STATE OF CONNECTICUT *v.* DENNIS EARL THOMPSON
(SC 18740)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh and Harper, Js.

Argued September 28—officially released December 4, 2012

Stephan E. Seeger, with whom, on the brief, was *Igor G. Kuperman*, for the appellant (defendant).

Laurie N. Feldman, special deputy assistant state's attorney, with whom, on the brief, were *Michael Dearington*, state's attorney, and *John Waddock*, supervisory assistant state's attorney, for the appellee (state).

Opinion

ZARELLA, J. The defendant, Dennis Earl Thompson, appeals from the judgment of the Appellate Court, which affirmed the trial court's judgment of conviction following the defendant's conditional plea of nolo contendere to the charge of possession of marijuana with intent to sell by a person who is not drug-dependent. See General Statutes § 21a-278 (b).[1] The defendant entered the plea after the trial court denied his motion to suppress evidence obtained during a search of his recreational vehicle, which was parked on the property of Edward Jevarjian,[2] and of Jevarjian's home and garage. The plea was conditioned on the defendant's right to appeal from the trial court's denial of the motion to suppress. The defendant appealed to the Appellate Court, claiming that the search was unlawful because it began prior to the time indicated in the search warrant and that he had standing to contest the search of Jevarjian's home and garage, in addition to the search of his own recreational vehicle, because parking on Jevarjian's property entitled the defendant to the constitutional protections afforded to overnight guests. The Appellate Court affirmed the judgment of the trial court. *State* v. *Thompson*, 124 Conn. App. 353, 360, 5 A.3d 513 (2010). The defendant then appealed to this court from the Appellate Court's judgment, and we granted certification to appeal, limited to the following two issues. First, "[d]id the Appellate Court properly determine that the contested search was not unreasonably premature?" *State* v. *Thompson*, 300 Conn. 905, 12 A.3d 1004 (2011). Second, "did the Appellate Court properly determine that the defendant lacked standing to challenge the search of [Jevarjian's] home and garage?"[3] Id. We affirm the judgment of the Appellate Court.

In its opinion, the Appellate Court set forth the following relevant facts and procedural history. "During the late evening hours of May 17, and into the early morning hours of May 18, 2007, law enforcement officials seized approximately 600 pounds of marijuana from Jevarjian's house and garage and from the defendant's recreational vehicle that was parked on Jevarjian's property. The defendant was sleeping in his recreational vehicle when the officials commenced the search. He and Jevarjian were arrested at that time. . . . The defendant was charged with possession of marijuana with intent to sell by a person who is not drug-dependent in violation of § 21a-278 (b) and conspiracy to possess marijuana with intent to sell by a person who is not drug-dependent in violation of General Statutes §§ 53a-48 and 21a-278 (b). Except for sentencing, [the defendant's and Jevarjian's] cases . . . were prosecuted simultaneously.

"On August 13, 2007, Jevarjian filed a motion to suppress the evidence that had been seized, claiming that the search had commenced [before] the judge signed

the search warrant. The defendant . . . requested permission to join in that motion on the second day of a four day evidentiary hearing, and the court granted the defendant's request. The court denied the motion to suppress [on] . . . May 13, 2008. . . . On July 16, 2008, the defendant entered a conditional plea of nolo contendere to one count of possession of marijuana with intent to sell [by a person who is not drug-dependent] in violation of § 21a-278 (b) and was sentenced to eighteen years incarceration, suspended after nine and one-half years, and three years probation." (Citations omitted.) *State* v. *Thompson*, supra, 124 Conn. App. 355–57.

