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ANGELO L. REYES *v.* STATE OF CONNECTICUT
(AC 45634)

Alvord, Prescott and Bishop, Js.

Syllabus

The petitioner, who had been convicted of various crimes in connection with a house fire and a motor vehicle fire caused by arson, appealed from the trial court's judgment dismissing his petition for a new trial. The petitioner was sentenced in January, 2015. More than five years later, in July, 2020, he filed a petition for a new trial, alleging that he had obtained evidence that was not discoverable or available at the time of his criminal trial that would likely produce a different result in a new trial. Although the petitioner acknowledged that the applicable statute (§ 52-582) contained a three year limitation period from the date he was sentenced, he contended that the court had subject matter jurisdiction over his petition because the exception to the limitation period applicable to newly discovered forensic scientific evidence pursuant to § 52-582 (a) applied to his petition due to the nature of the proffered evidence and the limitation period was tolled by the fraudulent concealment statute (§ 52-595) because the respondent, the state of Connecticut, intentionally withheld all of the newly discovered evidence supporting his petition. The proffered forensic scientific evidence included a discrepancy between the police report and the evidence receipt from the state forensic science laboratory as to the size of the cans that the police used to collect samples of potential accelerant from the scene of the house fire; a Federal Bureau of Investigation (FBI) report from which it could be inferred that the samples were collected in connection with an unrelated fire that occurred five days before the house fire; and a chain of custody report showing that the state forensic science laboratory scientist who had tested the contents of the cans retained the cans for two months after he had completed his testing of the samples, which would have permitted an investigator from a state or federal agency to visit and view the samples during those additional two months, thus allowing for an inference that the chain of custody had been broken. The petitioner also presented testimony from C, a former state police detective and K-9 handler who assisted with the investigation of the house fire, and B, a state forensic science laboratory evidence intake coordinator, who explained the discrepancies in the reports. The trial court granted the respondent's motion to dismiss the petition for a new trial, concluding that it lacked subject matter jurisdiction over the petition because there was no dispute that the petition had been filed after the expiration of the three year limitation period of § 52-582 and that the action was not saved by the exception for newly discovered forensic scientific evidence pursuant to § 52-582 (a) or by the tolling doctrine for fraudulent concealment pursuant to § 52-595 on the basis of applicable appellate authority at the time of the trial court's decision. *Held*:

1. In light of this court's decision in *Randolph* v. *Mambrino* (216 Conn. App. 126), which was issued approximately five months after the trial court in the present case issued its decision granting the respondent's motion to dismiss and in which this court made clear that the three year limitation period of § 52-582 may be tolled upon a showing of fraudulent concealment in accordance with § 52-595, the trial court incorrectly concluded, as a matter of law, that the three year limitation period of § 52-582 cannot be tolled by application of § 52-595; accordingly, the case was remanded for a new evidentiary hearing to determine whether the petitioner had established that the three year limitation period of § 52-582 was tolled by § 52-595.
2. The petitioner could not prevail on his claim that the trial court incorrectly concluded that the exception to the three year limitation period for newly discovered forensic scientific evidence pursuant to § 52-582 (a) was not applicable, as this court found that the petitioner's proffered evidence cumulatively amounted to chain of custody evidence that challenged the manner in which the police documented their handling of

the cans containing the accelerant samples and not forensic scientific evidence: police documentation of the sizes of the cans, the origin of the cans, and the duration of time that individuals had access to the cans did not constitute forensic scientific evidence within the meaning of § 52-582 because it did not involve the application of scientific or technical practices to the recognition, collection, analysis and interpretation of evidence, and the petitioner did not contest the forensic science that was applied to the samples within the cans; moreover, contrary to the petitioner's claim that the police report, the FBI report, the evidence receipt from the state forensic science laboratory, and the chain of custody report constituted forensic scientific evidence because they were reports by forensic analysts pursuant to § 52-582 (d), this court concluded that the documents did not qualify as forensic scientific evidence because they did not include any scientific or forensic analysis, none of their contents required the application of scientific standards or a scientific method, and scientific knowledge was not required to reveal any discrepancies resulting from the documents; furthermore, the testimony of C and B explaining the discrepancies in the reports did not constitute testimony by forensic analysts pursuant to § 52-582 (d), as C's testimony that he was not aware of any discrepancies with respect to the size of the cans had nothing to do with forensic science and the record contained no indication that he had any experience as a forensic analyst or expert, and B's testimony regarding who could visit the state laboratory did not involve any scientific analysis and was not contingent on a scientific method or technique but, rather, was limited to her personal knowledge of the access individuals would have had to the state laboratory.

