STATE OF CONNECTICUT *v.* RAFAEL HEREDIA
(SC 19111)

Rogers, C. J., and Palmer, Zarella, Eveleigh, McDonald and Vertefeuille, Js.

Argued September 26—officially released December 31, 2013

Bradford Buchta, assistant public defender, with whom were *Martin Zeldis*, public defender, and *Mary Haselkamp*, supervisory assistant public defender, for the appellant (defendant).

Joseph P. Corradino, senior assistant state's attorney, with whom were *Adam Mattei*, deputy assistant state's attorney, and, on the brief, *John C. Smriga*, state's attorney, and *Christopher Clark*, law student intern, for the appellee (state).

Opinion

EVELEIGH, J. The dispositive issue in this appeal is whether the trial court properly denied the motion of the defendant, Rafael Heredia, to be released without bond on the ground that, contrary to the procedures dictated by our rules of practice and United States Supreme Court case law, a probable cause finding had not been made within forty-eight hours of the defendant's warrantless arrest. The defendant sought review of the trial court's denial of his motion for release by the Appellate Court, which granted the defendant's motion for review, but denied the relief requested therein. The defendant subsequently filed a petition for certification to appeal from the decision of the Appellate Court. This court treated the defendant's petition for certification as an application filed pursuant to General Statutes § 52-265a,[1] which permits the Chief Justice to consider an interlocutory appeal from a decision of the trial court where the underlying action involves a matter of substantial public interest and delay may work a substantial injustice. See *Foley* v. *State Elections Enforcement Commission*, 297 Conn. 764, 767 n.2, 2 A.3d 823 (2010); *State* v. *Fernando A.*, 294 Conn. 1, 5 n.3, 981 A.2d 427 (2009); *State* v. *Kemah*, 289 Conn. 411, 414 n.2, 957 A.2d 852 (2008). The Chief Justice granted the defendant's § 52-265a application.[2] *State* v. *Heredia*, 308 Conn. 903, 61 A.3d 1096 (2013). We conclude that, even if we were to assume the failure to make a judicial determination of probable cause within forty-eight hours of a warrantless arrest constituted a violation of the defendant's rights under the fourth amendment to the United States constitution in the absence of proof by the state of a bona fide emergency or other extraordinary circumstance justifying the delayed adjudication, under the specific facts of the present case, the trial court correctly denied the defendant's motion for release because it was a de minimis violation in that: (1) the defendant was present in the courthouse awaiting arraignment, when probable cause findings typically are made, prior to the expiration of the forty-eight hour period; and (2) the trial court found probable cause for the defendant's arrest approximately one hour and thirty-five minutes after expiration of the forty-eight hour time period. Accordingly, we affirm the judgment of the trial court.

The record reveals the following undisputed facts and procedural history. The state and the defendant stipulated to the following facts: "The defendant was arrested by the Bridgeport Police Department without a warrant on speedy information . . . and charged with one count of attempt to commit [felony] murder in violation of [General Statutes §§] 53a-49 and 53a-54c, four counts of threatening in the second degree in violation of [General Statutes] § 53a-62, one count of reckless endangerment in the first degree in violation

of [General Statutes] § 53a-63, one count of [unlawful] discharge of a firearm in violation of [General Statutes] § 53-203,[3] one count of carrying a pistol without a permit in violation of [General Statutes] § 29-35 (a), and criminal possession of a firearm in violation of [General Statutes] § 53a-217.[4] . . . These charges arose out of allegations that the defendant fired a pistol from his automobile at one of the complainants, then exited the car and threatened others with a golf club. . . . The defendant was arrested on Saturday, August 18, 2012, at 10:40 a.m. . . . The defendant was brought to the [g]eographical [a]rea [number two] courthouse on Monday, August 20, 2012. . . . The defendant arrived at the [courthouse] at 8:33 a.m. . . . No probable cause finding had been made prior to the defendant's presentation before the court. . . . The defendant appeared before the court, *Rodriguez*, *J.*, at approximately 12:15 p.m. . . . The court made a finding of probable cause on all counts at that time." (Footnotes added.) Thereafter, the defendant filed a motion seeking to be released without bond pursuant to Practice Book § 37-12 (a).[5] After briefs and oral argument, the trial court denied the motion. In doing so, the trial court concluded that, although the forty-eight hour requirement of Practice Book § 37-12 (a) had been violated, that rule did not mandate the defendant's release because probable cause had been found.

The defendant then filed a motion for review of the trial court's denial with the Appellate Court. After oral argument, the Appellate Court granted the defendant's motion for review, but denied the relief requested therein. As grounds for its denial, the Appellate Court considered: "the particular facts of this case, including the fact that the defendant was brought to the court within forty-eight hours of his arrest for the specific purpose, inter alia, of having a probable cause determination made on these charges, and the fact that there was an actual finding of probable cause one hour and [thirty-five] minutes after the lapse of the forty-eight hour time period following his arrest." The defendant filed a petition for certification to appeal from the decision of the Appellate Court. This court treated the defendant's petition as an application to appeal filed pursuant to § 52-265a. After review, the Chief Justice granted the defendant's application. This appeal followed. See footnote 2 of this opinion.