At the suppression hearing, the defendant argued that the search of his recreational vehicle and Jevarjian's home and garage was unlawfully premature because it began before 10:51 p.m., the time that the issuing judge had specified in the warrant.[4] *State* v. *Jevarjian*, 124 Conn. App. 331, 340, 4 A.3d 1231 (2010). The trial court, however, attributed this discrepancy to a scrivener's error and credited the testimony of several police officers, along with other evidence, in concluding that the warrant was in fact signed at 9:51 p.m. and that the search did not begin prematurely.[5]

The defendant then appealed to the Appellate Court, claiming that the trial court improperly denied his motion to suppress the evidence seized from his recreational vehicle and Jevarjian's home and garage because the search was unlawfully premature.[6] The defendant also argued that he had standing to contest not only the search of his recreational vehicle but also the search of Jevarjian's home and garage because he was Jevarjian's overnight guest at the time of the search. The Appellate Court determined that the finding that the defendant was not an overnight guest in Jevarjian's home was not clearly erroneous. *State* v. *Thompson*, supra, 124 Conn. App. 358–59.

Relying on its analysis in the companion case of *State* v. *Jevarjian*, supra, 124 Conn. App. 331, the Appellate Court also concluded that the trial court's use of parol evidence to evaluate whether the warrant contained a scrivener's error was appropriate and that the conclusion that the time noted in the search warrant was a scrivener's error that did not affect the warrant's validity was not improper. *State* v. *Thompson*, supra, 124 Conn. App. 359–60; see *State* v. *Jevarjian*, supra, 344. Accordingly, the Appellate Court upheld the trial court's denial of the defendant's motion to suppress. See *State* v. *Thompson*, supra, 359–60. This appeal followed. We address the two certified issues in turn.

I

The defendant claims that the Appellate Court should have concluded that the search was unlawfully premature because the search commenced before 10:51 p.m.,

the time specified by the judge issuing the warrant, thereby contravening the fourth amendment's guarantee that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ."[7] U.S. Const., amend. IV. In contending that the search was unlawfully premature, the defendant first challenges the trial court's finding that the issuing judge made a scrivener's error, asserting that the court improperly relied on parol evidence in making that finding. The defendant also claims that, even if the court properly considered parol evidence in this instance, the factual basis on which the court relied was inadequate to find a scrivener's error because the issuing judge himself never testified or provided an affidavit regarding whether the time specified in the warrant was indeed incorrect. The defendant argues in the alternative that a scrivener's error would either render the warrant entirely invalid or curtail its effectiveness until after the time specified therein because of the requirements of General Statutes § 54-33a (c) that warrants include the time of issuance.

The state, by contrast, maintains that the Appellate Court correctly determined that the trial court properly relied on parol evidence, consistent with *State* v. *Colon*, 230 Conn. 24, 34, 644 A.2d 877 (1994), to ascertain whether the warrant was validly executed. The state also argues that the factual finding that the issuing judge made a scrivener's error by mistakenly specifying 10:51 p.m. when it was in fact 9:51 p.m. was not clearly erroneous in light of the record as a whole. Finally, the state asserts that the erroneous time notation did not require that the police delay the search until after the erroneous time indicated on the warrant. We agree with the state.

We begin by noting that "[o]ur standard of review of a trial court's findings and conclusions in connection with a motion to suppress is well defined. A finding of fact will not be disturbed unless it is clearly erroneous in view of the evidence and pleadings in the whole record . . . . [When] the legal conclusions of the court are challenged, we must determine whether they are legally and logically correct and whether they find support in the facts set out in the memorandum of decision . . . ." (Internal quotation marks omitted.) *State* v. *Courchesne*, 296 Conn. 622, 642, 998 A.2d 1 (2010).

Turning first to the defendant's claim that the trial court improperly relied on parol evidence to determine whether a scrivener's error was made, we previously have observed that, "although probable cause must be determined from the four corners of the warrant, we are not confined to the four corners of the warrant in determining whether the affidavit in support of probable cause has been validly executed." *State* v. *Colon*, supra, 230 Conn. 34. Mere technical defects are likewise insufficient to invalidate an otherwise valid search war-

rant. See, e.g., *State* v. *Browne*, 291 Conn. 720, 743–44, 970 A.2d 81 (2009). Accordingly, we do not agree with the defendant that the trial court's reliance on parol evidence to determine the timing of the warrant's execution was improper.

