that deportation was certain to follow his conviction" and that "the petitioner decided to accept the plea offer because the agreement significantly reduced his possible prison sentence, he was likely to be convicted of deportable offenses in any event, and because of his misplaced reliance on his father's advice as to the ease with which he could return to the United States legally or otherwise." Those findings are substantiated by the evidentiary record before us. We therefore conclude that the petitioner cannot demonstrate that his due process and ineffective assistance of counsel claims are debatable among jurists of reason, could be resolved in a different manner, or are adequate to deserve encouragement to proceed further. *Simms* v. *Warden*, supra, 230 Conn. 616. Accordingly, the court did not abuse its discretion in denying the petition for certification to appeal.

The appeal is dismissed.

In this opinion the other judges concurred.

HERBERT SHOOK *v.* ASHLEY BARTHOLOMEW

HERBERT SHOOK *v.* EASTERN CONNECTICUT HEALTH NETWORK, INC.

(AC 38945)

DiPentima, C. J., and Mullins and Norcott, Js

Syllabus

The plaintiff sought, in the first action, to recover damages from the defendant, B, for, inter alia, negligence in connection with personal injuries he had sustained in a motor vehicle accident when his vehicle was struck by a vehicle driven by B. The plaintiff also brought a second action alleging a claim for vicarious liability against B's employer, the defendant E Co. Both defendants filed special defenses claiming that the plaintiff had been negligent in several ways, including that he had entered the intersection where the accident occurred while the light was red. Thereafter, the actions were consolidated for trial and were tried to a jury. After the trial court denied the defendants' request for

a charge on comparative negligence, the jury returned a verdict for the plaintiff in both actions. Thereafter, the trial court denied the defendants' motion to set aside the verdict and, after ordering a collateral source reduction in accordance with the parties' agreement, rendered judgments for the plaintiff, from which the defendants appealed to this court. *Held*:

1. This court declined to review the defendants' claim that the trial court improperly refused to instruct the jury that it could apportion liability on the basis of comparative negligence as requested in their proposed charge; although the defendants had submitted a written request to charge that contained citations to specific sections of the civil jury instructions on the Judicial Branch website, the request contained no facts or evidence tailored to this particular case, it contained none of the statutory references relied on by the defendants on appeal, and it gave no guidance to the court as to how the principles of comparative negligence applied to the facts of this case, in violation of the applicable rules of practice (§§ 16-21 and 16-23), and because the defendants failed to present to the trial court the evidentiary arguments, statutes and cases on which they relied on appeal, and the trial court did not have the benefit of any of those arguments when it considered the defendants' request to charge, it would amount to ambuscade of the trial court to find error on these particular facts.
2. The defendants failed to preserve for appellate review their claim that the trial court improperly permitted the plaintiff, over their objection on the basis of relevancy, to introduce character evidence in the form of the plaintiff's driving history; in order to preserve an evidentiary ruling for review, trial counsel must articulate the basis of an objection so as to apprise the trial court of the precise nature of the objection, and the defendants' objection here on the ground of relevance failed to preserve the claim that the testimony was improper character evidence.
3. The defendants' claim that the trial court abused its discretion in denying their motion to set aside the verdict was unavailing, the defendants having based their claim that the trial court should have set aside the verdict on the jury's failure to consider comparative negligence, the improper jury charge regarding comparative negligence and the improper admission of evidence regarding the plaintiff's driving history, and this court having rejected those claims in resolving the defendants' other claims on appeal.