Argued September 13—officially released November 28, 2023

Procedural History

Petition for a new trial following the petitioner's conviction of the crimes of arson in the second degree, conspiracy to commit criminal mischief in the first degree and conspiracy to commit burglary in the first degree, brought to the Superior Court in the judicial district of New Haven, where the court, *Wilson*, *J.*, granted the respondent's motion to dismiss and rendered judgment thereon, from which the petitioner, on the granting of certification, appealed to this court. *Reversed in part*; *further proceedings*.

Alexander T. Taubes, for the appellant (petitioner).

Nancy L. Chupak, senior assistant state's attorney, with whom, on the brief, were *John P. Doyle, Jr.*, state's attorney, and *Lisa Maria Proscino*, former supervisory assistant state's attorney, for the appellee (respondent).

Opinion

BISHOP, J. The petitioner, Angelo L. Reyes, appeals, following the granting of his petition for certification to appeal, from the judgment of the trial court dismissing his petition for a new trial for lack of subject matter jurisdiction because it was time barred by the three year limitation period of General Statutes § 52-582.[1] On appeal, the petitioner claims that the trial court improperly (1) concluded, as a matter of law, that the three year limitation period of § 52-582 cannot be tolled by application of the fraudulent concealment statute, General Statutes § 52-595,[2] and (2) determined that the exception to the three year limitation period for newly discovered forensic scientific evidence pursuant to § 52-582 (a) was not applicable to the present case. We agree with the petitioner's first claim but disagree with his second claim. Accordingly, we affirm in part and reverse in part the judgment of the trial court, and we remand the case to the trial court for a new evidentiary hearing before a different judge to determine whether the three year limitation period of § 52-582 was tolled by § 52-595.

Our Supreme Court's decision in the petitioner's direct appeal sets forth the following relevant facts, which the jury in his criminal trial reasonably could have found.

"At the time of the events in question, the [petitioner] owned a Laundromat and several investment properties in the Fair Haven section of the city of New Haven. In October, 2008, the [petitioner] paid two employees, Osvaldo Segui, Sr., and Osvaldo Segui, Jr., to set fire to 95 Downing Street in New Haven, a single-family residence that the [petitioner] had sold to Robert Lopez [Lopez] and his mother, Carmen Lopez, in 2002. The [petitioner] was angry that [Lopez] would not sell the property back to him and informed Segui, Sr., that, after the fire, he intended to purchase the lot of land on which the residence had stood before the fire. Segui, Sr., and Segui, Jr., both of whom lived rent free in one of the [petitioner's] properties, agreed to set the fire, and, in the early morning hours of October 9, 2008, they did so.

"In May, 2009, the [petitioner] enlisted Segui, Sr., and Segui, Jr., to set another fire, this time to a vehicle belonging to Madeline Vargas, a local businesswoman and employee of a nonprofit substance abuse services agency operating in Fair Haven. Although the [petitioner] did not tell Segui, Sr., why he had had him set fire to Vargas' car, the evidence adduced at trial indicated that the [petitioner] was motivated by spite—the result of an ongoing dispute between him and Vargas over Vargas' attempts, in 2008, to run an outreach program for local drug addicts in an empty parking lot near the [petitioner's] Laundromat.

"The [petitioner], Segui, Sr., and Segui, Jr., were subsequently charged with various offenses related to the 2008 and 2009 arsons. Prior to being tried in state court, the [petitioner] was tried in federal court on unrelated arson charges. Segui, Sr., and Segui, Jr., also were charged in that federal case but agreed to testify against the [petitioner] in exchange for reduced sentences. In the present case, Segui, Sr., and Segui, Jr., entered into plea agreements pursuant to which, in exchange for their testimony, they received . . . sentence[s] that did not require them to serve any more time than they were required to serve in connection with the federal case." *State* v. *Reyes*, 325 Conn. 815, 818–19, 160 A.3d 323 (2017).

Following a jury trial, the petitioner was convicted of two counts of arson in the second degree in violation of General Statutes § 53a-112 (a) (2), two counts of conspiracy to commit criminal mischief in the first degree in violation of General Statutes §§ 53a-48 (a) and 53a-115 (a) (1), and one count of conspiracy to commit burglary in the first degree in violation of General Statutes §§ 53a-48 (a) and 53a-101 (a) (1). On January 8, 2015, the court sentenced the petitioner to a total effective sentence of twenty-five years of incarceration, execution suspended after fifteen years, followed by five years of probation. On June 6, 2017, our Supreme Court affirmed the petitioner's judgments of conviction on direct appeal. Id., 833.

