERIO
408861 RANDI J SILVERMAN
300785 STANLEY P SILVERSTEIN
432700 JULIANNE SIMEONE

430084 LAUREN CORI SIMON
058375 MARTIN SIMON
441686 MARY JESSICA SIMON
417869 WILLIAM A SIMONS
409318 DONNA LEA SIMS
306227 RUSSELL W SIMS
411746 SHAWN MERRILL SIMS
402347 JEANNE M SINCLAIR
406924 DAVID E SINGER
401978 HOWARD MARC SINGER
404234 LAURIE ANN SINGER
410360 JOHN JOSEPH SINISKO
424372 ROBIN STEPHANIE SINTON
302194 STEVEN PAUL SION
058515 JOSEPH J SIRICO
058520 LOUIS J SIRICO JR
405769 LESLEY CAROLE SISKIND
421026 JOHN BYRON SITARAS
439205 ANDREW P SIUTA
300857 WILLIAM E SKARREN
371758 JOHN THOMAS SKINNER
435773 LINDSAY HOPE SKLAR
420398 BRENT ZEFF SKOLNICK
436952 ROBERT CHRISTOPHER SKRAMSTAD
429479 SCOTT EDMUND SKRYNECKI
422952 BRIAN C SLATER
309650 JOEL SLAWOTSKY
308792 RICHARD CHARLES SLISZ
101212 SHAUN M SLOCUM
371735 ANTHONY W SLUSARZ JR
416858 ADAM EVAN SMALL
410197 JODIE RACCIO SMALL
400631 JOHN PETER SMARTO
306157 JACEK I SMIGELSKI
413344 ALLISON LOUISE SMITH
418823 BARBARA CECELIA SMITH
422953 CHARNINA RUNELLE SMITH
417733 CHERYL A SMITH
422292 COLIN DAVID SMITH
430862 COURTNEY PEIRCE SMITH
371698 DONALD JOE SMITH JR
433661 JANICE KEAYS SMITH
301737 JEFFREY A SMITH
304012 JENNIFER CLAIRE SMITH
438246 KHIREE T SMITH
371707 LORENZO SMITH JR
424374 MICHAEL J SMITH
408809 NANCY JOY SMITH
410846 RODGER FIELD SMITH JR
307615 S STEWART SMITH
303148 SANDRA KAY SMITH
412892 SUZANNE LISA SMITH
409400 THOMAS A SMITH
410813 THOMAS ANDREW SMITH
371714 THOMAS LEWIS SMITH III
407543 TONI M SMITH-ROSARIO
436426 JESSE DAVID SMOLIN
413647 STEVEN R SMTIH
435112 BRIGID MADEL DAVIS SNOW
414461 DAVID MARK SOBEL
402592 MOJGAN SOBHANI
417311 JENNIFER FREDI SOBOL
409051 MARK MICHAEL SOCHA
417870 MATTHEW AARON SOKOL
059988 MARK S SOLAK
408935 LISA C SOLARI
409583 THOMAS R SOLI JR
422299 JOSEPH MICHAEL SOLIMENE
415167 LINO A SOLIS
413139 ADAM CRAIG SOLOMON
411045 RANDALL ALAN SORSCHER
060148 ELLEN L SOSTMAN
306161 GREGORY JON SOUTHWORTH
308197 KAREN E SOUZA
060218 ELIZABETH K SPAHN
303098 ALAN D SPARGO
415998 VICTOR JOHN SPATA JR
429487 ANTHONY JOHN SPATH
427945 SERGIO ANTHONY SPAZIANO
060333 JOHN A SPECTOR
437875 WILLIAM STEVEN SPIEGEL
430536 LAURA JILL SPILLANE
300788 FRANK P SPINELLA JR
433020 DOMINIC SPINELLI
408103 PETER CHARLES SPODICK
419307 MOIRA ANNE SPOLLEN
400894 LORING NOEL SPOLTER
407963 JOSEPH W SPROULS
408763 DAVID MIGUEL SPRUANCE
404027 DAPHNE DARYA SRINIVASAN
429493 HEATHER CHRISTINE ST GERMAIN
410364 JACQUELINE A ST JOHN
371575 ROGER J STALOWICZ
424529 PETER R STAMBLECK
301887 BLAKE D STAMM
308479 WILLIAM B STAMMER
422958 TARA LYN STANCHFIELD
060805 PAUL STANDISH
408235 MITCHELL ANTHONY STANLEY
419870 GERALD JOSEPH STANTON
402349 ROBYN B STANTON
427833 KATHLEEN CASEY STAPLETON
309932 PAUL HOWARD STARICK
060917 NOAH STARKEY
306166 AMY LOUISE STAROBIN
425733 GREGORY WALTER STARON
304646 BARBARA DEE STARR
413569 CAROLYN MARGUERITE STARR
414346 KENDRA L STEARNS
439906 MARGARET SKARBEK STEFANDL
304648 HOWARD E STEIN
423107 JEREMY IAN STEIN
400897 JOSHUA OWEN STEIN
434199 MATTHEW A STEIN
401322 DARRYL ROSS STEINBERG
433023 LEANNE HEATHER STEINBERG
309863 DAVID MILLER STEINER
432489 SUSAN ELIZABETH STELLATO
405990 CAROLYN PAULAMARIE STENNETT
405514 JOAN T STEPHAN
400660 TAMARA STEPTON
307624 ARTHUR RICHARD STERN
061224 KENNETH D STERN

