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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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KATZ, J., dissenting. I agree with the majority's conclusion that the state need not demonstrate that a weapon utilizes gunpowder to discharge a shot in order to establish that it is a deadly weapon as defined by General Statutes § 53a-3 (6). The majority concludes that a weapon from which a shot may be discharged is a ''deadly weapon'' pursuant to § 53a-3 (6) if it is designed for violence and is capable of inflicting death or serious bodily harm.[1] In accordance with the majority's conclusion then, the state, in order to prove robbery in the first degree in violation of General Statutes § 53a-134 (a) (2), had the burden of proving beyond a reasonable doubt that the air gun found in the apartment of the defendant, Raymond Hardy, satisfied that definition. Although I agree with the majority's determination that to constitute a deadly weapon, an instrument must be (1) designed for violence and (2) capable of causing death or serious physical injury, I would conclude that an instrument is designed for violence only when the violence intended is the type of violence capable of causing death or serious physical injury to a person. Because the state did not prove that the Crosman model 1008 repeater CO_2 pellet pistol at issue in this case was designed for such violence, I disagree with the majority's determination that the trial court reasonably could have concluded that this air gun was a deadly weapon. Accordingly, I dissent.

''The United States Supreme Court has explicitly held that the due process clause requires that every fact necessary to constitute the crime of which an accused stands charged must be proven beyond a reasonable doubt before a conviction. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 [1970].'' (Internal quotation marks omitted.) *State* v. *Haddad*, 189 Conn. 383, 388–89, 456 A.2d 316 (1983). It is well established that, ''[e]ach essential element of the crime charged must be established by proof beyond a reasonable doubt, and although it is within the province of the [trier] to draw reasonable, logical inferences from the facts proven, [it] may not resort to speculation and conjecture. . . . Where it cannot be said that a rational trier of fact could find guilt proven beyond a reasonable doubt, then, a conviction cannot constitutionally stand, as it is violative of due process under the fourteenth amendment. . . . [T]he burden rested upon the prosecution to prove the guilt of the accused, i.e., to prove each material element of the offense charged beyond a reasonable doubt.'' (Citations omitted; internal quotation marks omitted.) Id., 387–88.

In reaching its determination that the trial court reasonably found the defendant guilty of robbery in the first degree under § 53a-134 (a) (2), the majority relies

on the commentary to § 53a-3 (6); see Commission to Revise the Criminal Statutes, Penal Code Comments, Conn. Gen. Stat. Ann. § 53a-3 (West 2001); as well as case law to define deadly weapon and thereafter to conclude that the state established that, because the air gun in the present case was both designed for violence and capable of causing death or serious physical injury, it therefore was a deadly weapon. In adopting this definition, the majority recognizes that not all items capable of discharging a shot are designed for violence. It also recognizes that there are many guns capable of causing death or serious physical injury that were not designed for violence against persons but concludes that such guns nevertheless satisfy § 53a-3 (6) because they were intended to cause damage or injury to their intended target. See footnote 12 of the majority opinion. Under the majority's reasoning, however, a nail gun designed to penetrate wood or a slingshot designed to strike a paper target or small animals could be considered to be designed for violence. To me, it challenges common sense to assume that the legislature had in mind violence to boards, paper targets, or even small animals—in other words, anything other than human beings—when it adopted the Penal Code, which solely addresses crimes against persons. See, e.g, *Carmel Hollow Associates Ltd. Partnership* v. *Bethlehem*, 269 Conn. 120, 133, 848 A.2d 451 (2004) ("[i]t is well established that, '[i]n construing a statute, common sense must be used and courts must assume that a reasonable and rational result was intended' "). Therefore, although I agree with the majority's determination that to constitute a deadly weapon, an instrument must be capable of causing death or serious physical injury, I would conclude that an instrument is designed for violence only when the violence intended is the type of violence capable of causing death or serious physical injury to a person.[2]

Recognizing that the focus of our disagreement is a narrow one, I begin with the meaning of the phrase "designed for." Although we previously have not considered the meaning of the phrase, courts have defined it essentially as the main purpose for which the item was created. See, e.g., *State* v. *Schaffer*, 202 Ariz. 592, 594 n.4, 48 P.3d 1202 (App. 2002) (prosthesis deemed not to be deadly weapon where " 'deadly weapon' " is defined to include " 'anything designed for lethal use' "; Ariz. Rev. Stat. § 13-105 [13] [2001]; and prosthesis, by definition, is not " 'designed for lethal use,' " but is designed as substitute body part); *Berry* v. *State*, 833 S.W.2d 332, 334 (Tex. App. 1992) (five inch long metal bolt sharpened on one end and wrapped with duct tape on other end deemed "deadly by design" when multiple witnesses testified that shank was designed to do harm to another person, weapon was capable of causing death, and there was no legitimate function for weapon; and when "deadly by design" defined pursuant to Texas