More than five years after the imposition of his sentence, on July 31, 2020, the petitioner filed the present petition for a new trial.[3] The petitioner alleged that he had obtained evidence of four material facts that were not discoverable or available at the time of his criminal trial that would likely produce a different result in a new trial: (1) one day before the 95 Downing Street fire, Lopez met with an "unlicensed broker," Hector Cortes, who was facing legal and financial trouble; (2) several days before the 95 Downing Street fire, Lopez was involved in a physical altercation at a café with Charles Ruggierrio, who later was admitted to the hospital for severe injuries; (3) the existence of a December 29, 2005 invoice from East Haven Building Supply that was signed by Lopez but paid by the petitioner that purportedly evinced that the petitioner had extended a line of credit to Lopez for improvements to the property at 95 Downing Street; and (4) evidence collected from 95 Downing Street was tampered with while en route from 95 Downing Street to the state forensic science laboratory (state laboratory). The petitioner alleged that the first three facts were especially material because they contradicted Lopez' testimony at the petitioner's criminal trial that he did not meet with Cortes, that he was not in an altercation with Ruggierrio, and that the petitioner had not extended a line of credit to him.

On August 25, 2020, the respondent, the state of Connecticut, filed a motion to dismiss the petition for lack of subject matter jurisdiction on the ground that the petition was time barred by § 52-582 because it was filed more than three years after the date the petitioner had been sentenced. In its memorandum of law in support, the respondent explained that the petitioner was sentenced on January 8, 2015, and he filed his petition for a new trial on July 31, 2020, which was well beyond the three year limitation period of § 52-582.

On November 1, 2020, the petitioner filed an objection to the respondent's motion to dismiss in which the petitioner conceded that his petition was filed outside the three year limitation period in § 52-582 but asserted that it was not time barred. He contended that the court had subject matter jurisdiction over his petition for two principal reasons. First, he argued that the exception to the three year limitation period applicable to newly discovered forensic scientific evidence pursuant to § 52-582 (a) saved his petition because his petition was partially contingent on "gasoline evidence." Second, he argued that the three year limitation period was tolled by the fraudulent concealment statute, § 52-595, because the state intentionally withheld all of the newly discovered evidence supporting his petition.

On July 1, 2021, the court ordered an evidentiary hearing to resolve the factual issues raised by the respondent's motion to dismiss, and, on October 5 and November 23, 2021, the court held the hearing. The respondent called multiple witnesses to testify, including Executive Assistant State's Attorney John P. Doyle, Jr., who had prosecuted the petitioner; a former Connecticut state police detective, Kenneth Christensen; a state laboratory evidence intake coordinator, Jessica Best; and a former New Haven police officer, Michael Mastropetre. The petitioner testified and called former Connecticut State Trooper Michael F. Pendleton to testify. The petitioner introduced six exhibits into evidence, and the respondent introduced twenty-seven exhibits into evidence, all of which the court considered in its decision.

In his posthearing memorandum, the petitioner claimed that there were three aspects of "newly discovered forensic scientific evidence" relating to the state's handling of cans used to store accelerant samples collected from the scene of the 95 Downing Street fire. First, the petitioner contended that there was a discrepancy as to the size of the cans that the police used to collect samples of potential accelerant from the scene of the fire at 95 Downing Street. The petitioner relied on the testimony of Christiansen that he was a K-9 handler assisting with the investigation of the cause and origin of the fire at 95 Downing Street when his police dog, Presley, alerted to the presence of accelerant on wood debris. Christiansen testified that the lead

investigator collected three samples of wood debris with the potential accelerant and placed them into three different cans. Exhibit 1, the police report authored by Christiansen, stated that there were three, one gallon cans, whereas exhibit 4, the evidence receipt from the state laboratory, stated that there were two, one gallon cans and one, one quart can. When asked about this inconsistency, Christiansen testified that he was not aware of any discrepancies with respect to the size of the cans at the petitioner's criminal trial but that it was his mistake that the police report identified three, one gallon cans and that, in actuality, the samples were contained in two, one gallon cans and one, one quart can.

Second, the petitioner contended that the samples contained in the three cans were not collected from the scene of the fire at 95 Downing Street. The petitioner buttressed his claim with exhibit 2, a Federal Bureau of Investigation (FBI) report that compiled a list of potential arsons in the Fair Haven section of New Haven from the mid-1990s to 2010. The FBI report detailed the following for each potential arson: the address of the fire; the date and time of the fire; a list of evidence that was submitted to the state laboratory in connection with the fire; and the details of any Connecticut state police involvement. One of the potential arsons contained in the report was a fire at 211 Lloyd Street in New Haven that occurred five days prior to the fire at 95 Downing Street. In the list of evidence submitted to the state laboratory for the fire at 211 Lloyd Street, there were three samples of floorboards with an indication to test for accelerants attributed to the laboratory ID number associated with the fire at 95 Downing Street (ID-08-003627).