Argued March 6—officially released June 20, 2017

Procedural History

Action, in the first case, to recover damages for the defendant's alleged negligence, and for other relief, and action, in the second case, to recover damages for the alleged negligence of the defendant's employee in the

course of her employment, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the court, *Robaina*, *J.*, granted the motion filed by the defendant in the second case to consolidate the cases; thereafter, the matter was tried to the jury before *Peck*, *J.*; verdict for the plaintiff in both cases; subsequently, the court, *Peck*, *J.*, denied the motion to set aside the verdict filed by the defendants; thereafter, the court, *Peck*, *J.*, granted the motion for collateral source reduction filed by the defendants, and by agreement of the parties issued an order granting a collateral source reduction; subsequently, the court, *Peck J.*, rendered judgments for the plaintiff in both cases, from which the defendants appealed to this court. *Affirmed.*

Kathleen F. Adams, with whom, on the brief, was *Peter J. Ponziani*, for the appellants (defendant in each cases).

Alinor C. Sterling, with whom was *Emily B. Rock*, for the appellee (plaintiff in both cases).

Opinion

MULLINS, J. In these consolidated actions, the defendants, Ashley Bartholomew and her employer, Eastern Connecticut Health Network, Inc., appeal from the judgments of the trial court, rendered in favor of the plaintiff in both actions, Herbert Shook, following a jury trial. On appeal, the defendants claim that the court improperly (1) refused to instruct the jury on apportionment of liability on the basis of comparative negligence despite the submission of a request to charge on that doctrine, (2) permitted the plaintiff to introduce evidence regarding his driving history, and (3) denied their motion to set aside the verdict. We affirm the judgments of the trial court.

The jury reasonably could have found the following facts on the basis of the evidence presented. On November 21, 2012, at approximately 4:45 p.m., the plaintiff

exited off of Interstate 84 in Manchester. It was the day before Thanksgiving and traffic was heavy. He stopped at the red light on the exit ramp in preparation to take a left turn onto Deming Street. The intersection is a busy four-way intersection, essentially in the shape of a cross or a plus sign, with many lanes. Some of the lanes of the intersection are for left turns, some for right turns and some for vehicles traveling straight through the intersection. There are traffic signals in the center of the intersection. The plaintiff's vehicle, which had exited Interstate 84, was facing north toward Avery Street; running east to west at the intersection is Deming Street. When the left arrow for the plaintiff's lane turned green, the plaintiff proceeded slowly into the intersection, intending to turn left (west) onto Deming Street. Bartholomew, who was traveling east on Deming Street in her Toyota Camry, hit the plaintiff's vehicle directly on the driver's side door. Although Bartholomew applied her breaks prior to impact, the plaintiff still sustained serious life-threatening injuries. Several witnesses saw the accident and gave statements to the police and/or provided testimony to the jury. The statements and testimony of those witnesses, varied greatly. Some of the witnesses stated that Bartholomew ran through a red light, and that the plaintiff had a green light. Other witnesses stated that the plaintiff ran through a red light, and that Bartholomew had a green light.

The plaintiff filed a complaint sounding in negligence against Bartholomew, and, in a separate action, he filed a complaint alleging vicarious liability against Eastern Connecticut Health Network, Inc., as the accident occurred during the course of Bartholomew's employment. The defendants each filed answers and the special defense of comparative negligence. In their special defenses, the defendants alleged that the plaintiff had been negligent in several different ways, including, that

he entered the intersection while his light was red, that he failed to observe that east and west traffic on Deming Street was crossing in front of him and that it was not safe to enter the intersection, and that he failed to maintain a reasonable lookout for other vehicles. The plaintiff denied the special defenses.

The two separate cases that the plaintiff had filed, one against each defendant, later were consolidated for trial, and counsel agreed that the pleadings and the record in one case applied equally to the other case and vice versa. The matter then was tried to a jury over the course of several days.

On November 23, 2015, the defendants submitted a request to charge that included various proposed instructions on comparative negligence. During the on-the-record charging conference, the plaintiff's attorney argued that there was no evidence to support a charge on comparative negligence on the plaintiff's part. He contended that the evidence demonstrated either that the plaintiff had a red light and ran through it, or that Bartholomew had a red light and ran through it, and that this was the manner in which the case was tried.

