BERDON, J., dissenting. I would not reach the claimed jury instruction issues but would reverse the judgment of the trial court and order a new trial on the issue that the court improperly permitted the state to cross-examine the defendant, Oles J. Baptiste, about his fourteen prior arrests for interfering with a police officer and misdemeanor convictions for interfering with police and engaging police officers in pursuit.[1]

Although the defendant objected to this cross-examination on the grounds of "relevancy," the majority holds that counsel should have used the magic word "prejudice." When the defendant again objected, the court called for a sidebar conference, which took place off of the record. We do not know what transpired in the sidebar conference.[2]

I agree with the majority with respect to our standard of review. "Our review of evidentiary rulings made by the trial court is limited to the specific legal ground raised in the objection." *State* v. *Sinclair*, 197 Conn. 574, 579, 500 A.2d 539 (1985).

At trial, the defendant, on the basis of relevance, objected to the state's questions about his prior arrests. My review of Connecticut case law, however, illustrates that objections on the basis of relevance and objections on the basis of unfair prejudice are interrelated. To be admissible, "[l]ogically relevant evidence must also be legally relevant . . . ." (Internal quotation marks omitted). *State* v. *Joly*, 219 Conn. 234, 260–61, 593 A.2d 96 (1991). Logically "[r]elevant evidence is evidence that has a logical tendency to aid the trier in the determination of an issue. . . . One fact is relevant to another if in the common course of events the existence of one, alone or with other facts, renders the existence of the other either more certain or more probable." (Internal quotation marks omitted.) *State* v. *Allen*, 289 Conn. 550, 562, 958 A.2d 1214 (2008). Legally relevant evidence is evidence that is "not subject to exclusion for any one of the following prejudicial effects: (1) where the facts offered may unduly arouse the jury's emotions, hostility or sympathy, [or] (2) where the proof and answering evidence it provokes may create a side issue that will unduly distract the jury . . . . Where the prejudicial effect of logically relevant evidence outweighs its probative value, the trial court has wide latitude to exclude the evidence as legally irrelevant, and its decision will not be disturbed absent a manifest abuse." (Citations omitted; internal quotation marks omitted.) *State* v. *Joly*, supra, 261.

"[E]vidence of prior unconnected crimes is inadmissible to demonstrate the defendant's bad character or to suggest that the defendant has a propensity for criminal

behavior, [but] such evidence may be admissible for other purposes . . . .” (Internal quotation marks omitted.) *State* v. *Collins*, 111 Conn. App. 730, 742, 961 A.2d 986 (2008), cert. denied, 290 Conn. 911, 964 A.2d 546 (2009). Questions related to prior arrests generally are within the proper scope of cross-examination if they are designed to rebut or impeach direct testimony. See *State* v. *Cooper*, 227 Conn. 417, 431, 630 A.2d 1043 (1993).

In the present case, the defendant testified on direct examination that he respected the police. He also testified on cross-examination that he had very little contact with the police. The state contends that it was permitted to rebut these statements with evidence that the defendant had been arrested fourteen times. It is, however, a basic principle of justice that an accused is innocent until proven guilty. Evidence of the defendant's prior arrests, absent some proof of the defendant's guilt, had only a slight logical connection to whether the defendant respected police officers. Furthermore, the defendant's statement that he had not had a lot of prior contact with the police, which the state also argues opened the door to questions concerning his prior arrests, was unconnected to any material issue in the case. Accordingly, the defendant's objection on the basis of relevance, which was clearly made before the court, should have been sustained. Moreover, in this case, distinguishing between relevance and prejudice is like splitting hairs.