Third, the petitioner claimed that John Hubball, the state laboratory scientist who had tested the contents of the cans, retained the evidence for two months after he had completed his testing. To support this claim, the petitioner relied on exhibit 5, a chain of custody report, that showed that Hubball originally obtained the three cans on October 14, 2008, from an evidence control officer at the state laboratory and that Hubball returned the three cans on March 2, 2009, to the evidence control officer—which was two months after his January 11, 2009 chemistry report in which he opined that the sample in the one quart can revealed the presence of a petroleum product consistent with gasoline. The petitioner further relied on the testimony of Best that it was possible for an investigator from a state or federal agency to visit Hubball during the two additional months that he possessed the three cans, which the petitioner asserted allowed "for a break in the chain of custody."

In its posthearing memorandum, the respondent contended, inter alia, that the documents and testimony

proffered by the petitioner did not constitute newly discovered forensic scientific evidence under § 52-582 because such evidence did not concern the manner in which the scientific tests were performed on the samples contained in the cans but, instead, amounted to a challenge to the chain of custody of the cans. The respondent further argued that the doctrine of fraudulent concealment pursuant to § 52-595 did not apply to the petitioner's petition for a new trial and, even if it did, the evidence proffered at the hearing demonstrated that the evidence was not fraudulently concealed.

On May 31, 2022, the court issued a memorandum of decision granting the respondent's motion to dismiss. The court concluded that it lacked subject matter jurisdiction over the petition because there was no dispute that the petition was filed after the expiration of the three year limitation period in § 52-582 and that the action was not saved by the exception for newly discovered forensic scientific evidence pursuant to § 52-582 (a) or the tolling doctrine for fraudulent concealment pursuant to § 52-595. With respect to the newly discovered forensic scientific evidence exception, the court concluded that § 52-582 was ambiguous and, after analyzing the pertinent legislative history, held that "[t]he [petitioner's] assertion regarding [the petitioner's] exhibit 5 is that it demonstrates that there was a possible break in the chain of custody, his assertion regarding [the petitioner's] exhibit 2 is that it demonstrates that the ID number associated with evidence presented at the original trial was associated with evidence from another fire at a different address, and his assertion regarding Christensen's testimony is that it demonstrates that there was an inconsistency in documenting the size of the containers, as the report and the lab evidence receipt differ in this regard. None of the [petitioner's] assertions pertain to improvements in science and technology that resulted in newly discovered forensic scientific evidence; rather, his assertions pertain to inconsistencies with chain of custody and documentation. Therefore, the court concludes that the forensic [scientific] evidence exception pursuant to § 52-582 . . . is inapplicable." (Footnote omitted.) With respect to the tolling doctrine of fraudulent concealment, the court held that, although there was no directly applicable appellate authority at the time, other decisions, including *Fichera* v. *Mine Hill Corp.*, 207 Conn. 204, 541 A.2d 472 (1988), and *Turner* v. *State*, 172 Conn. App. 352, 160 A.3d 398 (2017), were instructive. Surveying these cases, the court held, as a matter of law, that § 52-595 does not toll the statute of limitations in § 52-582.[4]

On June 3, 2022, the petitioner filed a petition for certification to appeal from the court's judgment, which the court granted. This appeal followed.

I

The petitioner first claims that the court incorrectly concluded, as a matter of law, that the three year limitation period of § 52-582 cannot be tolled by application of the fraudulent concealment statute, § 52-595. The petitioner primarily relies on *Randolph* v. *Mambrino*, 216 Conn. App. 126, 284 A.3d 645 (2022),[5] in which this court recently held that § 52-582 may be tolled by application of § 52-595. Id., 145. The respondent on appeal concedes, in light of *Randolph*, that the court incorrectly concluded that § 52-582 cannot be tolled by application of § 52-595.[6] Although the parties agree on this issue, it bears some discussion in order for this court to make its independent assessment.

We begin with the standard of review and relevant legal principles. We exercise plenary review over the question of whether the court properly granted the respondent's motion to dismiss on the basis of its ultimate legal conclusion that § 52-582 cannot be tolled by application of § 52-595. See, e.g., *Priore* v. *Haig*, 344 Conn. 636, 644–45, 280 A.3d 402 (2022).

