LAVINE, J., dissenting. The central issue in this appeal is whether certain of the constitutional rights of the respondent, a minor child, were protected as required by General Statutes § 46b-137 (a), which provides that both a juvenile and his or her parent or guardian must be advised of those rights and the implications of waiving them in order for the juvenile's statement to the police to be admissible in a court of law. See *In re Enrique S.*, 32 Conn. App. 431, 436, 629 A.2d 476 (1993). I conclude that the purpose of the statute was met when the respondent and his mother were advised and signed waiver or consent forms *prior* to the respondent's giving a statement to the investigating police officer on October 11, 2005. I, therefore, respectfully dissent.

I note the following facts and procedural history, in addition to those included in the majority's opinion. After the respondent gave a statement to the investigating police officer, Charles Hicking, on October 11, 2005, the then thirteen year old respondent was arrested and charged with several crimes.[1]

Prior to trial, on August 1, 2006, the respondent filed a motion to suppress the statement he gave to Hicking on October 11, 2005. In his motion to suppress, the respondent claimed that the statement was obtained in violation of § 46b-137 (a) and the rights afforded by the state and federal constitutions. Specifically, the respondent claimed that (1) he did not knowingly or voluntarily waive his right to remain silent, (2) his mother was not present when he made the statement to the police, (3) he and his mother were not advised of his constitutional rights *prior* to his giving a statement to the police, (4) his statement was the result of coercion by the police and (5) his mother never executed a parental consent form.

The court, *Fuger*, *J.*, held a hearing on September 28, 2006, and thereafter denied the respondent's motion to suppress. At trial before the court, *Graziani*, *J.*, the respondent objected to the introduction of his October 11, 2005 statement. Judge Graziani overruled the objection, stating that Judge Fuger's ruling was the law of the case, and admitted the October 11, 2005 statement into evidence. At the conclusion of trial, at which the respondent presented no evidence, Judge Graziani found the respondent guilty of reckless burning in violation of General Statutes § 53a-114 and making a false statement in the second degree in violation of General Statutes § 53a-157b.[2] The court adjudicated the respondent delinquent and sentenced him to six months of probation. The respondent appealed. Additional facts will be stated as needed.

I

The respondent claims on appeal that (1) his motion to suppress was improperly denied and (2) his October 11, 2005 statement improperly was admitted into evidence at trial. I disagree.

A

The respondent claims that Judge Fuger improperly denied his motion to suppress his October 11, 2005 statement pursuant to the plain language of § 46-137 (a). A familiar standard of review is applied "to a trial court's findings and conclusions in connection with a motion to suppress. A finding of fact will not be disturbed unless it is clearly erroneous in view of the evidence and pleadings in the whole record . . . . The conclusions drawn by the trial court will be upheld unless they are legally and logically inconsistent with the evidence. . . . [W]e engage in a careful examination of the record to ensure that the court's decision was supported by substantial evidence. . . . We give great deference to the findings of the trial court because it weighs the evidence before it and assesses the credibility of witnesses." (Internal quotation marks omitted.) *State* v. *Linarte*, 107 Conn. App. 93, 98, 944 A.2d 369 (2008).

The following additional facts are germane to my analysis. During the hearing on the motion to suppress, the petitioner placed into evidence the waiver form signed by the respondent, the consent form his mother signed and his October 9, 2005 statement. The petitioner also presented the testimony of Hicking and Kristan DiMauro, a Vernon police officer, who, on October 11, 2005, accompanied Hicking for field training purposes. DiMauro did not participate in the investigation but observed Hicking's interaction with the respondent and his mother. The respondent presented no evidence at the hearing and offered no case law in support of the claims raised in his motion to suppress. His counsel relied solely on the *plain language* of § 46b-137 (a) to suppress the statement of October 11, 2005.