On appeal to this court, the defendant asserts that the trial court improperly denied his motion for release when probable cause was found more than forty-eight hours after his arrest. Specifically, the defendant contends that the finding of probable cause more than forty-eight hours after his arrest violated the fourth amendment to the United States constitution, United States Supreme Court precedent, and Practice Book § 37-12 (a). The defendant further asserts that release without bond was the appropriate remedy for these

violations based on the plain and unambiguous language of § 37-12 (a). In response, the state asserts that the trial court properly denied the defendant's motion for release because a judicial determination of probable cause was made less than two hours after the expiration of the forty-eight hour period required by § 37-12 (a). Specifically, the state asserts that the fourth amendment to the United States constitution and United States Supreme Court precedent do not require the defendant's release without bail. The state also claims that the plain language of § 37-12 (a) does not require the defendant's release without bail and that § 37-12 (a) must be read in light of other rules of practice and the overall statutory scheme governing the release of criminal defendants. We agree with the state that the trial court properly determined that, under the facts of the present case, releasing the defendant without bail was not required.

Before undertaking our analysis in the present case, we briefly summarize the genesis and nature of the requirement that a person arrested without a warrant receive a timely judicial determination of probable cause. In *Gerstein* v. *Pugh*, 420 U.S. 103, 105, 95 S. Ct. 854, 43 L. Ed. 2d 54 (1975), the United States Supreme Court addressed whether a person arrested without a warrant is constitutionally entitled to a judicial determination of probable cause. In *Gerstein*, the respondents were arrested and held in custody based on a prosecutor's information. Id. The respondents filed a class action claiming a constitutional right to a judicial hearing on the issue of probable cause and requesting declaratory and injunctive relief. Id., 106–107. The respondents did not seek release from state custody, and only sought that the state authorities be ordered to give them a probable cause determination. Id., 107 n.6.

In *Gerstein*, the United States Supreme Court recognized that "[t]o implement the [f]ourth [a]mendment's protection against unfounded invasions of liberty and privacy, the [United States Supreme] Court has required that the existence of probable cause be decided by a neutral and detached magistrate whenever possible." Id., 112. Drawing from its decision in *Johnson* v. *United States*, 333 U.S. 10, 13–14, 68 S. Ct. 367, 92 L. Ed. 436 (1948), the court in *Gerstein* reiterated as follows: "The point of the [f]ourth [a]mendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime." (Internal quotation marks omitted.) *Gerstein* v. *Pugh*, supra, 420 U.S. 112–13.

In *Gerstein*, the United States Supreme Court concluded that there was a need to develop a practical

compromise between the "[m]aximum protection of individual rights [that] could be assured by requiring a magistrate's review of the factual justification prior to any arrest" and the legitimate need for law enforcement officers to assess probable cause at the scene of a crime and arrest a person suspected of committing it. Id., 113. The court in *Gerstein* continued: "Once the suspect is in custody, however, the reasons that justify dispensing with the magistrate's neutral judgment evaporate. There no longer is any danger that the suspect will escape or commit further crimes while the police submit their evidence to a magistrate. And, while the [s]tate's reasons for taking summary action subside, the suspect's need for a neutral determination of probable cause increases significantly." Id., 114. The United States Supreme Court, therefore, held that "[w]hatever procedure a [s]tate may adopt, it must provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest." (Footnote omitted.) Id., 124–25.

In 1991, the United States Supreme Court revisited the issue in *Riverside* v. *McLaughlin*, 500 U.S. 44, 111 S. Ct. 1661, 114 L. Ed. 2d 49 (1991). *McLaughlin* involved a class action brought under 42 U.S.C. § 1983 challenging the manner in which the County of Riverside, California, provided probable cause determinations to persons arrested without a warrant. Id., 47. Specifically, the plaintiffs challenged the county's policy of combining probable cause determinations with its arraignment procedures, which provided that arraignments must be conducted within two days of arrest. Id. This two day requirement, however, excluded weekends and holidays, thereby allowing an individual who was arrested without a warrant late in the week to be held for as long as five days before receiving a probable cause determination and even longer over holiday weekends. Id.

In *McLaughlin*, the United States Supreme Court recognized that "it is not enough to say that probable cause determinations must be 'prompt' " and that the "vague standard" announced in *Gerstein* did not provide "sufficient guidance." Id., 55–56. In deciding the plaintiffs' claims, the United States Supreme Court stated as follows: "Our task in this case is to articulate more clearly the boundaries of what is permissible under the [f]ourth [a]mendment. Although we hesitate to announce that the [c]onstitution compels a specific time limit, it is important to provide some degree of certainty so that [s]tates and counties may establish procedures with confidence that they fall within constitutional bounds. Taking into account the competing interests articulated in *Gerstein*, we believe that a jurisdiction that provides judicial determinations of probable cause within [forty-eight] hours of arrest will, as a general matter, comply

with the promptness requirement of *Gerstein*. For this reason, such jurisdictions will be immune from systemic challenges.