421043 MARK T STERN
309382 MIRIAM STERN
309383 ROBERT ALLAN STERN
401324 JEANNE WILSON STEVENS
418278 MATTHEW WILLIAM STEVENS
416250 TARA CONSTANCE STEVER
401325 ANNETTE Y STEWART
305488 CAROLYN SMITH STEWART
421044 NADIRA SHANI STEWART
412341 HEATHER ALLISON STIERS DORN
412940 MOLLY CUSSON STILES
401082 ELIZABETH W STODDARD
403013 HARRY MCKINNEY STOKES
406148 MICHAEL ERIC STONE
417315 JEFFREY EVAN STORCH
422313 JOHN STORR
416251 HENRY CLAYTON STRADA
371633 WILLIAM ERNANI STRADA
435923 RYAN P STRANKO
402807 MICHAEL ATWATER STRATTON
305782 GLORIA A STRAZZA
101896 JEFFREY H STRICHARTZ
371639 WILLIAM F STRIEBE JR
422315 DAVID R STROBEL
412895 JEFFREY MICHAEL STROLE
409681 THOMAS JAMES STRONG
371642 STANLEY IRA STROUCH
411755 STEPHEN IAN STROUD
430884 JACOB ZELL STUDENROTH
430091 MELISSA STACY STUDIN
421050 P TOBIAS STULL
309387 MARGARET RUTH STYSLINGER
062142 JOEL SUISMAN
414319 ERIN M SULLIVAN
409056 JAMES LAWRENCE SULLIVAN
062192 JOHN B SULLIVAN
309389 KATHERINE MCG SULLIVAN
409404 KEVIN JOSEPH SULLIVAN
102785 PAULA D SULLIVAN
307630 TERENCE M SULLIVAN
403493 NANCY RUBIN SUSSMAN
421537 JOELLE ANNIQUE SVAB
401649 JAMES SWAINE
431779 SARA ELIZABETH SWAN
414673 ROBERT D SWARTOUT
425246 SHELLY ANNE SWEATT
404313 JOHN DEVEREUX SYZ
425254 CHRISTOPHER RICHARD SZEFC
418279 ANNA SZIKLA
412545 WILLIAM ENGLE TABER III
438669 RADHIKA TAHILIANI V
302633 KAREN ANN TAKACH
413030 AMIT TANDON
415586 JEANEAN M TARANTO
063060 HARGREAVES V TATTERSALL III
063070 SHEILA TAUB
303398 BRIAN B TAYLOR
435925 CHARIS ELISABETH TAYLOR
304532 JANE CRUMP TAYLOR
439219 MICHAEL W TAYLOR
420411 OCTAVIA TAYLOR
407794 SUZANNE KATHERINE TAYLOR
428584 THERESA L TEIXEIRA
414496 CARMELA LINA TELESE
310012 JAN ANITA TEMPLEMAN
063280 JOHN E TENER
439222 HANNAH JANE TENISON
429509 MILANA TEPERMAYSTER
434804 BENJAMIN SCOTT TERNER
309395 ROSA ANNA TESTANI
404115 CHRISTINE M TETREAULT
416292 JOHN BOYD THACHER
426424 JENNIFER GEETHA THAMPAN
419382 MATTHEW THOMAS THERIAULT
373948 WILLIAM JOHN THOM
404188 AUDREY D THOMAS
101851 DAVID R THOMAS
412054 JODI M THOMAS
371343 JOHN EDWARD THOMAS
433034 KENNETH A THOMAS
305494 KENNETH L THOMAS
412494 RUTH MARTHA THOMAS
414235 PETER JOSEPH THOMPSON
410213 RICHARD LLOYD THOMPSON II
404200 BRENDA MARIE THOMSON
423737 BROOKE MEAGAN THOMSON
430901 ROBERT GLEN THOMSON
371350 GREGORY LEE THORNTON
428091 PATRICK DAVID THORNTON
412343 JOHN PAUL THYGERSON
422326 WILLIAM MICHAEL TIERNEY
304524 RIEFE TIETJEN
100832 CHARLES M TIGHE
422967 KATHERINE ANNE TIGHE
433035 LOWELL TILLETT
405521 VICTOR TIMOSHENKO
304027 CHRIS TIMPANELLI
409493 WILLIAM PERRY TOCCHI
303800 DAVID Y TODD
419261 KEVIN L TODD
306821 MARGARET BLAKE TODD
307688 KIMBERLY RONDA TODT
401346 BETTY NORA TOEPFER
302866 NORMAN PAUL TOFFOLON
417007 THOMAS JOSEPH TOLAN
426488 HUGO ANTHONY TOMASIO
432498 JOHN JOSEPH TOMASZEWSKI
400904 LAUREN M TOMAYKO
439941 JULES RUSSELL TORABY
434218 ALYSSA M TORNBERG
404977 PATRICIA E TORRENTE
427331 MICHELLE SUSAN TORRES
405030 FRANK R TORTORA
433036 ASHLEY TOTORICA
421544 ALAN ERNEST TRACY
305304 IRVING E TRAGER
417434 MARY HIRO TRAINER
416000 LESTINA CONSTANCE TRAINOR
401349 JOSEPH ALEXANDER TRANFO
409407 LAWRENCE RICHARD TRANK
064326 STEPHEN TRAUB
418851 CAROLYN M TREISS
422941 SARAH ROQUE TRESSLER
308659 CLAUDIA J TRIGGS