Second, with respect to the defendant's claim concerning the factual basis of the trial court's findings, the weighing of the evidence is the province of the trial court, and we will disturb the trial court's findings of fact only if they are clearly erroneous on the record as a whole. See, e.g., *Gianetti* v. *Norwalk Hospital*, 304 Conn. 754, 765–66, 43 A.3d 567 (2012). "The determination of a witness' credibility is the special function of the trial court. This court cannot sift and weigh evidence." (Internal quotation marks omitted.) *State* v. *Trine*, 236 Conn. 216, 227, 673 A.2d 1098 (1996). The Appellate Court determined that the trial court's finding that "[t]he time placed by Judge Vitale of 10:51 p.m. was in error and that the correct time was 9:51 p.m." was not clearly erroneous. (Internal quotation marks omitted.) *State* v. *Jevarjian*, supra, 124 Conn. App. 340–41. As we noted previously,[8] the trial court considered, among other factors, the testimony of several police officers present when the issuing judge signed the warrant, as well as transcripts of the officers' radio transmissions at the time the warrant was purportedly signed, to find that the issuing judge made a scrivener's error and that he, in fact, signed the warrant at 9:51 p.m. rather than at 10:51 p.m. See id., 339–41. Accordingly, the Appellate Court concluded, and we agree, that the record disclosed "substantial evidence to support the [trial] court's finding that the search occurred after Judge Vitale signed the warrant and that the 10:51 p.m. notation . . . was a scrivener's error."[9] Id., 341. On the basis of the record as a whole, we agree with the Appellate Court that this finding of fact was not clearly erroneous. See *State* v. *Courchesne*, supra, 296 Conn. 642.

Third, the defendant asserts in the alternative that a warrant must strictly comply with the time and date requirement in § 54-33a (c), and that the issuing judge's mistake in the warrant therefore rendered the warrant invalid and the ensuing search unlawful. Specifically, the defendant relies on language in § 54-33a (c) providing that a search warrant "shall state the date and time of its issuance" to claim that the scrivener's error rendered the warrant invalid. In the defendant's view, because the time of issuance is required by statute, the inclusion of an incorrect time either invalidates the warrant altogether or constrains the police to adhere to the time that is mistakenly specified in executing the search. Our analysis of § 54-33a (c), however, does not compel the result that the defendant urges.

Because this claim raises a question of statutory interpretation, our review is plenary. See, e.g., *State* v. *Thompson*, 305 Conn. 806, 818, 48 A.3d 640 (2012).

General Statutes § 1-2z, which guides our analysis, provides: "The meaning of a statute shall, in the first instance, be ascertained from 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." "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 . . . . A statute is ambiguous if, when read in context, it is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Fairchild Heights, Inc.* v. *Dickal*, 305 Conn. 488, 497, 45 A.3d 627 (2012). Accordingly, we begin by examining § 54-33a (c).

General Statutes § 54-33a (c) provides in relevant part: "A warrant may issue only on affidavit sworn to by the complainant or complainants before the judge or judge trial referee and establishing the grounds for issuing the warrant, which affidavit shall be part of the arrest file. . . . The warrant shall state the date and time of its issuance and the grounds or probable cause for its issuance and shall command the officer to search within a reasonable time the person, place or thing named, for the property specified. The inadvertent failure of the issuing judge or judge trial referee to state on the warrant the time of its issuance shall not in and of itself invalidate the warrant."

The defendant correctly notes that the statute dictates that "[t]he warrant shall state the date and time of its issuance . . . ." General Statutes § 54-33a (c). This does not, however, resolve the issue of what result arises when the time of issuance is included but is inaccurate due to a scrivener's error. In addition, we previously have explained that, when determining the meaning of "shall," we interpret it consistent with its ordinary mandatory meaning "[u]nless the text indicates otherwise . . . ." *State* v. *Cook*, 183 Conn. 520, 522, 441 A.2d 41 (1981). The final sentence of § 54-33a (c) indicates that, despite the apparently mandatory nature of the word "shall," the time need not always be included for a warrant to be valid when the warrant's time of issuance is inadvertently omitted. This, too, fails to provide an unambiguous answer as to whether a scrivener's error in the listing of the time of issuance affects the warrant's validity. Accordingly, we conclude that the time requirement's effect in the present case is ambiguous and turn to extratextual sources to resolve this ambiguity. See General Statutes § 1-2z; *Fairchild Heights, Inc.* v. *Dickal*, supra, 305 Conn. 497.