"This is not to say that the probable cause determination in a particular case passes constitutional muster simply because it is provided within [forty-eight] hours. Such a hearing may nonetheless violate *Gerstein* if the arrested individual can prove that his or her probable cause determination was delayed unreasonably. Examples of unreasonable delay are delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual, or delay for delay's sake. In evaluating whether the delay in a particular case is unreasonable, however, courts must allow a substantial degree of flexibility. Courts cannot ignore the often unavoidable delays in transporting arrested persons from one facility to another, handling late-night bookings where no magistrate is readily available, obtaining the presence of an arresting officer who may be busy processing other suspects or securing the premises of an arrest, and other practical realities.

"Where an arrested individual does not receive a probable cause determination within [forty-eight] hours, the calculus changes. In such a case, the arrested individual does not bear the burden of proving an unreasonable delay. Rather, the burden shifts to the government to demonstrate the existence of a bona fide emergency or other extraordinary circumstance. The fact that in a particular case it may take longer than [forty-eight] hours to consolidate pretrial proceedings does not qualify as an extraordinary circumstance. Nor, for that matter, do intervening weekends. A jurisdiction that chooses to offer combined proceedings must do so as soon as is reasonably feasible, but in no event later than [forty-eight] hours after arrest." Id., 56–57.

Neither *Gerstein* nor *McLaughlin* addressed the appropriate remedy when a probable cause determination was not made within the appropriate time frame. In *Gerstein* the court did, however, explicitly state that it did not "retreat from the established rule that illegal arrest or detention does not void a subsequent conviction. . . . Thus . . . although a suspect who is presently detained may challenge the probable cause for that confinement, a conviction will not be vacated on the ground that the defendant was detained pending trial without a determination of probable cause." (Citations omitted.) *Gerstein* v. *Pugh*, supra, 420 U.S. 119.

In *Powell* v. *Nevada*, 511 U.S. 79, 83–84, 114 S. Ct. 1280, 128 L. Ed. 2d 1 (1994), the United States Supreme Court concluded that a defendant's arrest that was not validated by a magistrate until four days had elapsed was presumptively unreasonable under *McLaughlin*'s forty-eight hour rule. The United States Supreme Court recognized, however, that "[i]t does not necessarily fol-

low . . . that [the defendant] must be set free . . . or gain other relief" and further acknowledged that the appropriate remedy for a violation of the forty-eight hour rule had not been resolved in *McLaughlin*. (Citation omitted;, internal quotation marks omitted.) Id., 84. The United States Supreme Court did not decide the appropriate remedy in *Powell* and has not ruled on the issue subsequently.

Several federal courts have examined this issue, however. Some of these courts have indicated that the appropriate remedy for a violation of the forty-eight hour requirement is a civil action brought pursuant to *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 389, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971), which creates an implied cause of action against federal government officials for the violation of a right secured under the fourth amendment to the United States constitution. See, e.g., *United States* v. *Fullerton*, 187 F.3d 587, 592 (6th Cir. 1999), cert. denied, 528 U.S. 1127, 120 S. Ct. 961, 145 L. Ed. 2d 834 (2000); see also *United States* v. *Sholola*, 124 F.3d 803, 821 (7th Cir. 1997). Other federal courts have indicated that suppression of evidence obtained from the defendant during the period between his arrest and the finding of probable cause is an appropriate remedy. See, e.g., *United States* v. *Davis*, 174 F.3d 941, 942 (8th Cir. 1999); *Anderson* v. *Calderon*, 232 F.3d 1053, 1071 (9th Cir. 2000), cert. denied, 534 U.S. 1036, 122 S. Ct. 580, 151 L. Ed. 2d 451 (2001), overruled on other grounds by *Bittaker* v. *Woodford*, 331 F.3d 715, 728 (9th Cir. 2003).[6]

In an analogous case, the Appellate Court recently examined a claim by a defendant that the trial court had improperly denied his motion to suppress his written statement because the police officers failed to present him in court for arraignment in compliance with General Statutes § 54-1c. See *State* v. *Crespo*, 145 Conn. App. 547, 562, 76 A.3d 664 (2013). The Appellate Court concluded that "§ 54-1c renders inadmissible any admission, confession or statement given by an accused person who remains in state custody after the time at which he should have been presented in court. The remedy of § 54-1c does not, however, invalidate any or all statements made by a defendant prior to that time due to later, unrelated wrongdoing by the police in prolonging the period of his pre-presentment detention." (Emphasis omitted.) Id., 565–66. The Appellate Court concluded, therefore, that the trial court properly had denied the defendant's motion to suppress his written statement, which was given prior to the violation of the timing requirement of § 54-1c. Id., 566.