Penal Code Annotated § 1.07 [a] [11] [A] [Vernon 1974], now codified at § 1.07 [a] [1], as either '' 'a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury' ''); see also *In re Robert A.*, 199 Ariz. 485, 487, 19 P.3d 626 (App. 2001) (flare gun not deadly weapon when, inter alia, no evidence in record indicated that flare gun was designed to be used to injure or kill someone); *Commonwealth* v. *Duxbury*, 449 Pa. Super. 640, 642–43, 674 A.2d 1116 (1996) (question of ''intended use'' is not whether appellant has proffered plausible lawful use for object, or whether circumstances of possession negated intent to use instrument unlawfully, but whether three inch knife concealed within pen has common lawful purpose within community); *Commonwealth* v. *Blake*, 413 Pa. Super. 416, 418–19, 605 A.2d 427 (1992) (pocket knife not designed as weapon in absence of description of size and shape of knife or blade to enable court to make such determination).

In applying its definition of deadly weapon to the present case and deciding that the trial court reasonably could have concluded that the air gun used in the robbery was designed for violence because it was intended to cause damage or injury to its intended target and was capable of causing death or serious physical injury, the majority relies on evidence establishing that the air gun used carbon dioxide cartridges as a propellant, was designed to shoot .177 caliber pellets[3] and was operational. It also relies on an operating manual for the air gun that was submitted by the state, which contained the following warning: ''NOT A TOY. ADULT SUPERVISION REQUIRED. MISUSE OR CARELESS USE MAY CAUSE SERIOUS PHYSICAL INJURY OR DEATH. MAY BE DANGEROUS UP TO 400 YARDS (366 METERS).'' Notably, however, three of the manual's four specific warnings as to such injuries exclusively concerned injury to the *user*.[4] Even more significant, the only use mentioned in the manual is target shooting. Indeed, the manual explains: ''Your airgun is designed for target shooting and is suited for both indoor and outdoor use.'' As the *only* evidence regarding intended use was the statements in the manual regarding target shooting, nothing in this record establishes that the air gun found in the apartment qualifies as a ''deadly weapon'' under § 53a-3 (6) in that it is designed for violence to humans.

The majority also notes that the state argued to the trial court that, ''as a matter of common sense, the gun, particularly when used at close range, could be a deadly weapon and could cause serious physical injury.''[5] To the extent, however, that the trial court may have relied on this argument, it clearly was an improper application of common knowledge.

Although it is certainly true that ''[i]t is the right and the duty of the [trier of fact] to draw reasonable and

logical inferences from the evidence . . . [i]n considering the evidence introduced in a case, [triers of fact] are not required to leave common sense at the courtroom door . . . nor are they expected to lay aside matters of common knowledge or their own observations and experience of the affairs of life . . . .'' (Internal quotation marks omitted.) *State* v. *Chapman*, 46 Conn. App. 24, 35, 698 A.2d 347, cert. denied, 243 Conn. 947, 704 A.2d 800 (1997), cert. denied, 523 U.S. 1063, 118 S. Ct. 1393, 140 L. Ed. 2d 652 (1998). It is also true, however, that ''common knowledge encompasses only those things so patently obvious and so well known to the community generally, that there can be no question or dispute concerning their existence.'' (Internal quotation marks omitted.) *State* v. *Padua*, 273 Conn. 138, 196, 869 A.2d 192 (2005) (*Katz, J.*, dissenting and concurring). ''[C]ommon knowledge is not tantamount to a common belief that may be nothing more than a perception grounded in folklore, not reality.'' Id., 194 (*Katz, J.*, dissenting and concurring); see also *State* v. *Smith*, 273 Conn. 204, 211–14, 869 A.2d 171 (2005) (expert testimony regarding harmful effect to child when cocaine ingested not required because harmful physiological effects of cocaine are within knowledge and experience of typical juror, state law reflected determination that cocaine was dangerous drug, published court opinions highlighted threat to health when cocaine was hidden in mouth or swallowed, and potentially harmful effects of ingesting crack cocaine are subject of published news reports); *State* v. *Clark*, 260 Conn. 813, 822, 801 A.2d 718 (2002) (expert testimony on effects of smoking marijuana is not required when average juror would have been exposed, through observation, experience, acculturation and popular education, to sufficient facts to form reasoned conclusion).