432499 HOAN KHAI TRINH
403241 MARGARET ANN TRIOLO
428689 PATRICK JAMES TROY
417740 WAYNE A TRUMBULL
401544 LEE-ANN RENEE TRUPIA
407175 GEORGE JOHN TSIMIS
425269 GREGORY A TSONIS
305497 JUDITH BALL TUCKER
307291 HARRY TUN
404753 SHAWNA RAE TUNNELL
403837 MICHAEL JAMES TUOHY
431425 JOSEPH D TURANO
411410 KATHLEEN LOUISE TURLAND
064753 BERTLEN F TURNER
306179 ANNE STUART TUTTLE
412059 THOMAS WILLIAM TVARDZIK
403503 JAMES SCOTT TWADDELL
411050 TIMOTHY ALLING TWINING
417009 CHRISTOPHER JAMES TWOMEY
417611 JULIAN T TYNES
409323 CHRISTOPHER UHL
440936 CHIDINMA UKONNE
407805 CHRISTOPHER FRANCIS ULTO
307635 ROBERT A UNGAR
065029 STEVEN F UNGER
409061 JOSEPH DANIEL URADNIK
431426 NICOLE-CELINA URBONT
413508 FRANCIS CHRISTOPHER URZI
421083 PAULA-MARIE USCILLA
305791 HENRY JOHN USCINSKI JR
307926 DOMINICK UVA
410848 LOUIS F VALENTI
101578 JOHN W VALENTINE
423750 TRACI JO VALERY
404756 LOUISE VAN DYCK
408868 JOSHUA WALTER VAN HULST
304102 CARMEN ESPINOSA VAN KIRK
405281 LANGDON VAN NORDEN JR
411411 CAROLINE ANN VAN RYN
430913 JOHN HARRISON VANARSDALE
307638 STEVEN TODD VANDERVELDEN
419556 JESSICA BANNON VANTO
411761 DIANA DELLAVOLPE VARGA
303805 STEVEN WILLIAM VARNEY
404757 DAVID JOHN VAROLI
405283 THOMAS FRANCIS VASTI III
400641 CHRISTOPHER CHARLES VAUGH
417011 LORILEE ANN VAUGHAN
308285 J A VAUTOUR
404238 NANCY VAVRA
416397 KRISTIN MARIE RAFFONE VAZQUEZ
413773 STEPHEN THOMAS VEHSLAGE JR
415861 WENDY L VEILLEUX
433044 STEVEN CHRISTOPHER VELARDI
418852 JASON M VENDITTI
410373 GERALD A VENTERINA
405523 ANN MARGARET VERMES
413194 TINA CHERICONI VERSACI
412899 VINCENT W VERSACI
432719 EMILY H VERSTEEG
307292 J RUSSELL VERSTEEG
426552 JARED DANIEL VERTERAMO