With this background in mind, we turn to the defendant's claim in the present case. The defendant claims that, because the trial court found probable cause more than forty-eight hours after his arrest, he was deprived

of his rights under the fourth amendment to the United States constitution and that the appropriate remedy for this deprivation is release without bond. Although the defendant acknowledges that the United States Supreme Court has not specified the appropriate remedy for such a violation, the defendant claims that, in this state, the plain and unambiguous language of Practice Book § 37-12 (a) requires that a defendant be released when probable cause is not found within forty-eight hours of a warrantless arrest.[7] In response, the state asserts that § 37-12 (a) does not require the defendant's release in the present case. The resolution of the defendant's claim, therefore, requires us to interpret § 37-12 (a) in light of the United States Supreme Court precedent discussed previously in this opinion.

We begin by setting forth the applicable standard of review. "The interpretive construction of the rules of practice is to be governed by the same principles as those regulating statutory interpretation." *Commissioner of Social Services* v. *Smith*, 265 Conn. 723, 733–34, 830 A.2d 228 (2003); see also *State* v. *Pare*, 253 Conn. 611, 622, 755 A.2d 180 (2000) ("principles of statutory construction apply 'with equal force to Practice Book rules' "). The interpretation and application of a statute, and thus a rule of practice, involves a question of law over which our review is plenary. *Commissioner of Social Services* v. *Smith*, supra, 734; see also *State* v. *McCahill*, 265 Conn. 437, 444–46, 828 A.2d 1235 (2003) (applying plenary standard of review to questions of law involving interpretation of rules of practice).

"The process of statutory interpretation involves the determination of the meaning of the statutory language as applied to the facts of the case . . . . 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 . . . . In seeking to determine that meaning . . . [General Statutes] § 1-2z[8] directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . 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 . . . . We recognize that terms in a statute are to be assigned their ordinary meaning, unless context dictates otherwise . . . ." (Citations omitted; footnote in original; internal quotation marks omitted.) *Rainforest Cafe, Inc.* v. *Dept. of Revenue Services*, 293

Conn. 363, 371–73, 977 A.2d 650 (2009).

In accordance with § 1-2z, we first turn to the language of Practice Book § 37-12 (a), which provides: "If a defendant has been arrested without a warrant and has not been released from custody by the time of the arraignment or is not released at the arraignment pursuant to Section 38-4, the judicial authority shall, unless waived by the defendant, make an independent determination as to whether there is probable cause for believing that the offense charged has been committed by the defendant. Unless such a defendant is released sooner, such probable cause determination shall be made no later than forty-eight hours following the defendant's arrest. Such determination shall be made in a nonadversary proceeding, which may be ex parte based on affidavits. If no such probable cause is found, the judicial authority shall release the defendant from custody."

The text of Practice Book § 37-12 (a) clearly and unambiguously requires an independent determination of probable cause to be made within forty-eight hours of a warrantless arrest. The parties do not dispute the existence of this requirement and, moreover, agree that it was violated in the present case. The parties differ, however, as to whether the violation of § 37-12 (a) in the present case requires the release of the defendant. The defendant asserts that the plain language of § 37-12 (a) requires the release of a defendant when probable cause is not found within forty-eight hours of a warrantless arrest while the state asserts that § 37-12 (a) contains no such requirement.

The interpretation of Practice Book § 37-12 (a) proffered by the defendant is reasonably plausible. In support of his claim, the defendant relies on the last sentence of § 37-12 (a), which provides: "If no *such probable cause* is found, the judicial authority shall release the defendant from custody." (Emphasis added.) The defendant asserts that the term "such" modifies the phrase "probable cause" and, therefore, indicates an intention by the drafters to incorporate the forty-eight hour requirement established in the second sentence of § 37-12 (a). Accordingly, the defendant claims that the phrase "such probable cause" means probable cause found within forty-eight hours.

In further support of his claim, because the term "such" is not defined in our rules of practice, the defendant relies on the dictionary definition of that word. See *Ugrin* v. *Cheshire*, 307 Conn. 364, 380, 54 A.3d 532 (2012) ("[i]f a statute or regulation does not sufficiently define a term, it is appropriate to look to the common understanding of the term as expressed in a dictionary" [internal quotation marks omitted]). Citing Black's Law Dictionary (8th Ed. 2004), the defendant asserts that "such" means "[o]f this or that kind" and "[t]hat or those; having just been mentioned . . . ." (Internal

quotation marks omitted.) On the basis of this definition, the defendant asserts that if the judges of the Superior Court intended Practice Book § 37-12 (a) to limit release to only those situations where the court made an express finding of no probable cause, there was no need to include the word "such" to modify "probable cause." Therefore, the defendant asserts that the term "such probable cause" must be read to mean probable cause found within forty-eight hours.