Because the field of common knowledge is limited to obvious facts, it can be considered common knowledge that an air gun is designed for violence only when the question actually has been examined and the results are largely undisputed as well as widely distributed. The majority's conclusion that such common knowledge exists seems to rest on the premise that it is an obvious fact that the air gun at issue here, specifically, a Crosman model 1008 repeater CO_2 pellet pistol, and indeed all air guns, are designed for violence. Such a conclusion is unwarranted. Unlike the effects of marijuana smoking addressed in *State* v. *Clark*, supra, 260 Conn. 822, it cannot be said that the average fact finder in Connecticut has been exposed, through personal observation and experience, acculturation or popular education, to the Crosman model 1008 repeater CO_2 pellet pistol, or any air gun, enough to be familiar with ''obvious facts'' sufficient to allow a determination that such instruments are designed for violence. Certainly it cannot be said that ownership of air guns is so widespread in this state at this point in time that most or even

many people have a familiarity with air guns through personal experience or the experience of friends and family.

Turning to reference materials readily available to the public, I note that one encyclopedia describes an air gun as: ''[A] small-caliber weapon, either a handgun or a shoulder weapon, from which pellets, bullets, or darts are discharged by the expanding force of compressed air or gas. Some air guns are little more than toys, others have considerable penetrating power.'' 1 Encyclopedia Americana, International Edition (Grolier, Inc., 1998) p. 383.[6] This article further explains that ''[n]o form of air gun yet made has had enough power to propel a bullet to any considerable distance; thus, air guns have no military significance,'' and that ''[t]opgrade air guns are accurate at short ranges and are particularly suitable for target practice, for exterminating such small pests as mice and rats, and for training in safe handling of firearms.'' Id. Similarly, another encyclopedia describes air guns as follows: ''Most modern air guns are inexpensive BB guns (named for the size of the shot fired). The best of these develop about [one-half] the muzzle velocity of light firearms, are accurate enough for marksmanship training at ranges up to 100 feet . . . and can kill small game.'' 1 The New Encyclopaedia Britannica (15th Ed. 1998) p. 175. Thus, popular reference books do not add to the common knowledge that air guns are designed for violence to humans, but, rather, indicate that there are many types of air guns with varying capabilities, designed for various uses.

Indeed, one buyer's guide, listing more than *400* types of air guns, demonstrates the expansive variety of guns, with varying power and accuracy, that are encompassed in this category. See J. Walter, The Airgun Book (3d Ed. 1984). There is also a variety of shots available for use in the various air guns: ''The target shooter, for example, selects stable, flat-head 'wadcutter' pellets to cut neat, easily gauged holes in his targets, while many fieldsmen prefer English-style round-heads, which perform better at long range—or the . . . pointed-head 'hunting' pellets which promise better penetration.''[7] Id., p. 52. A brief history offered by the author indicates that air guns were designed for a range of activities, including organized target shooting at pubs and air gun competitions for youngsters. Id., p. 15.

In *State* v. *Smith*, supra, 273 Conn. 211–14, we also looked to published opinions as highlighting information said to be common knowledge. The Appellate Court has addressed whether an unloaded air gun was a dangerous instrument so as to establish robbery in the first degree and concluded that, unless it was used to threaten bludgeoning, it was not. *State* v. *Osman*, 21 Conn. App. 299, 573 A.2d 743 (1990), rev'd on other grounds, 218 Conn. 432, 589 A.2d 1227 (1991). In dicta, however, the Appellate Court asserted: ''The pellet pis-

tol used in the robbery is a weapon designed for violence. The weapon fits the definition of the term 'deadly weapon' at § 53a-3 (6). This term appears in § 53a-134 (a) (2). . . . If the defendant had been charged under [this section], the state would not have had to prove that the pistol was loaded at the time of the robbery. The only issue would have been whether the weapon was operable.'' Id., 307 n.3. I question the precedential value of the assertion that the pellet gun was designed for violence and, in light of the fact that it was completely unsupported by evidence or even analysis, I find that it sheds no more light on the matter than the conclusory findings of the trial court in the present case. See footnote 5 of this opinion; see also *State* v. *Padua*, supra, 273 Conn. 194–95 (*Katz, J.*, dissenting and concurring) (discussing difference between perception grounded in folklore and common knowledge).[8]