437400 CHELSEA KATHRYN VETRE
413364 DENISE INEZ VIERA
309995 ANTHONY PETER VIGNA
065450 THOMAS L VIGUE
406623 GIL HOWARD VILKAS
414031 ELPIDIO VILLARREAL
423754 MARK ERIC VILLENEUVE
414685 PAUL B VIOLETTE
407806 NICOLE A VISAGGI
309406 MARY LOUISE VITELLI
434473 MIKHAEL VITENSON
439229 IZICK VIZEL
407807 MELINDA HERVEY VOLLMER
370895 PETER ERNEST VON ELTEN
439231 JONATHAN EDWARD VOSPER
400913 E CHARLES VOUSDEN
418565 GEMMA GABRIELLE WAANANEN
065802 KATHRYN M WACHSMAN
401554 RENA WACHTEL
403511 ANDREW JOHN WAGHORN
431343 BRIAN M WAGNER
421100 NATHAN JAMES WAGNER
405035 LOIS H WAGREICH
401556 BENJAMIN JAY WALDMAN
302875 MARY ELLEN WALKAMA
406498 JAMES QUENTIN WALKER
406005 KEVIN MICHAEL WALKOWSKI
411543 LISA NICOLE WALL
426691 BLAIR HARRISON WALLACE
414469 MICHAEL JOHN WALLACE
418283 MICHAEL RAYMOND WALLACE
422980 BEN E WALLERSTEIN
440395 ALLISON M WALSH
427343 BRENDAN FRANCIS WALSH
422355 DAVID ALLEN WALSH
300795 HENRY A WALSH JR
416004 JOHN PATRICK WALSH
423760 KAREN MICHELE WALSH
419230 MICHELLE PARKER WALSH
309411 ROBERT CARLTON WALSH JR
421102 ALECIA WALTERS-HINDS
413526 DONNA L WALTON
404760 BEVERLY I WARD
441214 CLAUDINE CECILIA WARD
406696 JOHN DAVID WARD
370842 LAWSON LEWIS WARD
404761 MARK BRIAN WARD
370843 THOMAS JOSEPH WARD
409989 NICHOLAS MICHAEL WARD-WILLIS
410227 DENISE MARIE WARNER
370845 JON P WARNICK
428614 ELIZABETH ANNE WARREN
405525 JENNIFER CYNTHIA WARREN
416259 JIMMY WARREN JR
424402 LIONEL DAVID WARSHAUER
405037 MONA R WASHINGTON
303814 WILLIAM K WASSERMAN
402296 DANIEL SCOTT WASSMER
309773 RAYMOND OLIVER WATERS JR
409067 BRIAN NEIL WATKINS
403515 JOHN MICHAEL WATKINS
411771 NGOZI BOMANI WATTS