The state's offered construction is also reasonably plausible. The state claims that Practice Book § 37-12 (a) plainly and unambiguously provides that the defendant is to be released only when no probable cause is specifically found. The state points to the fact that the last sentence only refers to the existence of probable cause and does not incorporate the forty-eight hour requirement. In support of its claim, the state also points to the fact that the term "such" is used throughout § 37-12 (a) to refer to "such a defendant," "such probable cause determination," and "such probable cause" and that the use of the word "such" in the last sentence does not, therefore, incorporate the forty-eight hour requirement as the defendant suggests. The state contends that, if the forty-eight hour requirement was supposed to be incorporated into the last sentence, the rule would have been written as follows: "If no such probable cause is found *within forty-eight hours*, the judicial authority shall release the defendant from custody."

Because neither party's proposed interpretation fits neatly within the rule's language, nor is either interpretation obviously incongruent with that language, we conclude that § 37-12 (a) is susceptible to more than one reasonable construction. Accordingly, Practice Book § 37-12 is ambiguous and resort to extratextual interpretive aids is warranted. See *Tuxis Ohr's Fuel, Inc.* v. *Administrator, Unemployment Compensation Act*, 309 Conn. 412, 425, 72 A.3d 13 (2013).

We therefore consider the genealogy of the forty-eight hour provision contained in Practice Book § 37-12 (a). As we explained previously in this opinion, it has long been established that warrantless arrests require a judicial determination of probable cause. See *Gerstein* v. *Pugh*, supra, 420 U.S. 119. In 1991, the United States Supreme Court definitively stated that the probable cause determination must be made within forty-eight hours of a warrantless arrest to avoid a systemic constitutional challenge. *Riverside* v. *McLaughlin*, supra, 500 U.S. 56–57.

Practice Book § 37-12 (a) was formerly set forth in Practice Book (1978-97) § 650. Prior to October 1, 1992, the rule read as follows: "If a defendant has been arrested without a warrant and has not been released from custody by the time of the arraignment or is not released at the arraignment . . . the judicial authority

shall, unless waived by the defendant, make an independent determination as to whether there is probable cause for believing that the offense charged has been committed by the defendant. Such determination shall be made in a nonadversary proceeding, which may be ex parte, at which affidavits or testimony under oath shall be received. If no such probable cause is found, the judicial authority shall discharge the defendant." Practice Book (1978–97) § 650.

Effective October 1, 1992, the rule was amended. Although there is no available commentary, a review of the amendment demonstrates that it was designed to bring Connecticut's practices in-line with the United States Supreme Court's decision in *McLaughlin* by requiring that an independent judicial determination of probable cause occur within forty-eight hours of a warrantless arrest. "If a defendant has been arrested without a warrant and has not been released from custody by the time of the arraignment or is not released at the arraignment . . . the judicial authority shall, unless waived by the defendant, make an independent determination as to whether there is probable cause for believing that the offense charged has been committed by the defendant. *Unless such a defendant is released sooner, such probable cause determination shall be made no later than forty-eight hours following his arrest.* Such determination shall be made in a nonadversary proceeding, which may be ex parte based on affidavits. If no such probable cause is found, the judicial authority shall release the defendant from custody." (Emphasis added.) Practice Book (1978–97) § 650.

Therefore, the phrase "no such probable cause," on which the defendant relies preexisted the forty-eight hour requirement. Indeed, the release provision was added in 1981, approximately ten years prior to *McLaughlin*. Practice Book (1978–97) § 650. Accordingly, the genealogy of the rule supports the state's position that the judges of the Superior Court did not intend the release provision to apply to a defendant if probable cause was not found within forty-eight hours of arrest but, rather, simply intended to maintain the existing, narrow meaning of the phrase "no such probable cause." Indeed, it is important to note that, after *McLaughlin*, the judges of the Superior Court also had the opportunity to amend the last sentence of the rule to explicitly provide for release if a probable cause hearing did not occur within forty-eight hours when it made a related change, but apparently chose not to do so. In 1993, the judges of the Superior Court did make such a change to the rules of practice governing probable cause hearings for juveniles, set forth in Practice Book § 30-5 (b). Practice Book § 30-5 (b) provides: "A hearing to determine probable cause and the need for further detention shall be held no later than the next business day following the arrest. However, a judicial finding of probable cause must be made within forty-

eight hours of arrest, including Saturdays, Sundays and holidays. *If there is no such finding of said probable cause within forty-eight hours of the arrest, the child shall be released from detention* subject to an information and subsequent arrest by warrant or take into custody order." (Emphasis added.)

The judges of the Superior Court did not, however, add similar language to Practice Book § 37-12 (a). "[W]hen a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject . . . is significant to show that a different intention existed. . . . That tenet of statutory construction is well grounded because [t]he General Assembly is always presumed to know all the existing statutes and the effect that its action or [nonaction] will have upon any one of them." (Internal quotation marks omitted.) *Saunders* v. *Firtel*, 293 Conn. 515, 527, 978 A.2d 487 (2009). This differential treatment, moreover, seems logical and therefore intentional given the many differences in procedures mandated for adult and juvenile offenders.