The court denied the motion to suppress, finding that the respondent was not in custody at the time he gave the October 11, 2005 statement, and concluded that there was no constitutional requirement that he be advised of his right to remain silent. The court also found that the interview process was not deceptive, that it was straightforward and that Hicking did not violate the respondent's constitutional rights. The court addressed the respondent's claims pursuant to § 46b-137 (a), finding that the respondent had given his statement in the presence of his mother. In addressing the argument of the respondent's counsel that the court look at the plain meaning of the statute, the court found that "the facts in this case are clear. There was an advisement on October 9, which was prior to the taking

of the statement on October 11. So, the statute has therefore been complied with as to the plain language of the statute."

The respondent's principal claim on appeal is that by denying his motion to suppress, the court violated § 46b-137 (a). That subsection provides in relevant part: "Any admission, confession or statement, written or oral, made by a child to a police officer . . . shall be inadmissible in any proceeding concerning the alleged delinquency of the child making such admission, confession or statement unless made by such child in the presence of his parent . . . and *after* the parent . . . and child have been advised (1) of the child's right to retain counsel, or if unable to afford counsel, to have counsel appointed on the child's behalf, (2) of the child's right to refuse to make any statements and (3) that any statements he makes may be introduced into evidence against him." (Emphasis added.) General Statutes § 46b-137 (a). The respondent does not contend that Hicking failed to comply with the statute on October 9, 2005, when he obtained the respondent's first statement. He contends, however, that because Hicking failed to readminister the constitutional advisements and to obtain another set of waivers from the respondent and his mother, he failed to comply with the statute when he obtained the October 11, 2005 statement, and, therefore, the statement is inadmissible.

The respondent offers no case law to support his argument that Hicking was obligated to readvise him of his rights and obtain another waiver and consent form. On the basis of the undisputed facts and the plain language of the statute, I conclude that because Hicking obtained the respondent's October 11, 2005 statement *after* he had advised the respondent and his mother of the respondent's rights and obtained a written waiver from the respondent and a consent from his mother, the court properly concluded that Hicking complied with the statute and that the statement was admissible.

What a statute requires is a question of statutory construction; see *State* v. *Winer*, 286 Conn. 666, 676, 945 A.2d 430 (2008); a question over which a reviewing court exercises plenary review. See *State* v. *Marsh & McLennan Cos.*, 286 Conn. 454, 464, 944 A.2d 315 (2008). "The process of statutory interpretation involves the determination of the meaning of the statutory language as applied to the facts of the case, including the question of whether the language does so apply. . . .

"When construing a statute, [a court's] fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, [a court seeks] to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs [the court] first

to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *State* v. *Marsh & McLennan Cos.*, supra, 286 Conn. 464–65.

I agree with the majority that § 46b-137 (a) is ambiguous given that "[t]he test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Small* v. *Going Forward, Inc.*, 281 Conn. 417, 422, 915 A.2d 298 (2007). I do not agree, however, that the statute is ambiguous because the word *after* is susceptible to more than one reasonable interpretation. Webster's Third New International Dictionary gives five definitions of the preposition *after*. Only one definition applies in the context of § 46b-137 (a): "later than a particular time or period of time." Webster's Ninth New Collegiate Dictionary defines *after* as "behind in place; subsequent to in time or order." Clearly, the statute requires that an advisement must be given and waivers obtained before an admissible statement is taken from a child. I conclude that the statute is ambiguous, however, because it does not address the length of time that permissibly may pass between the time the juvenile is advised of his rights and signs a waiver and the time a child gives a statement that is admissible.

"It is a principle of statutory construction that a court must construe a statute as written. . . . Courts may not by construction supply omissions . . . or add exceptions merely because it appears that good reasons exist for adding them. . . . The intent of the legislature, as this court has repeatedly observed, is to be found not in what the legislature meant to say, but in the meaning of what it did say. . . . It is axiomatic that the court itself cannot rewrite a statute to accomplish a particular result. That is the function of the legislature." (Internal quotation marks omitted.) *Doe* v. *Norwich Roman Catholic Diocesan Corp.*, 279 Conn. 207, 216, 901 A.2d 673 (2006).