066475 JONATHAN H WAXMAN
421107 JASON SANFORD WEATHERS
413146 MICHAEL DAVID WEBB
304129 SHARON D WEBB
404137 LISA W WEBBER
066575 MORTON M WEBBER
418065 RICHARD HOWARD WEBBER
303815 RICHARD G WEBER
100011 STUART A WEBSTER
101715 WILLIAM A WECHSLER
412385 GEORGE HENRY WEEKS
435438 WILLIAM HOWARD WEEKS JR
430923 LOWELL PALMER WEICKER III
406946 CARYN RENEE WEINBERG
411773 DAVID C WEINSTEIN
412386 ROBYNE STACI WEINSTEIN
303816 YERACHMIEL EPHRAIM WEINSTEIN
102301 ANDREW WEISS
308633 CLAUDIA S WEISS
067017 JEFFREY S WEISS
405288 MARC DAVID WEISS
407186 MICHAEL IAN WEISS
304141 WILLIAM OWEN WEISS
423009 AHRON WEISSMAN
414691 JENNIFER J WEITZ-CLANCY
418333 REPHOEL A WEITZNER
418567 TIMOTHY PAUL WELCH
308808 ARTHUR STANTON WELLS
413147 JENNIFER ANNE WELLS
412065 MICHAEL J WELLS
419945 STEVEN L WELLS
410607 JUDITH F WERTHEIMER
300796 HOLLY RODGERS WESCOTT
402823 ARNOLD BERNARD WEST
438275 OLIVIA ASHLEY WEST
306976 JASON D WESTCOTT
400412 LAURA L WESTLUND
417617 GLENN EDWARD WESTRICK
304149 EDWARD C WETMORE
414243 JAMES WILLIAM WHALEN IV
400919 DIANE CAROL WHEELER
304065 CATHERINE LEWIS WHITAKER
304064 ANDREW CLAYTON WHITE
101969 JARVIS WHITE
304154 ROCHELLE LITOWSKY WHITE
416746 SCOTT WHITE
425712 WHITNEY LEIGH WHITE
302883 ELLEN EVANS WHITING
102931 JAMES L WHITING III
101449 PAUL B WHITMAN
067587 NORMAN E WHITNEY
430932 PAUL VINCENT WHITTY
436914 GABRIELLE ALEXANDRA WICHOWSKI
426233 JENNIFER PATRICIA WIDNESS
413370 MICHAEL JAMES WIEBER
302885 ROSALIND ZELDINA WIGGINS
304127 KATHRYN ANNE WIKMAN
434817 BENJAMIN ALDRICH WILES
429550 GEOFFREY BRIAN WILHELMY
100042 JOHN R WILLARD
412668 ANDREW CARTER WILLIAMS
410610 BRENDA WILCOX WILLIAMS
100115 DAVID S WILLIAMS
303289 DAVIDSON D WILLIAMS
427354 DEBRA A WILLIAMS
401570 ELVIN VINCENT WILLIAMS
405532 IVANA I WILLIAMS
424410 LENWORTH LESTER WILLIAMS
407192 MICHAEL ROBERT WILLIAMS
401569 SARAH JANE WILLIAMS
417438 TAYA NICOLE WILLIAMS
101735 THOMAS J WILLIAMS
370741 JAMES D WILSON
417439 JULIA WILSON
306199 LORI RENE WILSON
426636 TANYKA T WILSON
102899 THOMAS P WILSON
410951 TIMOTHY M WILSON
101930 PATRICIA WILSON-COKER
102533 RENEE F WINCHESTER
307656 ROBIN LISA WINICK
410861 LISA BESSEGHINI WINJUM
412348 MICHAEL JACOB WINSTON
068350 RICHARD L WINTER
412509 ERIK J WINTON
370727 ALFRED I WIRTENBERG
401572 STEPHAN WISLOCKI
409429 WILLIAM ROBERT WITCRAFT JR
102319 OTTO P WITT
428017 R MARTIN WITT
370694 PENROSE WOLF
429556 SARAH HOLLEY WOLF
416008 CATHERINE ANNE WOLFF
300787 RUSSELL THOMAS WOLFGANG-SMITH
441322 DAVID CAREY WOLL JR
400928 MARK JAY WOLLMAN
370698 RONALD WAYNE WOLSEY
400967 JAY THOMAS WOLTER
410237 TINA WOO
307517 BARBARA ANN WOOD
304074 JOHN DANIEL WOOD
068785 LAURENCE M WOOD
304128 SUSAN M WOOD
418710 DAVID ANDRE WOODARD
405043 JEFFREY S WOODARD
430941 JESSICA AISHA WOODHOUSE
414477 PAMELA LEILA WOODLEY
403554 GLENN D WOODS
403252 THERESE MARIE WOODS
418711 PAMELA WOODSIDE
409121 GREGORY WOZNIAK
304079 STEPHEN X WRIGHT
407566 JENNIFER LEIGH WRINN
425754 ANIA MARIA WROBLEWSKA
309514 SHANLON WU
405045 THOMAS CLINTON WYCKOFF
404770 ROBERT O WYNNE
420054 RAY ANDREW WYNTER
433572 YUJIA JULIA XIA
424412 FENG XU
416263 CHERI L YAGER
305810 ARTHUR I YANKOWITZ