As we have stated previously in this opinion, "it is a well settled principle of statutory construction that the legislature knows how to convey its intent expressly; e.g., *Dept. of Public Safety* v. *Freedom of Information Commission*, 298 Conn. 703, 729, 6 A.3d 763 (2010); or to use broader or limiting terms when it chooses to do so. See, e.g., *Stitzer* v. *Rinaldi's Restaurant*, 211 Conn. 116, 119, 557 A.2d 1256 (1989)." *Scholastic Book Clubs, Inc.* v. *Commissioner of Revenue Services*, 304 Conn. 204, 219, 38 A.3d 1183, cert. denied, U.S. , 133 S. Ct. 425, 184 L. Ed. 2d 255 (2012). These principles apply with equal force to interpreting the action or inaction of the Superior Court judges adopting or amending the rules of practice. See *State* v. *Pare*, supra, 253 Conn. 622 ("principles of statutory construction apply 'with equal force to Practice Book rules' "). Therefore, the lack of language regarding the forty-eight hour requirement in the release provisions of Practice Book § 37-12 (a) also supports the conclusion that the judges of the Superior Court did not intend to require the release of an adult defendant if the forty-eight hour provision had been violated.[9]

We next turn to the constitutional considerations implicated in the defendant's claim. As the United States Supreme Court recognized in *Gerstein* v. *Pugh*, supra, 420 U.S. 112, the standard of probable cause is "a necessary accommodation between the individual's right to liberty and the [s]tate's duty to control crime." In *Brinegar* v. *United States*, 338 U.S. 160, 176, 69 S. Ct. 1302, 93 L. Ed. 1879, reh. denied, 338 U.S. 839, 70 S. Ct. 31, 94 L. Ed. 513 (1949), the United States Supreme Court stated as follows: "These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of

crime. They also seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice."

The defendant asserts that the remedy for any violation of Practice Book § 37-12 (a) is release without bond. The provisions governing the release of a defendant on bail or other conditions are set forth in General Statutes §§ 54-63a through 54-73 and Practice Book §§ 38-1 through 38-23. These provisions are separate from those that proscribe the timing of the defendant's presentment to court and they serve a different purpose. This court has long recognized that "the fundamental purpose of bail is to ensure the presence of an accused throughout all proceedings"; (internal quotation marks omitted) *State* v. *Ayala*, 222 Conn. 331, 349, 610 A.2d 1162 (1992); and "is a method for ensuring a defendant's good behavior while on release." Id., 351.

As the foregoing demonstrates, both the forty-eight hour probable cause requirement set forth in Practice Book § 37-12 and the release provisions contained within General Statutes §§ 54-63a through 54-73 and Practice Book §§ 38-1 through 38-23 seek to balance the individual liberty of the defendant and the safety of the community through different procedures and safeguards. Nevertheless, the probable cause requirement and the release provisions represent separate and distinct safeguards. Under the facts of the present case, using release as a means of addressing the violation of the forty-eight hour requirement of Practice Book § 37-12 (a) would seem to frustrate the very policy behind both § 37-12 (a) and the release provisions.

In *New York* v. *Harris*, 495 U.S. 14, 15–16, 110 S. Ct. 1640, 109 L. Ed. 2d 13 (1990), the United States Supreme Court addressed a claim for suppression of the defendant's statement on the ground that the defendant was arrested without a warrant inside his home in violation of *Payton* v. *New York*, 445 U.S. 573, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980). The United States Supreme Court recognized that "[n]othing in the reasoning of that case suggests that an arrest in a home without a warrant but with probable cause somehow renders unlawful continued custody of the suspect once he is removed from the house. There could be no valid claim here that [the defendant] was immune from prosecution

because his person was the fruit of an illegal arrest. . . . Nor is there any claim that the warrantless arrest required the police to release [the defendant] or that [the defendant] could not be immediately rearrested if momentarily released. Because the officers had probable cause to arrest [the defendant] for a crime, [the defendant] was not unlawfully in custody when he was removed to the station house, given *Miranda* warnings, and allowed to talk." (Citation omitted.) *New York* v. *Harris*, supra, 18. In declining to suppress the defendant's statement, the United States Supreme Court reasoned that "[t]he penalties visited upon the [g]overnment, and in turn upon the public, because its officers have violated the law must bear some relation to the purposes which the law is to serve." (Internal quotation marks omitted.) Id., 17.[10]

Therefore, we conclude that Practice Book § 37-12 (a) does not require release as a remedy for its violation. If it did, it would say so, presumably in express language like that contained in Practice Book § 30-5 (o), which pertains to probable cause determinations for juveniles. Section 37-12 (a) is, however, a judge made rule. Accordingly, in an egregious case, the court would have authority to remediate a violation of § 37-12 (a) by ordering release. This is especially true because the interest protected by § 37-12 (a) is rooted in the fourth amendment. Although § 37-12 (a) does not provide for release, it does not prohibit it. As we have discussed herein, releasing a defendant without bond, however may place the community at large in jeopardy, and there are other potential remedies available—namely, administrative remedies, private right of action, and suppression of evidence. The existence of these other remedies supports our conclusion that § 37-12 (a) does not mandate release.