In this case, the respondent gave an inculpatory statement to Hicking after the respondent and his mother had been advised of the respondent's constitutional rights and the respondent signed a waiver and his mother a consent form. Hicking obtained the respondent's October 11, 2005 statement consistent with the requirements of the plain language of the statute. If the legislature wanted to limit the time within which an admissible statement could be taken, it could have

included such language in the statute. See *In re Enrique S.*, supra, 32 Conn. App. 435–36 (§ 46b-137 [a] prescribes no specific procedure but merely requires advisement be imparted to both child and his or her parent or guardian; as long as juvenile and parent or guardian have heard and understand warnings, statute is satisfied).

The petitioner argues that by amending the language of the statute from "at the time of" to simply "after," the legislature expressed its intent *not* to require subsequent warnings. This change, the petitioner argues, indicates the legislature's intent to expand the time frame within which an officer may take an admissible statement relative to when he or she advises the juvenile and his or her parent or guardian of the juvenile's rights. Whether one accepts the petitioner's argument or not, an examination of "the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter"; (internal quotation marks omitted) *Windels* v. *Environmental Protection Commission*, 284 Conn. 268, 294–95, 933 A.2d 256 (2007); provides no indication whatever that the legislature intended that the advisement be readministered in circumstances such as those presented in this case or any other case.

Section 46b-127 (a) was enacted in 1967 in response to the United States Supreme Court's decision in *In re Gault*, 387 U.S. 1, 30, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967) (juvenile proceedings " 'must measure up' " to essentials of due process and fair treatment). "The warnings required by § 46b-137 (a) are equivalent to the *Miranda*[3] warnings. . . . The purpose of the *Miranda* warnings is to enhance [a juvenile's] ability to exercise fifth amendment rights knowingly, intelligently and voluntarily. . . . Thus, the purpose of the § 46b-137 (a) warnings is to help [a juvenile] make a valid decision to speak or remain silent. . . . Provided both the [juvenile] and the [juvenile's] parents or guardian receive that information, the purpose of § 46b-137 (a) is achieved." (Citations omitted.) *In re Enrique S.*, supra, 32 Conn. App. 436. If the requirements of § 46b-137 (a) are the equivalent of *Miranda* warnings, then the law guiding the administration of *Miranda* warnings logically should guide the administration of warnings under § 46b-137 (a).

The United States Supreme Court has rejected a per se rule that warnings regarding constitutional rights must be given repeatedly. See *Wyrick* v. *Fields*, 459 U.S. 42, 103 S. Ct. 394, 74 L. Ed. 2d 214 (1982). This court in *State* v. *Marshall*, 83 Conn. App. 418, 850 A.2d 1066, cert. denied, 271 Conn. 904, 859 A.2d 564 (2004), summarized the decisions of federal courts that have considered whether the passage of time and a change of

circumstances and interrogating authority demonstrate that a waiver was not knowing, intelligent and voluntary. Id., 426. "The courts have generally rejected a *per se* rule as to when a suspect must be readvised of his rights after the passage of time or a change in questioners." (Emphasis in original; internal quotation marks omitted.) Id.

B

My conclusion that Hicking complied with the plain language of § 46b-137 (a) does not end my analysis of the respondent's claim that he was denied due process as a result of Hicking's failure to advise him of his rights on October 11, 2005. The totality of the circumstances test is applicable to the waiver by a juvenile of his rights pursuant to *Miranda*. See *State* v. *Perez*, 218 Conn. 714, 728, 591 A.2d 119 (1991). "[The] totality-of-the-circumstances approach is adequate to determine whether there has been a waiver even where interrogation of juveniles is involved. . . . This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights." (Internal quotation marks omitted.) Id., 725, quoting *Fare* v. *Michael C.*, 442 U.S. 707, 725, 99 S. Ct. 2560, 61 L. Ed. 2d 197 (1979). An appellate court reviews a trial court's finding that a juvenile's waiver was voluntary, intelligent and knowing by searching the record for substantial evidence that supports the court's finding. *State* v. *Perez*, supra, 728.