424447 BONITA CHERYLYNN YARBORO
418713 MARK STEPHEN YAVINSKY
413554 KUANG-CHANG YEH
069180 BARRY J YELLEN
403766 RONALD R YEOMANS
410850 SUE CHONG YI
423783 DONNA LEE YIP
428088 NELS WALL YLITALO
414006 DAVID PHILLIP YON
405292 STEVEN JOSEPH YOUNES
434234 BRIAN CLAY YOUNG
403920 JOYCE H YOUNG
409306 MARY M YOUNG
300400 ROLAND FREDERIC YOUNG III
300402 STUART JAY YOUNG
413377 DONG YU HWAN
426346 ZHUANG YUAN
307703 JOHN YUASA
422986 ROBERT KEITH YULE
402826 JONATHAN DAVID ZABIN
401359 CHERIE LOUISE ZACKER
412068 ALBERT APGAR ZAKARIAN
411417 HARRIS JAY ZAKARIN
411434 MICHELLE LYNN ZAKARIN
303324 RICHARD JOSEPH ZAKIN
431429 SAWSAN Y ZAKY
307751 JOHN G ZANDY
415363 JURIS VILHELMS ZAULS
419390 JOSH PAUL ZEIDE
069708 MARTIN ZELDIS
417747 AVA L ZELENETSKY
415871 CHRISTOPHER J ZEMAN
307663 GARY BURTON ZENKEL
415873 ANTHONY VINCENT ZEOLLA
430947 ELIZABETH ERIN ZESSMAN
403257 MICHAEL A ZEYTOONIAN
426638 YUE ZHENG
306272 NOEL M ZIEGLER
305352 CATHERINE CORNELIA ZIEHL
429969 LISSA NYLA ZIEMKOWSKI
300428 CHARLES JOSLYN ZIFF
421135 ANNE ZIMMERMAN
309432 JENNIFER HOLLY ZIMMERMAN
429572 RYAN JACOB ZIMMERMAN
426675 STACIE ANN ZIMMERMAN
427827 DANIEL M ZINN
300436 CHRISTOPHER ZIOGAS
405534 CHARLES GEORGE ZISKIND
071350 HOWARD F ZOARSKI
433067 JOSEPH ZOCCALI
417748 ALAN FRANK ZOCCOLILLO JR
418013 PATRICIA F ZOCCOLILLO
403030 BARRY STEPHEN ZORNBERG
431439 VERONICA NIEVES ZORRILLA
300446 STEPHEN ALOYSIUS ZRENDA JR
433577 MATTHEW F ZUBA
300453 SHIMEN BARRY ZUDEKOFF
403259 ERIC MICHAEL ZYLA