In response, the defendants' attorney argued: "It's the defendants' position that the evidence does support the issuance of the charge. The jury could find comparative negligence here, even if it found one operator or the other ran the red light, specifically if they found [Bartholomew] went through the red light . . . . [T]he jury could still find—whether it's a probability or not, we don't know, but it's possible they could still find—that, due to the configuration of this intersection, the sightlines available, the opportunity to perceive and react, [that] nonetheless, there is some comparative fault to be apportioned here, even if they found that one operator or the other, in fact, committed negligence per se in running the red light. So it's the defendants'

position that the evidence in the case does support the issuance of the charge on comparative negligence."

The court responded that it recognized that there was a special defense alleging comparative negligence and that the defendants had requested a comparative negligence instruction, but that it did not "remember any evidence at all concerning any of the sightlines." The court stated that it thought a comparative negligence instruction, wherein the jury could apportion some liability to the plaintiff, might confuse the jury because the case was tried as one in which the only issue was "who ran the red light." Additionally, the court stated that it had not "heard anything from counsel, very frankly, either in chambers or in court, that would persuade [it] otherwise . . . ." After some unrelated discussion, the defendants' counsel stated that he was taking an exception to the court's ruling on the comparative negligence instruction.

After the court instructed the jury, the defendants' counsel again noted his exception. The jury returned a plaintiff's verdict, and the defendants filed a motion to set aside the verdict, which the court denied. On February 23, 2016, the court rendered judgments in favor of the plaintiff. This appeal followed.

I

The defendants claim that the court improperly refused to instruct the jury that it could apportion liability on the basis of comparative negligence as requested in their proposed charge. They argue that there was a "clear record [of] evidence supporting a comparative negligence finding," and that there are statutes supporting such a finding and a jury charge on this issue. Additionally, the defendants contend that, even if the plaintiff had the green light, "Supreme Court authority expressly holds that comparative negligence principles apply when the plaintiff operator has the green light

and the right-of-way." The defendants cite to specific evidence in the record, statutes, and Supreme, Appellate and Superior Court case law to support their contentions. The plaintiff argues in part that the defendants failed to alert the trial court to the applicability of the cases and the statutes they now cite on appeal.

We conclude that the defendants did not present these evidentiary arguments, statutes, and cases to the trial court, and, further, that they failed to comply with the specific requirement in Practice Book § 16-23 to set forth evidence to support a comparative negligence instruction in their request to charge. See also Practice Book § 16-21. Accordingly, we decline to review this claim.

"Pursuant to Practice Book § 60-5: 'The court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial. . . .' 'As we have repeatedly reiterated, issues not properly raised before the trial court will ordinarily not be considered on appeal. . . . We have referred to the policy reasons underlying the preservation requirement on several occasions. The policy serves, in general, to eliminate the possibility that: (1) claims of error would be predicated on matters never called to the attention of the trial court and upon which it necessarily could have made no ruling in the true sense of the word; and (2) the appellee . . . would be lured into a course of conduct at the trial which it might have altered if it had any inkling that the [appellant] would . . . claim that such a course of conduct involved rulings which were erroneous and prejudicial to him.' " *Rendahl* v. *Peluso*, 173 Conn. App. 66, 105–106, A.3d (2017).

Our decision also is guided by other rules of practice. Practice Book § 16-20 provides: "An appellate court shall not be bound to consider error as to the giving of, or the failure to give, an instruction unless the matter

is covered by a written request to charge or exception has been taken by the party appealing immediately after the charge is delivered. Counsel taking the exception shall state distinctly the matter objected to and the ground of objection. The exception shall be taken out of the hearing of the jury."

Practice Book § 16-21 provides in relevant part: "Any party intending to claim the benefit of the . . . provisions of any specific statute shall file a written request to charge on the legal principle involved." See also *Mancaniello* v. *Guile*, 154 Conn. 381, 385, 225 A.2d 816 (1966) (party intending to rely on specific statute should submit written request to charge specifically citing statute). The party requesting a charge on a specific statute has the burden to demonstrate the statute's application, meaning, and effect on the case. See *Lowell* v. *Daly*, 148 Conn. 266, 269–71, 169 A.2d 888 (1961).