"Pursuant to [General Statutes] § 52-270, a convicted criminal defendant may petition the Superior Court for a new trial on the basis of newly discovered evidence." *Skakel* v. *State*, 295 Conn. 447, 466, 991 A.2d 414 (2010). Section 52-582, which contains the statute of limitations applicable to petitions for a new trial, provides in relevant part that "[n]o petition for a new trial in any civil or criminal proceeding shall be brought but within three years next after the rendition of the judgment or decree complained of . . . ." "The three year period [of § 52-582] begins to run from the date of rendition of judgment by the trial court . . . which, in a criminal case, is the date of imposition of the sentence by the trial court." (Citation omitted.) *Summerville* v. *Warden*, 229 Conn. 397, 426, 641 A.2d 1356 (1994). Additionally, the three year limitation period pursuant to § 52-582 is a jurisdictional bar and, in the absence of any applicable exception or tolling doctrine, a trial court lacks subject matter jurisdiction over an untimely petition for a new trial. See *Turner* v. *State*, supra, 172 Conn. App. 370.

The tolling doctrine of fraudulent concealment is codified in § 52-595, which provides: "If any person, liable to an action by another, fraudulently conceals from him the existence of the cause of such action, such cause of action shall be deemed to accrue against such person so liable therefor at the time when the person entitled to sue thereon first discovers its existence." With respect to fraudulent concealment under § 52-595, "[t]he question . . . is whether the [petitioner] [has] adduced any credible evidence that [the respondent] fraudulently concealed the existence of the [petitioner's] cause of action. . . . Under our case law, to prove fraudulent concealment, the [petitioner] [was] required to show: (1) [the respondent's] actual awareness, rather than imputed knowledge, of the facts necessary to

establish the [petitioner's] cause of action; (2) [the respondent's] intentional concealment of these facts from the [petitioner]; and (3) [the respondent's] concealment of the facts for the purpose of obtaining delay on the [petitioner's] part in filing a complaint on [his] cause of action." (Internal quotation marks omitted.) *Medical Device Solutions, LLC* v. *Aferzon*, 207 Conn. App. 707, 745–46, 264 A.3d 130, cert. denied, 340 Conn. 911, 264 A.3d 94 (2021).

We agree with the parties that our analysis of this claim is controlled by *Randolph* v. *Mambrino*, supra, 216 Conn. App. 126, in which this court "conclude[d] that the three year limitation period of § 52-582 may be tolled by a showing of fraudulent concealment pursuant to § 52-595." Id., 132. To support this conclusion, this court reasoned, in part, that "the intent of the legislature that § 52-595 applies to § 52-582 is apparent from the straightforward language and evident purpose of those statutory sections. . . . [T]here is no language in § 52-595 to indicate that its application is restricted only to certain statutes of limitations and not to others. Rather, § 52-595 provides, in broadly applicable terms, for the tolling of the limitation period applicable to a cause of action '[i]f *any* person' who is liable to such an action by another 'fraudulently conceals from him the existence of' that cause of action. . . . Moreover, there is nothing in the wording of § 52-582 to indicate that the legislature intended to exempt that limitation period from the operation of § 52-595 and thereby reward a respondent for his own misconduct in fraudulently concealing evidence that would warrant a new trial." (Emphasis in original; footnote omitted.) Id., 142–43. In short, this court held that, "given the plain and encompassing language of § 52-595, it must be deemed to apply to *any* limitation period that does not expressly disclaim its applicability. Because § 52-582 contains no such disclaimer, its three year limitation period may be tolled upon a showing of fraudulent concealment in accordance with § 52-595." (Emphasis in original.) Id., 145.

In the present case, the trial court concluded, as a matter of law, that § 52-595 does not operate to toll the statute of limitations in § 52-582. Conversely, *Randolph* makes clear that the three year limitation period of § 52-582 may be tolled upon a showing of fraudulent concealment in accordance with § 52-595. Id. The respondent concedes, and the petitioner agrees, that we are bound to apply *Randolph*. In sum, we conclude, in light of *Randolph*, that the court's conclusion that the three year limitation period of § 52-582 cannot be tolled by application of § 52-595 cannot stand. Consequently, we reverse the court's judgment in this regard and remand the case for a new evidentiary hearing before a different judge to determine whether the petitioner had established that the three year limitation period of § 52-582 was tolled by § 52-595.