Notice of Suspension of Attorney

Pursuant to Practice Book § 2-54, notice is hereby given that on 5/3/22 in docket number FBT CV22 6113849s Christopher Neil Overton, juris number 422916 of Bridgeport, CT was suspended from the practice of law in Connecticut for a period of 3 (three) years pursuant to § 2-40(h) of the Connecticut Practice Book, effective April 12, 2022.

Additional orders:

The respondent shall comply with Practice Book § 2-47B (Restrictions on the Activities of Deactivated Attorneys).

Any application for reinstatement shall be made pursuant to the provisions of Practice Book § 2-53.

The Court, (Stevens, J.)

Notice of Suspension

Pursuant to Practice Book Section 2-41(g), notice is hereby given that on May 17, 2022, in Docket Number HHD-CV 22-61547766 Deron D. Freeman (juris# 418625) of Hartford, CT is hereby suspended from the practice of law as of the date of this order until further court order.

The Office of Chief Disciplinary Counsel shall immediately notify the Chief Clerks of all Judicial Districts and Probate Court Administration of the respondent's suspension.

Pursuant to Practice Book § 2-64, Attorney Donald Howard of Rockville, Connecticut, Juris #432865, is appointed Trustee to take such steps as are necessary to protect the interests of respondent's clients. Specifically, the trustee will oversee notice, of the respondent's interim suspension, to all clients of the respondent's previous law firm. The notice shall provide the trustee's contact information and advise the clients that they may remain clients of the law firm or obtain successor counsel. The trustee will assist any clients in obtaining their legal file from the firm should they request to terminate representation with respondent's previous law firm.

The respondent shall not deposit to, or disburse any funds from, any clients' funds, IOLTA, or fiduciary accounts.

The respondent shall comply with Practice Book § 2-47B (Restrictions on the Activities of Deactivated Attorneys).

The respondent shall cooperate with the Trustee in all respects.

Susan Quinn Cobb
Presiding Judge

Notice of Reprimand of Attorneys

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

Reviewing Committee Reprimands

March 18, 2022: Nickola Jean Cunha – 417834

March 25, 2022: Paul S. Taub – 421061

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

Attest:

Michael P. Bowler
Statewide Bar Counsel

Notice of Disbarment of Attorney

Pursuant to Practice Book § 2-54, notice is hereby given that on 2/24/22 in docket number FBT CV16 6055908s Alfred J. Cali, juris number 420597 of Bridgeport, CT was disbarred from the practice of law.

Additional orders as to all counts:

1. The respondent shall comply with Practice Book § 2-47B (Restrictions on the Activities of Deactivated Attorneys).
2. Any application for reinstatement shall be made pursuant to the provisions of Practice Book § 2-53.

The Court, (Stevens, J.)

NOTICE OF PENDENCY OF REINSTATEMENT APPLICATION

In accordance with Section 2-53 of the Connecticut Practice Book, notice is hereby given that the following individual has filed an application for reinstatement to the bar:

Lawrence Dressler

The Standing Committee on Recommendations for Admission to the Bar of Fairfield County will commence a hearing on the above application on Thursday, June 16, 2022 at 9:30 am at Bridgeport Superior Court, 1061 Main Street, Bridgeport, CT 06604 and such future dates as are necessary to conclude the matter.

Please contact Kathleen M. Dunn, Chairperson (203-375-1433) for further information regarding the matter or if you have an objection to the application.

Appointment of Trustee

Pursuant to Practice Book § 2-64, on June 8, 2022 in docket number KNL-CV22-6055920-S Attorney Daniel L. King (Juris #433867), 53 Lafayette Street, Norwich, CT 06360, is appointed as Trustee to inventory the late Attorney Joseph Broder's (Juris #006287) files, secure his IOLTA account, take and review the office mail, and take such action as seems indicated to protect the interests of Attorney Broder's clients and to provide an accounting and report to the Court.

Robert R. Young
Presiding Judge

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 April 6, 2022:	
Richard W. Rew II	IsoPlexis Corp.
Certified as of April 8, 2022:	
Carol Kline Anderson	Mohegan Tribal Gaming Authority
Certified as of April 12, 2022:	
Kim C. Ramelow	Hartford Fire Insurance Company
Certified as of May 2, 2022:	
Laurie Newman	W. R. Berkley
Jessica L. Supernaw	XPO Logistics
Certified as of May 3, 2022:	
Scott M. Press	Linde, Inc.
Certified as of May 5, 2022:	
Christopher J. Scott	Colt's Manufacturing Co., LLC
Certified as of May 23, 2022:	
Alexander Bellino II	The Travelers Companies
Nicole A. Laskin	United Rentals, Inc.
Certified as of May 24, 2022:	
Melissa A. Williams	The Prudential Insurance Co. of America

Hon. Patrick L. Carroll III
Chief Court Administrator

NOTICE

Supreme Court Sessions

Notice is hereby given that the calendar of sessions for the next court year has been adopted.