We note first that the requirement of § 54-33a (c) that the warrant "shall state the . . . time of its issuance" is not mandated under the fourth amendment but is intended to ensure that search warrants are issued prior to the commencement of a search. See, e.g., *Dalia* v. *United States*, 441 U.S. 238, 255, 99 S. Ct. 1682, 60 L. Ed. 2d 177 (1979) (fourth amendment requires only that warrant [1] be issued by neutral, disinterested magistrate, [2] demonstrate probable cause, and [3] describe with particularity items to be seized and places to be searched). Thus, neither the statutory language of § 54-33a (c) nor the limits of the fourth amendment shed light on what result ensues when the time is included but is inaccurate because of a scrivener's error.

Turning next to the legislative history of this provision, we also note that the requirement that a warrant include the time of issuance was not contained in earlier iterations of § 54-33a but instead was added in 2000. See Public Acts 2000, No. 00-31 (P.A. 00-31). Concurrently with this change, the legislature included the inadvertent omission provision described previously, which provides that the "inadvertent failure of the issuing judge to state on the warrant the time of its issuance shall not in and of itself invalidate the warrant." P.A. 00-31, codified as amended at General Statutes § 54-33a (c). Representative Michael P. Lawlor, who testified in favor of the bill that became P.A. 00-31, explained that this inadvertent omission provision was intended to prevent otherwise valid warrants from being invalidated due to mere technicalities. See 43 H.R. Proc., Pt. 4, 2000 Sess., p. 983.[10] This rationale is equally applicable to inadvertent errors in time as it is to inadvertent omissions of the time and therefore would counsel against the invalidation of warrants containing scrivener's errors with respect to the time of issuance.

Considering both the text of the statute and the underlying legislative history, we conclude that the Appellate Court appropriately resolved the ambiguity by determining that the mistaken notation of an incorrect time, which is a mere technicality, should not invalidate the warrant. See *State* v. *Thompson*, supra, 124 Conn. App. 359–60; *State* v. *Jevarjian*, supra, 124 Conn. App. 344. We agree with the rationale of the Appellate Court in *Jevarjian*, in which it concluded that, "[i]f, as the legislature has indicated, the failure to include the time does not invalidate a warrant, we see no logical reason whatsoever to conclude that this search warrant was invalidated when the time noted by [the issuing judge] was proved to be a scrivener's error." *State* v. *Jevarjian*, supra, 344.

In sum, we conclude that the Appellate Court correctly determined that the trial court's finding that the warrant was issued at 9:51 p.m. was not clearly erroneous because the trial court appropriately relied on parol evidence to find a scrivener's error. See id. Moreover,

we conclude that the Appellate Court properly determined that the scrivener's error did not invalidate the warrant. Id. We therefore hold that the Appellate Court properly determined that the contested search was not unlawfully premature. See *State* v. *Thompson*, supra, 124 Conn. App. 355, 359–60; *State* v. *Jevarjian*, supra, 124 Conn. App. 341, 344.

II

With respect to the second certified issue, the defendant claims that the Appellate Court should have concluded that he had standing to challenge the search of Jevarjian's home and garage, in addition to his own recreational vehicle, because he was Jevarjian's overnight guest. The state counters that the Appellate Court correctly determined that one who is not invited into the home as an overnight guest cannot claim a reasonable expectation of privacy, the touchstone of standing to contest a search, with respect to the home. See *State* v. *Thompson*, supra, 124 Conn. App. 358–59. We agree with the state.

After examining the records and briefs and considering the arguments of the parties, we are persuaded that the judgment of the Appellate Court should be affirmed on the second certified issue. We conclude that the Appellate Court's opinion thoroughly and properly resolved the issue. See id. Accordingly, we adopt the Appellate Court's opinion "as a proper statement of the issue and the applicable law concerning the issue. It would serve no useful purpose for us to repeat the discussion contained therein." *Pin* v. *Kramer*, 304 Conn. 674, 679, 41 A.3d 657 (2012); accord *Clinch* v. *Generali-U.S. Branch*, 293 Conn. 774, 777–78, 980 A.2d 313 (2009).