The record in this case reveals the following. Before interviewing the respondent about the incident that occurred on October 9, 2005, Hicking orally explained to the respondent and his mother his rights with regard to the statement and read the forms to them before they signed them.[4] The respondent's mother signed two parental consent forms, one on behalf of the respondent and another on behalf of the respondent's brother, C, who also was involved in the incident.[5] Both the respondent and his mother initialed each of the lines adjacent to the rights listed on the forms. They each signed their respective forms at the bottom of the page.

In this case, the respondent argues that he was coerced or misled, citing Hicking's testimony at the suppression hearing, which the respondent claims was evasive as to whether Hicking had threatened the respondent with incarceration or detention. The court found, however, that the "interview process was not deceptive. It was straightforward . . . ." The respondent also argues that Hicking may have employed a coercive tactic of telling the respondent that there was a videotape of him igniting the cardboard when no such videography existed. Even if this accusation was true, the use of false representations "are common investigative techniques and would rarely, if ever, be sufficient

to overbear the defendant's will and to bring about a confession . . . ." (Internal quotation marks omitted.) *State* v. *Pinder*, 250 Conn. 385, 423, 736 A.2d 857 (1999); see also *In re Jonathan M.*, 46 Conn. App. 545, 552, 700 A.2d 1370 (fact that detective and mother told juvenile they knew he was lying did not constitute coercion undermining trustworthiness of confession), cert. denied, 243 Conn. 930, 701 A.2d 661 (1997). The court's finding that the interview process was not deceptive is supported by the record.

Moreover, there is no evidence whatever in the record that the respondent failed to understand his rights prior to giving Hicking the October 11, 2005 statement; or that he did not understand the legal concepts involved; or that he failed to understand the English language; or that he suffered from any emotional, psychiatric, mental or physical limitations that would interfere with his ability to knowingly and intelligently waive his rights; or that he was intoxicated or confused. See, e.g., *State* v. *Perez*, supra, 218 Conn. 728–29.

The evidence in the sparse record indicates that the respondent understood what he was doing when he gave the October 11, 2005 statement. The fact that approximately fifty hours had elapsed between his two encounters with Hicking does not provide a basis to conclude that the respondent failed to understand the import of what he was doing on October 11, 2005. "Courts have held that the mere passage of time between when a defendant is advised of his *Miranda* rights and when he gives a statement does not necessarily render the confession involuntary, even if the defendant is not readvised of his rights prior to giving a statement." *State* v. *Marshall*, supra, 83 Conn. App. 426, citing numerous federal cases so holding. The court found that there was no evidence that the respondent would not have been able to remember what had transpired fifty hours before, when Hicking first advised the respondent and his mother of his rights.

The fact that the respondent's mother was present on both October 9 and 11, 2005, is of particular significance. Requiring the presence of a parent or guardian at the time a statement is given is to ensure that the investigation is not coercive and that the statement is given knowingly, intelligently and voluntarily.[6] Judge Fuger found that there was no indication that the respondent's mother was restricted in her ability to understand the respondent's rights or his waiver of them. In response to a question from defense counsel whether he had employed any trickery to obtain a statement from the respondent on October 11, 2005, Hicking testified: "I remember mostly speaking with [his mother] with regards to this, because that's the mother, and that's the one that obviously has to make the approval, as well, as to the statement." The respondent and his mother were with Hicking and DiMauro in the

kitchen of the family home. Hicking testified that the respondent and his mother "left the room momentarily to discuss whether or not, probably, he should speak to me about this, and then came back, and this (the statement) was completed."[7]