Sessions last approximately two weeks and are subject to change. Any deviation from the calendar as adopted, will be noticed in the court's Docket.

The first day of each of the sessions for the 2022 - 2023 court year is as follows: September 7, 2022; October 11, 2022; November 14, 2022; December 12, 2022; January 9, 2023; February 14, 2023; March 20, 2023; and April 24, 2023.

Carl D. Cicchetti
Chief Clerk

Appellate Court Sessions

Notice is hereby given that the calendar of sessions for the next court year has been adopted.

Sessions last approximately three weeks and are subject to change. Any deviation from the calendar as adopted, will be noticed in the court's Docket.

The first day of each of the sessions for the 2022 - 2023 court year is as follows: September 1, 2022; October 3, 2022; November 7, 2022; January 3, 2023; January 30, 2023; February 27, 2023; April 3, 2023; and May 8, 2023.

Carl D. Cicchetti
Chief Clerk

Docket and Assignment Posting Dates for Supreme and Appellate 2022–2023 Court Years

Docket and case assignment information is available on the Judicial Branch website and at http://appellateinquiry.jud.ct.gov. The electronic posting on the Judicial Branch website is the official notice of the dockets and assignments except for incarcerated self-represented parties and individuals who have an exemption from e-filing who will continue to receive notice by mail. See Practice Book sections 69-1 and 69-3. Notice of the cases the Appellate Court determines should be considered on the court's motion calendar for dismissal or sanction will also be by mail. The information below provides docket and assignment posting dates for both courts for the 2022 – 2023 court year.

Supreme Court Docket	**Information available on or about**
First Term Docket	Posted to the website June 27, 2022
Second Term Docket	Posted to the website August 19, 2022
Third Term Docket	Posted to the website September 23, 2022
Fourth Term Docket	Posted to the website October 24, 2022
Fifth Term Docket	Posted to the website November 28, 2022
Sixth Term Docket	Posted to the website January 5, 2023
Seventh Term Docket	Posted to the website February 6, 2023
Eighth Term Docket	Posted to the website March 13, 2023
Supreme Court Assignment	**Information available on or about**
First Term Assignment	Posted to the website July 28, 2022
Second Term Assignment	Posted to the website September 15, 2022
Third Term Assignment	Posted to the website October 14, 2022
Fourth Term Assignment	Posted to the website November 18, 2022
Fifth Term Assignment	Posted to the website December 22, 2022
Sixth Term Assignment	Posted to the website January 26, 2023
Seventh Term Assignment	Posted to the website March 1, 2023
Eighth Term Assignment	Posted to the website April 6, 2023

. . . *continued*

Appellate Court Docket	**Information available on or about**
First Term Docket	Posted to the website July 12, 2022
Second Term Docket	Posted to the website August 22, 2022
Third Term Docket	Posted to the website September 27, 2022
Fourth Term Docket	Posted to the website November 8, 2022
Fifth Term Docket	Posted to the website December 13, 2022
Sixth Term Docket	Posted to the website January 19, 2023
Seventh Term Docket	Posted to the website February 27, 2023
Eighth Term Docket	Posted to the website April 3, 2023
Appellate Court Assignment	**Information available on or about**
First Term Assignment	Posted to the website August 11, 2022
Second Term Assignment	Posted to the website September 20, 2022
Third Term Assignment	Posted to the website October 25, 2022
Fourth Term Assignment	Posted to the website December 6, 2022
Fifth Term Assignment	Posted to the website January 11, 2023
Sixth Term Assignment	Posted to the website February 16, 2023
Seventh Term Assignment	Posted to the website March 24, 2023
Eighth Term Assignment	Posted to the website April 27, 2023