In the present case, the defendant does not claim that his delay was occasioned for any improper purpose or that any additional evidence was obtained during the delay. Further, the defendant does not claim that the court lacked jurisdiction over him when it found probable cause and set bond. Instead, the defendant concedes that he was brought to the courthouse less than forty-eight hours after his warrantless arrest, but was not presented in court within that time. The defendant was brought before the court and probable cause for his arrest was found approximately one hour and thirty-five minutes after the expiration of the forty-eight hour period. With that in mind, we conclude that using release as the remedy for the violation of the forty-eight hour requirement in the present case would undercut the important policy of community safety that the rule was designed to safeguard and, moreover, impose a penalty upon the state and the community that is not in proportion to the purpose that the forty-eight hour requirement is designed to serve. See *New York* v. *Harris*, supra, 495 U.S. 18. Accordingly, based on the lan-

guage and history of Practice Book § 37-12 (a), along with our analysis of the principles of public policy that rule was designed to implement, we conclude that release of the defendant was not required for the violation of the forty-eight hour requirement under the facts of present case.[11]

Nevertheless, we take this opportunity to emphasize the importance of the forty-eight hour requirement as a constitutional mandate. Consequently, the state is obliged not to wait until this deadline is about to expire to bring the defendant to the court. Moreover, if the deadline is imminent, the state is obliged to bring that fact to the marshals' attention so that the presiding judge in the criminal court may be alerted to take appropriate measures. We also recognize that there may be situations in which the violation of the forty-eight hour requirement is so egregious or in which the delay is caused by an improper purpose. In those situations a balancing of the interests of individual liberty and community protection may favor release.[12] In this situation, however, because the defendant was present in the courthouse within the forty-eight hour time period and probable cause was found one hour and thirty-five minutes after the forty-eight hour time period expired, a balancing of the interests of individual liberty and community protection do not require release. It is important to point out that this is not a close case with respect to the appropriateness of release. The actions of the state actors do not approach the kind of flagrant misconduct that would warrant release in the exercise of judicial discretion as a means of vindicating the interests protected by Practice Book § 37-12 (a). Moreover, we are not presented with a pattern of disregard for these requirements by the state or the bench that might require us to consider a per se prophylactic rule. Thus, even if we assume that the failure to make a probable cause finding within forty-eight hours after his arrest is a technical violation of the constitutional requirement, the fact that probable cause was found one hour and thirty-five minutes after the expiration of the forty-eight hour period renders the effect de minimis in the present case.

The trial court's decision denying the defendant's motion for release is affirmed and the case is remanded for further proceedings according to law.

In this opinion the other justices concurred.

[1] General Statutes § 52-265a provides: "(a) Notwithstanding the provisions of sections 52-264 and 52-265, any party to an action who is aggrieved by an order or decision of the Superior Court in an action which involves a matter of substantial public interest and in which delay may work a substantial injustice, may appeal under this section from the order or decision to the Supreme Court within two weeks from the date of the issuance of the order or decision. The appeal shall state the question of law on which it is based.

"(b) The Chief Justice shall, within one week of receipt of the appeal, rule whether the issue involves a substantial public interest and whether delay may work a substantial injustice.

"(c) Upon certification by the Chief Justice that a substantial public

interest is involved and that delay may work a substantial injustice, the trial judge shall immediately transmit a certificate of his decision, together with a proper finding of fact, to the Chief Justice, who shall thereupon call a special session of the Supreme Court for the purpose of an immediate hearing upon the appeal.

"(d) The Chief Justice may make orders to expedite such appeals, including orders specifying the manner in which the record on appeal may be prepared."

[2] The Chief Justice granted the defendant's § 52-265a application limited to the following issues: (1) "Did the Appellate Court properly determine that the trial court correctly set bail for the defendant, rather than releasing him, when probable cause for the arrest of the defendant was found by the court more than forty-eight hours after his arrest?" and (2) If the trial court was required to release the defendant pursuant to Practice Book § 37-12, is there any limitation on what conditions of release could be imposed by the trial court?" *State* v. *Heredia*, 308 Conn. 903, 903–904, 61 A.3d 1096 (2013). Upon closer review of the briefs and the record, we now recognize that the formulation of the first question misstates our inquiry in the present case because it is an appeal pursuant to § 52-265a, in which this court directly reviews an interlocutory order of the Superior Court. We have, therefore, reformulated the certified question to more accurately reflect the issue presented. See *DiPietro* v. *Farmington Sports Arena, LLC*, 306 Conn. 107, 111 n.2, 49 A.3d 951 (2012) (reformulating certified question "to reflect more accurately the issue presented").