The majority states that "[w]e do not know what the respondent and his parent discussed when they left the room prior to the respondent's giving his second statement because there is no evidence of that conversation. It would only be speculation and would be improper to assume that they were discussing whether he should remain silent." Given the circumstances, I disagree. It is hard to imagine that the respondent and his mother were discussing anything other than the extent of his involvement in the fire or whether he should give a second statement. Drawing reasonable inferences from the undisputed facts under circumstances such as those present in this case is not speculation. "As the trier of fact, the court had a duty to draw reasonably inferences from the testimony and other evidence." *Lusa* v. *Grunberg*, 101 Conn. App. 739, 754 n.8, 923 A.2d 795 (2007).[8] The fact that the respondent and his mother left the room, had a discussion and returned at which point the respondent gave a second statement, in context, clearly suggests that they understood their rights and were prepared to waive them. Compare *In re Jonathan M.*, supra, 46 Conn. App. 549 (mother and juvenile offered time to speak privately). For all of the foregoing reasons, I conclude that it was not improper for the court to deny the respondent's motion to suppress.

II

The respondent claims that by admitting the October 11, 2005 statement into evidence, Judge Graziani violated the respondent's state and federal constitutional rights against self-incrimination. Furthermore, because the statement was the only evidence the petitioner produced that the respondent had been involved in lighting the fire and that his October 9, 2005 statement was false, admitting the statement was harmful error. I agree with Judge Fuger's determination that the respondent was not in custody at the time he gave the October 11, 2005 statement and that his constitutional rights were not violated.

III

The respondent claims that it was improper for Judge Graziani to rely on Judge Fuger's ruling on the motion to suppress when he overruled the respondent's objection to the October 11, 2005, statement. I disagree.

At trial, the respondent objected to the admission of his October 11, 2005 statement on the same grounds presented in his motion to suppress. Judge Graziani heard evidence of the circumstances under which the statement had been taken and had a copy of Judge

Fuger's ruling on the motion to suppress. Judge Graziani adopted Judge Fuger's ruling as the law of the case.

"Where a matter has already been put in issue, heard and ruled on pursuant to a motion to suppress, the court on the subsequent trial, although not conclusively bound by the prior ruling, may, if it is of the opinion that the issue was correctly decided, properly treat it as the law of the case, in the absence of some new or overriding circumstance." *State* v. *Mariano*, 152 Conn. 85, 91, 203 A.2d 305 (1964), cert. denied, 380 U.S. 943, 85 S. Ct. 1025, 13 L. Ed. 2d 962 (1965). In this instance, there were no new or overriding circumstances presented to Judge Graziani, and I conclude that he permissibly treated Judge Fuger's ruling as the law of the case.

For all of the foregoing reasons, I respectfully dissent.

[1] The respondent was charged with reckless burning in violation of General Statutes § 53a-114, breach of the peace in the second degree in violation of General Statutes § 53a-181, making a false statement in the second degree in violation of General Statutes § 53a-157b, reckless endangerment in the second degree in violation of General Statutes § 53a-64 and risk of injury to a child in violation of General Statutes § 53-21 (a) (1).

[2] The court found the respondent not guilty of the remaining charges.

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

[4] The waiver form signed by the respondent stated: "You have the right to remain silent. If you talk to any police officer, everything you say can and will be used against you in a court of law. You have the right to consult with a lawyer before you are questioned, and may have him or her with you during any questioning. If you cannot afford a lawyer, one will be appointed for you, if you wish, before any questioning. If you wish to answer questions, you have the right to stop answering at any time. You may stop answering questions at any time if you wish to talk to a lawyer, and may have him or her with you during any further questioning.

"I have been advised:

"____ I have the right to remain silent.

"____ If I talk to any police officer anything I say can and will be used against me in a court of law.

"____I have the right to consult with a lawyer before I answer any questions and I may have a lawyer with me during any questioning.

"____I have the right to have a lawyer appointed for me, if I cannot afford one, before I answer any questions.