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

[1] General Statutes § 21a-278 (b) provides in relevant part: "Any person who manufactures, distributes, sells, prescribes, dispenses, compounds, transports with the intent to sell or dispense, possesses with the intent to sell or dispense, offers, gives or administers to another person any narcotic substance, hallucinogenic substance other than marijuana, amphetamine-type substance, or one kilogram or more of a cannabis-type substance, except as authorized in this chapter, and who is not, at the time of such action, a drug-dependent person, for a first offense shall be imprisoned not less than five years or more than twenty years; and for each subsequent offense shall be imprisoned not less than ten years or more than twenty-five years. . . ."

[2] Jevarjian also was prosecuted, and, following a conditional plea of nolo contendere and an unsuccessful appeal to the Appellate Court, he filed an appeal with this court; see *State* v. *Jevarjian*, 299 Conn. 923, 11 A.3d 152 (2011); which we also decide today. *State* v. *Jevarjian*, 307 Conn. 559, A.3d (2012).

[3] As originally certified, the second question was conditioned on a determination that the search was unreasonable. *State* v. *Thompson*, supra, 300 Conn. 905. Because the issue of whether the search was unreasonable and the issue of standing are independent of one another, however, we have reframed the second certified question accordingly. See, e.g., *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, 276 Conn. 168, 191, 884 A.2d 981 (2005) (court may reframe certified question "to reflect more accurately the [issue] presented").

[4] In its decision in the present case, the Appellate Court incorporated its analysis from the companion case of *State* v. *Jevarjian*, 124 Conn. App. 331, 4 A.3d 1231 (2010), to address whether the search was unlawfully premature under the fourth amendment to the United States constitution because the defendants' arguments regarding this claim were "identical" in each case. *State* v. *Thompson*, supra, 124 Conn. App. 359–60; see also *State* v. *Jevarjian*, supra, 338–44. As such, we rely on both decisions in setting forth the relevant facts in the present case.

[5] Specifically, the Appellate Court, in *Jevarjian*, set forth the following facts with respect to the evidence presented at the suppression hearing: "At the suppression hearing, Bruce J. Lovallo, an officer with the Woodbridge police department, provided the following testimony. The application for the search warrant was prepared at the Woodbridge police department during the late afternoon and evening of May 17, 2007. At approximately 9:25 p.m., he and Robert Criscuolo, an officer with the New Haven police department assigned to the Statewide Narcotics Task Force, left the Woodbridge police department and drove to the residence of the Honorable Elpedio N. Vitale, a judge of the Superior Court, to obtain his signature on the warrant. They arrived at Judge Vitale's house within five minutes. As they sat at the kitchen table, Judge Vitale reviewed the application and gave it back to the officers. Criscuolo and Lovallo then each took an oath as to the representations in the affidavit and signed and dated it. Both officers also noted the time as 21:50 in military time, or 9:50 p.m. in civilian time, on the first page of the warrant. Judge Vitale then signed, dated and noted the time as 10:51 p.m. on each page of the warrant. Lovallo did not notice the discrepancy in the notation of the hour.

"Judge Vitale handed the signed warrant to Lovallo, and the officers went back to their police vehicle. After Lovallo entered the vehicle, he called Gene Marcucci, the chief of the Woodbridge police department, from his police radio and notified him that the warrant had been signed. Marcucci testified that he received that call on his police radio sometime between 9:50 . . . and 9:55 p.m. An exhibit submitted by the state confirmed that the call was placed at 9:55:22 p.m. and concluded at 9:56:22 p.m. Joseph B. Marchio, a sergeant employed by the Statewide Narcotics Task Force, testified that he received a call from Criscuolo that the warrant had been signed and that he then notified law enforcement officials waiting at [Jevarjian's] premises that the search could begin. Additionally, Marc Grandpre, a detective with the Connecticut state police, testified that he was the evidence officer involved in the collection of evidence at [Jevarjian's] premises. He testified that the seizure of the evidence on May 17, 2007, commenced shortly after 10 p.m." *State* v. *Jevarjian*, supra, 124 Conn. App. 339–40.