The majority also cites cases from other jurisdictions concerning air guns, but these do little to support the conclusion that it is common knowledge that air guns are designed for violence to humans.[9] In cases cited by the majority wherein the definition of deadly weapon applied by the courts actually did include a requirement that the item was designed, made or adapted to cause death or serious injury and the factor was determinative, those cases are not persuasive in that one court never discussed the application of this standard, and the others provided only a cursory analysis of the issue. See *McCaskill* v. *State*, 648 So. 2d 1175, 1178 (Ala. Crim. App. 1994) (concluding that BB gun could be deadly weapon, defined by statute, to include anything '' 'manifestly designed, made or adapted for the purposes of inflicting death or serious physical injury,' '' because it can cause serious injury to eye); *State* v. *Cordova*, 198 Ariz. 242, 243, 8 P.3d 1156 (App. 1999) (because pellet gun uses carbon dioxide cartridges to propel pellets and jury had opportunity to view pellet gun during its deliberations, evidence sufficient to establish air gun was deadly weapon when ''deadly weapon'' defined to include anything designed for lethal use, including ''firearm,'' which was defined by Arizona Revised Statutes § 13-105 [17] as ''any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of expanding gases''); *Campbell* v. *State*, 577 S.W.2d 493, 495–96 (Tex. Crim. App. 1979) (because air gun designed to fire .22 caliber projectile was capable of causing death of human being if fired at close range and gun was pointed at close range during robbery, it was found to be deadly weapon capable of causing serious injury and designed for that purpose); see also *Mitchell* v. *State*, 698 So. 2d 555, 560–62 (Fla. App. 1997) (unclear whether air gun was found to be deadly weapon or dangerous instrument when conviction was affirmed after court assessed likelihood of injury from reasonable victim's point of view and air

gun used to threaten).

In other cases addressing air guns used in crimes, however, fact finders have concluded that the air guns at issue were not designed for violence. See, e.g., *Holde*r v. *State*, 837 S.W.2d 802, 808 (Tex. App. 1992) (although air pistol could shoot BB with muzzle velocity of 180 feet per second and thus was capable of penetrating human eye, expert witness testified that spring-piston BB or pellet pistol was not manifestly designed, made, or adapted for purpose of inflicting death or serious bodily injury and state therefore had to prove air pistol was loaded); *Mosley* v. *State*, 545 S.W.2d 144, 145 (Tex. Crim. App. 1976) (when state's expert testified that BB gun projectile could not penetrate skin, but that there was good probability it could cause loss of sight if victim were shot in eye and witness testified that air pistol used constantly misfired and, when it did fire, projectile had very low velocity and rarely went over five feet, unreasonable to conclude that weapon was " 'designed, made, or adapted for the purpose of inflicting death or serious bodily injury' "). Indeed, the latter two Texas cases are more persuasive because the fact finders in those cases were presented with expert testimony as to the specific air gun's capabilities. Moreover, in light of the differing conclusions drawn by fact finders regarding whether various types of air guns were designed for violence, I do not believe that, even if we were to search outside of Connecticut, it can be said to be common knowledge that all air guns generally, or the air gun in the present matter specifically, are designed for violence.[10]

I do not deny the possibility that evidence could be submitted at trial that conceivably could convince a fact finder that the Crosman model 1008 repeater CO_2 pellet pistol discharges the flat ended pellet used at a velocity so high that it supports the conclusion that the gun was designed for violence to humans.[11] Indeed, it may be that the velocity of 430 feet per second reported in the manual submitted as evidence is of sufficient force that it would support a conclusion by a fact finder that an item capable of such power is designed mainly for the type of violence capable of causing death or serious physical injury to a human.[12] I strongly disagree, however, that it reasonably can be said to constitute common knowledge.[13] Therefore, I respectfully dissent with respect to the majority's conclusion that the trial court in the present case reasonably could have concluded that the Crosman model 1008 repeater CO_2 pellet pistol was a deadly weapon, specifically, that it was designed for violence.

The state, however, requests, in the alternative, that we conclude that there was sufficient evidence to support the lesser charge of robbery in the third degree in violation of General Statutes § 53a-136.[14] Under the facts of this case, I agree that the state has established the

elements of third degree robbery and I would instruct the trial court to render a judgment of conviction under that statute.

[1] Although the Penal Code does not provide a definition for "serious bodily harm," General Statutes § 53a-3 (4) defines " '[s]erious physical injury' " as a "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ . . . ." In the absence of an alternative definition for "serious bodily harm," or any indication in the majority's analysis that the definitions would differ, I apply the statutory definition for serious physical injury.