Assuming that referencing the defendant's fourteen prior arrests served a legitimate impeachment value, which it did not, that value clearly was outweighed by unfair prejudice, and, therefore, the arrests were legally irrelevant. The state's questions about the defendant's prior arrests “painted the defendant as a recidivist who flouted the law . . . . Such evidence invited the jury to conclude that if he did it before, he did it this time also.” *State* v. *Dunbar*, 51 Conn. App. 313, 325–26, 721 A.2d 1229 (1998), cert. denied, 247 Conn. 962, 724 A.2d 1126 (1999).[3]

Another issue, not addressed by the majority but also not raised by the defendant, that makes this case egregious is the failure of the court to make any effort to minimize the unfair prejudice ensuing from the large number of the defendant's prior arrests and convictions; contra *State* v. *McGraw*, 204 Conn. 441, 450, 528 A.2d 821 (1987) (but trial court precluded state from disclosing number of counts or particulars of arrests); and the court's failure to provide the jury with an instruction limiting the purpose for which it could consider them. Our Supreme Court has held that “in order to vitiate th[e] potential prejudice [of uncharged misconduct], we generally have required the court, *sua sponte if necessary*, to instruct the jury as to the limited purpose for which such evidence is admitted and for which it is

to be considered." (Emphasis added; internal quotation marks omitted.) *State* v. *Ouellette*, 190 Conn. 84, 96, 459 A.2d 1005 (1983). Just as the trial court has the obligation to instruct the jury sua sponte of the limited purpose for which such evidence is admitted, we as an appellate court should take the failure to so instruct the jury into consideration even though it was not raised by the defendant on appeal.

This case, without any doubt, does not speak well for our system of justice.[4] The majority decides it on a play on words—that "relevance" does not embrace "prejudice" and it ignores the fact that the court did not instruct the jury with the limiting instructions that our Supreme Court has directed to be given when a defendant's prior unrelated arrests and convictions are admitted into evidence.

Accordingly, I would reverse the judgment and remand the case for a new trial on the foregoing basis.

I respectfully dissent.

[1] Although the majority opinion quotes a portion of the cross-examination by the state, the following is the entire relevant part of the cross-examination.

"[The Prosecutor]: You said that you have respect for the police?

"[The Defendant]: Yes, sir.

"[The Prosecutor]: And when you say you have respect for the police, what do you mean?

"[The Defendant]: I respect everybody, every individual. I respect police because I know police are doing a good job. Some of them are doing a good job to protect people.

"[The Prosecutor]: Okay. And when you say you respect the police because they are doing a good job, you feel that it's important that you're cooperative with police?

"[The Defendant]: You suppose[d] to.

"[The Prosecutor]: Okay. And do you think that that's important?

"[The Defendant]: I believe the police if the police got some question and they come to you, they talk to you as a gentleman, you can cooperate if they want to ask you a couple of questions; you're suppose[d] to.

"[The Prosecutor]: Okay. And you are saying that that's what you've always done, is to be cooperative with police?

"[The Defendant]: Not so far. I never talk to police too much.

"[The Prosecutor]: Okay. You never talk to police too much?

"[The Defendant]: No.

"[The Prosecutor]: When you say that, what do you mean?

"[The Defendant]: Like—

"(Interpreter helping defendant interpret.)

"[The Defendant]: I don't understand the question. I'm trying to say that if I talk to a police, I would.

"[The Prosecutor]: Well, the first question [was], when you talk to a police officer, are you cooperative with the police officer?

"[Defense Counsel]: Your Honor, I'm going to object at this point just because I don't know what kind of relevance this has got to do with what the trial is about at this point. You know, he's just talking generalities now and just, generally, 'are you cooperative?' I think the relevance is gone at this point, Your Honor.

"The Court: [Prosecutor]?

"[The Prosecutor]: It's a credibility claim, Your Honor, and I'm real close.

"The Court: I'll overrule your objection based on the charges here [which] do have to do with obstructing or hindering police, so I'll allow it. But could you move it along?

"[The Prosecutor]: And do you feel, sir, that you have been cooperative with the police?

"[The Defendant]: A couple of times because I pull over and the police talk to me. I have no problem.

"[The Prosecutor]: Okay. And are you also saying that you have not had a lot of contact with police officers?