II

The petitioner next claims that the court incorrectly concluded that the exception to the three year limitation period for newly discovered forensic scientific evidence pursuant to § 52-582 (a) was not applicable.[7] Specifically, the petitioner argues that his proffered evidence—including the police report, the FBI report, the evidence receipt from the state laboratory, the chain of custody report, and the supporting testimony of Christiansen and Best—constituted newly discovered forensic scientific evidence. He contends that the four exhibits constituted "reports . . . by forensic analysts" and that the testimony of Christiansen and Best explaining the discrepancies of the exhibits constituted "testimony by forensic analysts" as defined by § 52-582. We are not persuaded.

We begin with the applicable standard of review and relevant legal principles. "Whether the court had subject matter jurisdiction to consider the petitioner's petition for a new trial on the basis of newly discovered evidence is an issue of statutory construction over which our review is plenary." *Myers* v. *Commissioner of Correction*, 215 Conn. App. 592, 620–21, 284 A.3d 309 (2022), cert. denied, 346 Conn. 1021, 293 A.3d 897 (2023), and cert. denied sub nom. *Myers* v. *State*, 346 Conn. 1021, 293 A.3d 897 (2023). "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply." (Internal quotation marks omitted.) *State* v. *Dupigney*, 295 Conn. 50, 58, 988 A.2d 851 (2010). Our decisional law in this regard instructs us that, when challenged with the task of statutory interpretation, we first consider the text of the statute itself and its relationship to other statutes and that, if this examination leads us to conclude that the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, it is inappropriate to consult extratextual evidence of the meaning of the statute. See *Mattatuck Museum-Mattatuck Historical Society* v. *Administrator*, 238 Conn. 273, 278–79, 679 A.2d 347 (1996). But, when a statute is not plain and unambiguous, we also look for interpretive guidance to 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 in order to properly glean the meaning of the statutory language at issue. See *Bender* v. *Bender*, 258 Conn. 733, 741, 785 A.2d 197 (2001).

We next turn to the relevant language of § 52-582. Section 52-582 (a) provides: "No petition for a new trial

in any civil or criminal proceeding shall be brought but within three years next after the rendition of the judgment or decree complained of, except that a petition for a new trial in a criminal proceeding based on DNA (deoxyribonucleic acid) evidence or other newly discovered evidence, as described in subsection (b) of this section, that was not discoverable or available at the time of the original trial or at the time of any previous petition under this section, may be brought at any time after the discovery or availability of such new evidence, and the court may grant the petition if the court finds that had such evidence been presented at trial, there is a reasonable likelihood there would have been a different outcome at the trial.''

Section 52-582 (b) (1) provides in relevant part: ''Such newly discovered evidence in support of a petition for a new trial may include newly discovered forensic scientific evidence that was not discoverable or available at the time of the original trial or original or previous petition for a new trial . . . including that which might undermine any forensic scientific evidence presented at the original trial.'' Section 52-582 (d) provides: ''For purposes of this section, 'forensic' means the application of scientific or technical practices to the recognition, collection, analysis and interpretation of evidence for criminal and civil law or regulatory issues, 'forensic scientific evidence' includes scientific knowledge or technical knowledge, reports or testimony by forensic analysts or experts, and scientific standards or a scientific method or technique upon which the relevant scientific evidence is based, and 'scientific knowledge' includes knowledge of the general scientific community and all fields of scientific knowledge upon which those fields or disciplines rely.''

In interpreting § 52-582, we do not write on a clean slate. Rather, we are bound by our previous judicial interpretations of the language and purpose of the statute. See, e.g., *State* v. *Douglas C.*, 345 Conn. 421, 465, 285 A.3d 1067 (2022). Accordingly, we turn to *Myers*, in which this court previously interpreted the newly discovered forensic scientific evidence exception in § 52-582.[8] See *Myers* v. *Commissioner of Correction*, supra, 215 Conn. App. 592. In *Myers*, the petitioner, who previously was convicted of murder and assault; id., 597–99; filed a petition for a new trial asserting that new evidence became available establishing that one of the victim's friends identified a third party as the shooter, not the petitioner. Id., 618–19. The trial court dismissed his petition for a new trial for lack of subject matter jurisdiction on the grounds that the petition was filed outside the three year limitation period and that the petitioner's evidence did not fit within the exception for newly discovered forensic scientific evidence in § 52-582. Id., 619–20. On appeal, this court affirmed the judgment of the trial court and held that the petition properly was dismissed because § 52-582 permits a peti-

tion for a new trial to be filed outside of the statute's limitation period *only* if the petition is based on newly discovered DNA or forensic scientific evidence, neither of which was the basis for the petitioner's petition. Id., 623–27. To reach this conclusion, this court first determined that it was not clear from the plain language of § 52-582 (b) (1) whether the word "may" in the phrase "may include newly discovered forensic scientific evidence" was mandatory or permissive. Id., 624–25. After surveying the legislative history, this court concluded that the legislature intended that phrase to be mandatory. Id., 625–27. In the end, this court concluded "that the legislature intended for newly discovered evidence under § 52-582 to include only newly discovered forensic evidence. Consequently, because the petitioner's untimely petition for a new trial was not based on such evidence, the court correctly concluded that it lacked subject matter jurisdiction over the petition and properly dismissed the petition on that basis." Id., 627.