[3] We note that § 53-203 was amended by No. 12-80, § 103, of the 2012 Public Acts, which made certain changes to the statute that are not relevant to the present appeal. For the sake of simplicity, we refer to the current revision of the statute.

[4] We also note that § 53a-217 has been amended by our legislature twice since the defendant's arrest. See Public Acts 2013, No. 13-3, § 44; Public Acts 2012, No. 12-133, § 19. These amendments, however, are not relevant to the present appeal. For the sake of simplicity, we refer to the current revision of the statute.

[5] Practice Book § 37-12 (a) provides: "If a defendant has been arrested without a warrant and has not been released from custody by the time of the arraignment or is not released at the arraignment pursuant to Section 38-4, the judicial authority shall, unless waived by the defendant, make an independent determination as to whether there is probable cause for believing that the offense charged has been committed by the defendant. Unless such a defendant is released sooner, such probable cause determination shall be made no later than forty-eight hours following the defendant's arrest. Such determination shall be made in a nonadversary proceeding, which may be ex parte based on affidavits. If no such probable cause is found, the judicial authority shall release the defendant from custody."

[6] We note with interest the various remedies that may be available for individuals detained longer than forty-eight hours without a probable cause finding. We express no opinion on what other remedies, if any, may be available to a defendant because that issue is not presented in the present case. The only issue here is whether release was the appropriate remedy for the violation of the forty-eight hour requirement under the facts of the present case.

[7] The defendant also claims that the past practice of the Superior Court supports his claim that Practice Book § 37-12 (a) requires the release of a defendant when a finding of probable cause is not found within forty-eight hours of a warrantless arrest. In support of his claim, the defendant cites *State* v. *McCreary*, Superior Court, judicial district of Hartford-New Britain at New Britain, Docket No. 48643 (April 6, 1983). It is, however, axiomatic that "this court is not bound by a decision of a lower court." (Internal quotation marks omitted.) *State* v. *Samuels*, 273 Conn. 541, 553 n.8, 871 A.2d 1005 (2005). Moreover, we are not persuaded by the defendant's reliance on this single decision of the Superior Court because, as we explain subsequently in this opinion, the language, genealogy and policy behind § 37-12 (a) demonstrate that, under the specific facts of the present case, the defendant's release is not required for the violation of the forty-eight hour requirement.

[8] General Statutes § 1-2z 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."

[9] Likewise, the defendant claims that a construction of Practice Book § 37-12 (a) requiring the defendant's release in the present case would be consistent with rules of other states that explicitly provide that release is the appropriate remedy for a violation of the forty-eight hour requirement. Because we conclude that the language, genealogy and policy behind § 37-12 (a) demonstrate that the release of the defendant was not required in the present case, we do not address the defendant's claims regarding the rules of other states. It is important to point out, however, that the mere existence of these explicit rules in other jurisdictions is further evidence that, if the judges of this state had intended release to be the remedy for a violation of the forty-eight hour requirement, they could have explicitly so provided.

[10] The United States Supreme Court applied similar reasoning in holding that the failure to comply with the prompt hearing provision of the Bail Reform Act of 1984 (act), 18 U.S.C. § 3142 (e), does not require release of a person who should otherwise be detained. See *United States* v. *Montalvo-Murillo*, 495 U.S. 711, 110 S. Ct. 2072, 109 L. Ed. 2d 720 (1990). The United States Supreme Court reasoned as follows: "A prompt hearing is necessary, and the time limitations of the [a]ct must be followed with care and precision. But the [a]ct is silent on the issue of a remedy for violations of its time limits. Neither the timing requirements nor any other part of the [a]ct can be read to require, or even suggest, that a timing error must result in release of a person who should otherwise be detained." Id., 716–17. The United States Supreme Court further reasoned that "[t]here is no presumption or general rule that for every duty imposed upon the court or the [g]overnment and its prosecutors there must exist some corollary punitive sanction for departures or omissions, even if negligent." Id., 717.

[11] The defendant also asserts that the rule of lenity requires that Practice Book § 37-12 (a) be interpreted to require custodial release when the forty-eight hour requirement has been violated. We disagree. "[T]he touchstone of [the] rule of lenity is statutory ambiguity. . . . Thus . . . courts do not apply the rule of lenity unless a reasonable doubt persists about a statute's intended scope . . . ." (Citation omitted; internal quotation marks omitted.) *State* v. *Lutters*, 270 Conn. 198, 219, 853 A.2d 434 (2004). As we have explained in this opinion, the textual ambiguity present within § 37-12 (a) is resolved by examination of the genealogy and policy behind the rule. Accordingly, resort to the rule of lenity is not appropriate in the present case.

[12] Because we conclude that Practice Book § 37-12 (a) does not require release of the defendant for a violation of the forty-eight hour requirement under the particular facts of this case, we need not address the second certified question regarding limitations on what conditions of release could be imposed by the trial court. See footnote 2 of this opinion.