"[The Defendant]: I no have contact. Actually, when I was working, a police I knew. That one, I knew him; he use[d] to come in with his wife. I

remember his name because one day he walk through my job, and I was talk[ing] to my boss; he said—the first time I did not know him, and he asked me if I got a problem, and I said, 'yeah, I got a problem,' and he say, 'what happened?' I tell him I need a ride for work, I don't got no ride, I've been coming late, and one day he come in and he's an old guy named Smitty—Smitty, and old guy he gave me a ride. That's the only police I know.

"[The Prosecutor]: Okay. And that's the only police officer you've had contact with?

"[The Defendant]: Yeah, because he give me a ride. I believe that's the contact.

"[The Prosecutor]: Okay. But you've been arrested fourteen times?

"[Defense Counsel]: Objection, Your Honor.

"The Court: Well, sidebar.

"(Off the record sidebar.)

"The Court: Okay. Your objection is overruled, proceed . . . .

"[The Prosecutor]: Do you agree, sir, that you've been arrested fourteen times?

"[The Defendant]: I have a little difficulty before back in the day.

"[The Prosecutor]: And do you agree that a lot of those arrests took place in the city of Norwich?

"[The Defendant]: I have difficulty with my son's mother. I was young back in the day.

"[The Prosecutor]: Do you agree that some of those arrests resulted in convictions for interfering with a police officer?

"[The Defendant]: I believe so. They stick police in the court now, which got conspiracy I see between me; they try to do something to me.

"[The Prosecutor]: Answer the question. Do you agree that you got convictions for interfering with a police officer and the answer to that is yes?

"(Interpreter helping the defendant interpret.)

"[The Defendant]: When I just get to this country because I didn't know the legal system here, they told me to plead guilty, so I plead guilty on those things.

"[The Prosecutor]: Okay. And do you also agree that you've been convicted of engaging police officers in pursuit?

"[The Defendant]: About that time I was not doing the thing. I was not doing these things. They found me; I was not driving that time. The police pick me up from the street because the building belong to my brother-in-law. They picked me up from the street, and when they call my house, I use[d] to live with my sister-in-law and my brother-in-law; when they call the house, my sister-in-law, she think I might have the car, but they pick me up from the street, and when they pick me up from the street and they take [me] to Mohegan and they show me the car, I saw the plate number and they asked me if I know the car. I tell them, yes, I know the car, and they take me to jail for that.

"[The Prosecutor]: The question is, do you agree that you've been convicted of engaging a police officer in pursuit?

"[The Defendant]: I don't think that was why—what I had was nothing to do with that.

"[The Prosecutor]: Fair enough. No further questions, sir.

"[The Defendant]: They asked me to plead."

[2] This case points out the dangers of sidebar conferences that are off the record. Counsel should be cautious of such conferences with respect to preserving issues for appeal on what may have occurred at the conference and insist that the jury be excused so that a record can be made.

[3] In reaching this conclusion, I am mindful of our Supreme Court's holding in *State* v. *Sinclair*, supra, 197 Conn. 574. In *Sinclair*, the court held that an objection at trial on the ground of relevance did not preserve for appeal an argument that admission of the defendant's prior arrests was unfairly prejudicial. Id., 578. *Sinclair* is distinguishable from the case now before us. The testimony at issue in *Sinclair* was from a police officer who stated that he recognized the defendant because he had assisted other officers in arrests and worked with photographs of known subjects. Id., 578 n.4.

In this case, I find that the logical relevance of the defendant's fourteen prior arrests was minimal and the unfair prejudice was so great that the defendant's objection should have placed the court on notice that the fourteen arrests were not legally relevant to rebut the defendant's testimony. Therefore, I cannot conclude that our Supreme Court intended the language of *Sinclair* to apply to a case as egregious as the case before this court.

[4] Of course, the errors committed by counsel may be corrected by seeking relief through habeas corpus for ineffective assistance of counsel.