As applied to the present case, the paramount holding of *Myers* is that, in order to satisfy the exception in § 52-582, any purported new evidence in support of a petition must be newly discovered forensic scientific evidence and not merely newly discovered evidence of any type or form. Indeed, the petitioner on appeal recognizes that this is the holding of *Myers*, as he does not dispute that the plain language of § 52-582 requires that the newly discovered evidence be forensic scientific evidence. Rather, he asserts that his evidence falls within the legislative framework of newly discovered forensic scientific evidence. Accordingly, the issue presented is whether the petitioner's proffered evidence with respect to the state's handling of cans containing accelerant samples collected from the scene of the 95 Downing Street fire constituted "forensic scientific evidence," as defined by § 52-582 (d).[9]

As outlined previously, the petitioner's newly discovered evidence is in three parts. First, he contends that there was a discrepancy as to the size of the cans that the police used to collect samples of potential accelerant from the scene of the fire at 95 Downing Street because the police report (exhibit 1) stated that there were three, one gallon cans, but the evidence receipt from the state laboratory (exhibit 4) stated that there were two, one gallon cans and one, one quart can. Second, he argues that the samples were not collected from the fire at 95 Downing Street because it can be inferred from the FBI report (exhibit 2) that the samples were collected in connection with an unrelated fire at 211 Lloyd Street that occurred five days earlier. Third, he argues that the chain of custody report (exhibit 5) shows that Hubball retained the cans for two months after he had completed his testing of the samples, which would have permitted an investigator from a state or federal agency to visit and view the samples during those additional two months, thus allowing for an infer-

ence that the chain of custody had been broken.

We conclude that the definition of forensic scientific evidence pursuant to § 52-582 (d) unambiguously does not apply to the petitioner's evidence. The petitioner's evidence cumulatively amounts to chain of custody evidence that challenges the manner in which the police documented their handling of the cans containing the accelerant samples.[10] Police documentation of the sizes of the cans, the origin of the cans, and the duration of time that individuals had access to the cans does not constitute forensic scientific evidence within the meaning of § 52-582. This evidence does not involve "the application of scientific or technical practices to the recognition, collection, analysis and interpretation of evidence"; General Statutes § 52-582 (d); because it exclusively bears on the details of the size and whereabouts of the cans, which does not involve the evidence contained within those cans. Scientific knowledge is not required to reveal any discrepancies resulting from the police report, the evidence intake report, the FBI report, and the chain of custody report. To be clear, the petitioner does not contest the forensic science that was applied to the samples within the cans, namely, the propriety of the scientific tests performed on the samples, the analysis and interpretation of the results of those tests by forensic analysts, the scientific standards or methods used by those analysts, or whether accelerant actually was present on the samples. Thus, the determination of whether the police properly documented the location and custodians of the cans does not involve the application of scientific or technical practices.

Nevertheless, the petitioner contends that the four exhibits constituted forensic scientific evidence because they are "reports . . . by forensic analysts" pursuant to § 52-582 (d). We agree with the respondent that this argument incorrectly seeks to expand the exception in § 52-582. Exhibit 1, the police report, is a standard report detailing the important details of the incident, including the date, time, and location, the investigation undertaken, and a description of any evidence collected from the scene. The police report does not contain any scientific analysis. Likewise, exhibit 2, the FBI report, is a mere compilation and list of potential arsons in the Fair Haven section of New Haven, including details specific to each fire and a description of the evidence that was sent to the state laboratory. There is no forensic analysis contained in the FBI report and none of its contents required the application of scientific standards or a scientific method. Exhibit 4, the evidence receipt from the state laboratory, contains no information, scientific or otherwise, other than an abbreviated description of the cans received from the scene of the fire. Exhibit 5, the chain of custody report, contains only information as to the time, location, and custodian of the cans since they were received by the state labora-

tory. The report is devoid of any scientific analysis of the contents of the cans or any other forensic information.