The legislature does not define violence; nor does the majority. One dictionary includes the following definitions for violence: "[E]xertion of physical force so as to injure or abuse (as in effecting an entrance to a house)," "injury by or as if by distortion, infringement, or profanation" and "intense, turbulent, or furious and often destructive action or force." Merriam-Webster's Collegiate Dictionary (10th Ed. 1993). As I hope to demonstrate in this dissent, a simple application of this definition, divorced from the context of the Penal Code, would lead to absurd and unworkable results.

[2] Under the majority's use of the phrase "designed for violence," proof that a slingshot was carried, without shot in a zipped backpack, and was never used or even referenced during a robbery, would elevate a robbery in the third degree pursuant to General Statutes § 53a-136 to robbery in the first degree, with five years of the resulting sentence to be without suspension or reduction. See General Statutes § 53a-134 (b). This is so because, if an instrument is deemed a "deadly weapon" under § 53a-3 (6), it need not be used to injure, it need not be displayed or even used to threaten during the course of the robbery, it may be loaded or unloaded, and the state need only show that it is operational. General Statutes §§ 53a-3 (6) and 53a-134 (a). Further, the penalty for robbery in the first degree, a class B felony, carries the additional requirement that the defendant "shall be sentenced to a term of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court." General Statutes § 53a-134 (b). To me, it challenges common sense to posit that the legislature intended such a result.

[3] The operating manual for the air gun submitted into evidence pictured the .177 caliber pellets as cylindrical objects tapering in the middle and flat on both ends.

[4] Specifically, in addition to the general warning noted by the majority, the manual contains the following four warnings or cautions also printed in capital letters and red ink: (1) "[CARBON DIOXIDE (CO_2)] CYLINDERS MAY EXPLODE AT TEMPERATURES ABOVE 120 [DEGREES FAHRENHEIT]. DO NOT MUTILATE OR INCINERATE THEM. DO NOT EXPOSE THEM TO HEAT OR STORE THEM AT TEMPERATURES ABOVE 120 [DEGREES FAHRENHEIT]."; (2) "KEEP HANDS AWAY FROM ESCAPING CO_2 GAS. IT CAN CAUSE FROSTBITE IF ALLOWED TO COME IN CONTACT WITH SKIN."; (3) "USE .177 CALIBER PELLETS ONLY. NEVER REUSE PELLETS. USE OF ANY PELLET OTHER THAN .177 CALIBER CAN CAUSE INJURY TO YOU OR DAMAGE TO YOUR AIR PISTOL."; and (4) "KEEP THE AIR PISTOL ON SAFE UNTIL YOU ARE ACTUALLY READY TO SHOOT. THEN PUSH IT TO SAFE OFF."

Although these specific warnings suggest that the general warning was nothing more than a standard products liability waiver, I do not dispute that the air pistol at issue was capable, under limited circumstances, of causing serious injury or possibly death. See footnote 8 of this opinion (referencing product liability cases arising from use of air guns).

[5] The trial transcript also contained the following exchange:

"The Court: . . . [The] manual for the [Crosman] pellet gun, if I'm not mistaken. I haven't—they fire at a rate of speed and have a key—they can kill, for example, small animals. We know that for a fact. Don't we? Don't we know that pellet guns can kill small animals?

"[State's Attorney]: I think we do make a common sense finding.

"The Court: Well, I can tell you from my own experience such things occur, you know."

[6] The Encyclopedia Americana, supra, p. 383, explains that there are two general types of air guns in popular use: one type is powered by air or carbon dioxide gas under pressure within the guns, and the second type is powered by air pressure created by the release of a powerful spring and plunger. These guns are comparable in power and accuracy. 1 The New Encyclopaedia Britannica (15th Ed. 1998) p. 175.

[7] Although certainly not common knowledge, this information would suggest that because the Crosman model 1008 repeater CO_2 pellet pistol found in the defendant's apartment utilized the flat head pellets, which are described as the type that are intended for short range target shooting, the gun was not designed for violence.

[8] Other published cases indicate that air guns are given to and used by children. See *Haesche* v. *Kissner*, 229 Conn. 213, 217, 640 A.2d 89 (1994) (product liability case arising out of eye injury occurring while fifteen and sixteen year olds used Crosman model 66 Powermaster .177 caliber pellet/BB air rifle in activity called ''war games'' that involved hunting for and shooting at each other while wearing several layers of clothing for protection); *Vilcinskas* v. *Sears, Roebuck & Co.*, 144 Conn. 170, 171, 127 A.2d 814 (1956) (product liability case arising out of accident occurring when air rifle sold to ten year old accidentally discharged and caused injury). Although these cases may not reflect positively on the safety of air guns, they do indicate a general usage that belies the argument that these guns are designed mainly to do the type of violence capable of causing death or serious physical injury to a human.