[6] In his appeal to the Appellate Court, the defendant also claimed that the trial court improperly denied his second motion to suppress, filed pursuant to *Franks* v. *Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978). *State* v. *Thompson*, supra, 124 Conn. App. 355. The Appellate Court rejected this claim; id., 360; and it was not preserved on appeal to this court. Accordingly, we do not address it.

[7] The defendant initially asserted claims under the state constitution, in addition to the federal constitution, but they were not preserved. See *State* v. *Jevarjian*, supra, 124 Conn. App. 339 n.4. Our analysis therefore does not address these state constitutional claims.

[8] See footnote 5 of this opinion.

[9] We find no support for the defendant's claim that *only* testimony of the issuing judge could constitute sufficient evidence of a scrivener's error, which the defendant raised obliquely in his brief to this court. The defendant appears to rely on the arguments in the companion case made by Jevarjian, whose brief cites several cases from other jurisdictions, as well as an unpublished Superior Court decision, in which the person who made the error either testified or provided an affidavit, to extrapolate that such proof was therefore obligatory. See, e.g., *United States* v. *Henderson*, 471 F.3d 935, 937 (8th Cir. 2006) (when issuing judge failed to sign jurat verifying that officer had been sworn, testimony of judge and officer enabled court to find clerical error); *State* v. *Tavano*, Superior Court, judicial district of Tolland, Docket No. CR-99-0067778 (August 9, 2000) (considering affidavit of judge in finding potential clerical error in warrant). Even if the defendant had expressly addressed these cases, however, this interpretation would be unavailing. Testimony of the issuing judge may be useful evidence of whether a scrivener's error was made, but the fact that other courts have relied on such evidence does not in and of itself establish that such testimony is *required* to prove such an error. Indeed, other jurisdictions have found such

errors on the basis of the testimony of an officer alone. See, e.g., *People* v. *Deveaux*, 204 Ill. App. 3d 392, 394, 400, 561 N.E.2d 1259 (1990) (officer's testimony that warrant time designation of "p.m." rather than "a.m." was clerical error served as "proof that the trial judge had, in fact, issued the warrant prior to the search and seizure"), appeal denied, 136 Ill. 2d 547, 567 N.E.2d 336 (1991). Weighing evidence and evaluating the credibility of witnesses to make factual findings is the function of the trial court. See, e.g., *State* v. *Trine*, supra, 236 Conn. 227. Because we agree with the Appellate Court that the trial court's finding of a scrivener's error was adequately supported by the record as a whole, we see no reason to disturb that finding simply because the judge issuing the warrant did not testify.

[10] As initially proposed, House Bill No. 5141, 2000 Sess., excused the inadvertent failure to include both the date and the time, but the reference to the date was removed prior to the bill's enactment. See 43 H.R. Proc., supra, pp. 983–84. Representative Lawlor, who advocated for this change, explained as follows: "This amendment strikes from the last portion of the bill reference to date and let me simply explain that.

"As a matter of course, as you can imagine, all search warrants when they're issued at the moment contain the date in which they were issued. The real purpose of the bill was to add time . . . [a]lthough date was never specifically mentioned in the statute previously.

"There was a concern . . . that referring to having a time in the search warrant might give another technical argument to a defense attorney following the issuance of a search warrant, that if the time wasn't there, that would invalidate the whole thing on a technicality.

"When the amendment was adopted in the [j]udiciary [c]ommittee it said both date and time. I think it's fair to say that current case law says that a search warrant has to have a date on it, although the statute didn't say that and so this would restore the statute to what the current state law is, although not specific in the statute. But it would retain the portion of the bill [that] says that the inadvertent failure to include the time on the search warrant would not, in any way, invalidate the search warrant itself.

"I think this clarifies the intent of the bill, conforms with existing law and I urge its adoption." Id.