"____I know that if I answer questions, I have the right to stop answering at any time.

"____I may stop answering questions at any time if I wish to talk to a lawyer, and have him or her with me during any further questioning.

"I am willing to answer questions and make this statement knowing that I have and fully understand these rights. I do not want a lawyer at this time. I do make the following statements without fear, threats or promises of favor, knowing that this statement can be used for or against me in a court of law.

Dated at _____ on the _____ day of _____ [20] _____ _____[time].

Signed _____"

The respondent initialed each of the lines to the left of the rights set forth and signed the waiver on October 9, 2005, at 7:40.

[5] The parental consent form signed by the respondent's mother stated the following: "I, _____ (parent/guardian) do hereby give _____ (police officer) or any other police officer consent to question and take a statement from _____ who is my son/daughter/ward. I have been advised that:

"____ He/she has the right to remain silent.

"____ If he/she does speak to any police officer, anything he/she says can and will be introduced into evidence and used against him/her in a court of law.

"____ We have the right to consult with a lawyer before he/she answers any questions and he/she may have a lawyer with him/her during any questioning.

"____ He/she has the right to have a lawyer appointed for him/her, if we

cannot afford one, before he/she answers any questions.

"____ If he/she wishes to answer questions, he/she may stop answering at any time.

"____ He/she may stop answering questions at any time if we wish to talk to a lawyer and may have a lawyer present during any further questioning.

"I am willing to give my consent to any police officer to question my son/daughter/ward and take a statement, knowing that I have been advised and fully understand these rights. I do not want a lawyer present at this time. I do give my consent without fear, threats, or promises of favor. I know my consent does not waive the rights of my son/daughter/ward. I also know that any statement given can be used for or against him/her in a court of law.

"Dated at _____ on the _____ day of _____ [20] ____ _____ (time)

"Signed _____"

The respondent's mother initialed each of the lines to the left of the rights set forth and signed the consent on October 9, 2005, at 7:40.

[6] The majority states that in enacting General Statutes § 46b-137 (a), the legislature intended to provide a juvenile with protection that goes beyond the purpose of *Miranda* in response to *In re Gault*. As this court said in *In re Enrique S.*, supra, 32 Conn. App. 436, the purpose of the statute's warnings is to help an accused make a valid decision to speak or remain silent. The United States Supreme Court made clear, on the basis of several factual scenarios where adolescent boys were removed from their homes and subjected to lengthy police interrogations in the absence of their parents, that not only were the admissions coerced but also their trustworthiness was in doubt. *In re Gault*, supra, 387 U.S. 42–57. "[A]uthoritative opinion has cast formidable doubt upon the reliability and trustworthiness of 'confessions' by children." Id., 52. "If counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair." Id., 55.

The concerns of the United States Supreme Court are not at issue here. Hicking spoke with the respondent's mother, who was advised of the respondent's rights and signed a consent form. The respondent and his mother spoke in private before the respondent gave a statement on October 11, 2005. The mere presence of the respondent's mother ameliorates the court's concerns regarding not only coercion but also the trustworthiness of a confession obtained by reason of adolescent idiosyncrasies. The respondent's mother permitted him to give the statement.

[7] DiMauro testified in part: "I remember [the respondent] and his mom leaving the room together to speak. She stated that she wanted to speak to her son, and I remember her and her son leaving the room together."

[8] Trial courts routinely instruct juries that they may draw reasonable inferences from the factual circumstances. "The only way in which a jury can ordinarily determine what a person's purpose was at any given time, aside from that person's own statements or testimony, is by determining what the person's conduct was and what the circumstances were surrounding that conduct, and from that, infer what the person's purpose was." (Internal quotation marks omitted.) *State* v. *Schultz*, 100 Conn. App. 709, 714–15, 921 A.2d 595, cert. denied, 282 Conn. 926, 926 A.2d 668 (2007).