[9] The definitions of deadly weapon applied in two of the cases did not include a requirement that a deadly weapon be designed or intended for violence—and indeed, the analysis applied was much closer to the analysis of circumstances that we would apply under § 53a-3 (7) defining dangerous instrument. Notably, the most relevant point to this discussion that may be taken from *People* v. *Lochtefeld*, 77 Cal. App. 4th 533, 538–40, 91 Cal. Rptr. 2d 778 (2000), and *Merriweather* v. *State*, 778 N.E.2d 449, 457 (Ind. App. 2002), goes not to whether air guns are designed for violence, but, instead, to whether knowledge regarding air guns is so common as to obviate the need for evidence. In both of these cases cited in the majority opinion, expert testimony was submitted regarding the capabilities of the particular guns at issue and the type of capabilities that would be required to cause death or serious injury to a human, thereby acknowledging implicitly that such information is not a matter of common knowledge.

[10] Moreover, I note that if we look within Connecticut, as we did in *State* v. *Smith*, supra, 273 Conn. 212–14, to state law to determine the existence of a legislative determination, evidencing common knowledge, we do not find a similar confirmation. It is not unlawful to own or to sell air guns and, indeed, the legislature expressly has recognized the use of such instruments by children in sporting events or by persons in sporting competitions. See General Statutes § 53-206 (b) (5) (although ''BB. gun[s]'' included in list of dangerous weapons that may not be carried on one's person, providing explicit exclusions for ''the carrying of a BB. gun by any person taking part in a supervised event or competition of the Boy Scouts of America or the Girl Scouts of America or in any other authorized event or competition while taking part in such event or competition or while transporting such weapon to or from such event or competition'').

[11] In this regard, I note General Statutes § 53a-217e (3), which prohibits negligent hunting, includes in the definition of '' '[l]oaded hunting implement' '' high velocity air guns that are charged with a projectile in the chamber or in a magazine that is attached to the air gun. Clearly, there are some air guns that are used in hunting and some even may be used in hunting game large even to support the conclusion that they are designed for the type of violence capable of causing death or serious physical injury to a human.

[12] I note that, even if I were to accept the majority's interpretation of ''designed for violence'' to include objects designed to cause violence to small animals, common knowledge still cannot serve to establish whether the Crosman model 1008 repeater CO_2 pellet pistol is an air gun with the accuracy and velocity required for hunting small prey. One expert has explained that ''[t]arget rifles may need to better 0.8 [accuracy unit] to be reasonable for value for money, or 0.5 [accuracy unit] to win competitions if the firer is good enough; good sporting guns probably need to surpass 1 unit; low-price plinking rifles 2.5; cheap pistols, 5 [accuracy unit] (though 5 units would mean that groups at 10m would be 50mm in diameter!).'' J. Walter, supra, p. 61. The author explains that a gun with one accuracy unit achieves a one meter diameter group at 1000 meters, a 2.5 centimeter group at 25 meters or a centimeter group at a 10 meter distance. Id. ''Plinking'' is defined as ''to shoot at especially in a casual manner.'' Merriam-Webster's Collegiate Dictionary (10th Ed. 1993). Where the air gun in this case falls within this range cannot reasonably be said to be common knowledge.

[13] ''It is a fundamental tenet of our law to resolve doubts in the enforcement

of a penal code against the imposition of a harsher punishment.'' (Internal quotation marks omitted.) *State* v. *Hinton*, 227 Conn. 301, 316, 630 A.2d 593 (1993). Lenity certainly requires that, to the extent the definition of a deadly weapon does not clearly include the air gun in the present case, it should not be presumed, without proof, to be included.

[14] General Statutes § 53a-136 (a) provides: ''A person is guilty of robbery in the third degree when he commits robbery as defined in section 53a-133.''

General Statutes § 53a-133 provides: ''A person commits robbery when, in the course of committing a larceny, he uses or threatens the immediate use of physical force upon another person for the purpose of: (1) Preventing or overcoming resistance to the taking of the property or to the retention thereof immediately after the taking; or (2) compelling the owner of such property or another person to deliver up the property or to engage in other conduct which aids in the commission of the larceny.''