The petitioner also contends that the testimony of Christiansen and Best explaining the discrepancies in the reports constituted "testimony by forensic analysts" pursuant to § 52-582 (d). We do not agree. Christiansen, the author of the police report, testified that he was not aware of any discrepancies with respect to the size of the cans at the petitioner's criminal trial but that it was his mistake that the police report listed three, one gallon cans. This testimony by Christiansen has nothing to do with forensic science, and the record is devoid of any indication that he had any experience as a forensic analyst or expert. Likewise, Best testified that it was possible that an investigator from a state or federal agency could have visited Hubball during the two additional months that he possessed the three cans. Best's title, a forensic laboratory evidence intake coordinator, by itself, does not render her a forensic analyst because her presupposition as to who could visit the state laboratory obviously does not involve any scientific analysis. Her testimony is not contingent on a scientific method or technique; rather, it was limited to her personal knowledge of the access individuals would have had to the state laboratory. Under the present circumstances, and in light of the proffered evidence in this matter, we conclude that the police officer and the evidence intake coordinator were not acting as forensic analysts under § 52-582. In sum, we conclude that the court correctly determined that the exception to the three year limitation period for newly discovered forensic scientific evidence pursuant to § 52-582 (a) was not applicable.

The judgment is reversed only with respect to the determination that § 52-582 cannot be tolled by application of § 52-595, and the case is remanded for a new evidentiary hearing before a different judge to determine whether the three year limitation period of § 52-582 was tolled by § 52-595 and for further proceedings according to law; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

[1] General Statutes § 52-582 (a) provides in relevant part: "No petition for a new trial in any civil or criminal proceeding shall be brought but within three years next after the rendition of the judgment or decree complained of, except that a petition for a new trial in a criminal proceeding based on DNA (deoxyribonucleic acid) evidence or other newly discovered evidence, as described in subsection (b) of this section, that was not discoverable or available at the time of the original trial or at the time of any previous petition under this section, may be brought at any time after the discovery or availability of such new evidence . . . ."

[2] General Statutes § 52-595 provides: "If any person, liable to an action by another, fraudulently conceals from him the existence of the cause of such action, such cause of action shall be deemed to accrue against such person so liable therefor at the time when the person entitled to sue thereon first discovers its existence."

[3] On June 23, 2017, the petitioner filed a separate petition for a new trial in which he claimed that he recently discovered new evidence of third-party culpability establishing that a different individual, Saul Valentin, ordered

Segui, Sr., and Segui, Jr., to set fire to 95 Downing Street and Vargas' automobile and that the state suppressed a search warrant executed at 95 Downing Street months before the fire pursuant to which the police seized a cache of weapons. On October 15, 2019, the trial court denied that petition and subsequently denied the petitioner's petition for certification to appeal. In a separate decision also released today, we dismissed that appeal after concluding that the court properly denied the petitioner certification to appeal. See *Reyes* v. *State*, 222 Conn. App. , A.3d (2023).

[4] As a result of its legal determination that § 52-595 does not apply to § 52-582, the trial court did not reach the factual question of whether the petitioner had established that the state fraudulently concealed the evidence supporting his petition.

[5] We emphasize that the trial court in the present case did not have the benefit of this court's decision in *Randolph* v. *Mambrino*, supra, 216 Conn. App. 126, because it was officially released approximately five months after the trial court in the present case issued its decision granting the respondent's motion to dismiss.

[6] Although the respondent acknowledges that this court is bound by the *Randolph* decision, it expressly reserves its ability to challenge "the correctness of the *Randolph* decision" in our Supreme Court.

[7] Although our resolution of the petitioner's first claim is dispositive of this appeal, we also address the petitioner's second claim because it is likely to arise on remand. See, e.g., *Budlong & Budlong, LLC* v. *Zakko*, 213 Conn. App. 697, 714 n.14, 278 A.3d 1122 (2022).

[8] This court's decision in *Myers* is, to the best of our knowledge, the only appellate decision to interpret § 52-582 since it was revised in 2018 to create the exception for newly discovered forensic scientific evidence. See Public Acts 2018, No. 18-61, § 1. *Myers* is instructive as to the legislative purpose of § 52-582; however, that decision did not squarely address whether the evidence at issue constituted forensic scientific evidence, as that term is defined by § 52-582 (d), because that issue was not disputed.

[9] The trial court did not determine whether the petitioner's evidence "was not discoverable or available at the time of the original trial or original or previous petition for a new trial" under § 52-582 (b). On the basis of our conclusion that the petitioner's evidence was not forensic scientific evidence, and because neither party raises this claim on appeal, we likewise do not reach this issue.

[10] The petitioner on appeal does not contest the characterization of his newly discovered evidence as "chain of custody evidence." In fact, the petitioner used the same phrase to describe this evidence in his principal appellate brief, his appellate reply brief, and at oral argument before this court.