Practice Book § 16-23 (a) provides: "When there are several requests, they shall be in separate and numbered paragraphs, each containing a single proposition of law clearly and concisely stated with the citation of authority upon which it is based, *and the evidence to which the proposition would apply*. Requests to charge should not exceed fifteen in number unless, for good cause shown, the judicial authority permits the filing of an additional number. If the request is granted, the judicial authority shall apply the proposition of law to the facts of the case." (Emphasis added.)

As so aptly explained in W. Horton & K. Knox, 1 Connecticut Practice Series: Superior Court Civil Rules (2016–2017 Ed.) § 16-20, author's comments, p. 734: "Litigants can preserve their appellate rights concerning the judge's charge to the jury by filing written requests to charge consistent with the court rules . . . ."

"The purpose of a request to charge is to inform the trial court how a principle of law applies to the facts

of the case. The authors advise that a proper format for a request to charge is: (1) state the request, which may or may not refer to the evidence; (2) follow with a paragraph entitled 'citation of authority'; and (3) follow with a paragraph entitled 'evidence to which the request would apply,' if the request itself does not include a reference to the evidence. Counsel often omit references to evidence, *a requirement* which was added to the rule in 1980, but they do so at their own peril." (Emphasis added.) Id., § 16-23, author's comments, p. 738.

"The Appellate Court noted the requirement that a request to charge must include a citation to the evidence on which it is based in *State* v. *Williams*, 59 Conn. App. 771, 778–82, [758 A.2d 400] (2000), rev'd on other grounds, 258 Conn. 1, 778 A.2d 186 (2001) (noncompliance with parallel criminal rule excused). See also *State* v. *Rudd*, 62 Conn. App. 702, [707–708], [773 A.2d 370] (2001). . . . The request should refer the law to the relevant facts, *State* v. *Martin*, 15 Conn. App. 58, 65, [544 A.2d 231] (1988), [aff'd], 211 Conn. 389, 559 A.2d 707 (1989); *McGloin* v. *Southington*, 15 Conn. App. 668, 671, [546 A.2d 906] (1988); and requests not applicable to the facts are properly refused. *Batick* v. *Seymour*, 186 Conn. 632, 643, [443 A.2d 471] (1982). If the request contains a factual statement involving facts claimed by one party, it should also include the facts claimed by the opposing party on the point. *Pickens* v. *Miller*, 119 Conn. 553, 555, [177 A. 573] (1935), and *Kast* v. *Turley*, 111 Conn. 253, 258, [149 A. 673] (1930). . . .

"A request is properly refused if it contains an inadequate statement of the law as applied to the facts, *State* v. *Manganella*, 113 Conn. 209, 218, [155 A. 74] (1931), if it is argumentative on the facts, *Colucci* v. [*Pinette*, 185 Conn. 483, 441 A.2d 574 (1981)], or emphasizes

unfairly certain elements of the case, *Radwick* v. *Goldstein*, 90 Conn. 701, [706–707], [98 A. 583] (1916), or embodies a hypothetical case, *Shields* v. *O'Reilly*, 68 Conn. 256, 261, [36 A. 49] (1896), or if it is based on the assumption of facts still in dispute, *Eckstrand* v. *Union Carbide Corp.*, 169 Conn. 337, 342, [363 A.2d 124] (1975), or based upon assumed facts likely to mislead the jury, *Miller* v. *Connecticut Co.*, 112 Conn. 476, 479, [152 A. 879] (1931), or states some of the facts but leaves out other relevant facts, *Bunnell* v. *Waterbury Hospital*, 103 Conn. 520, 528, [131 A. 501] (1925)." (Citations omitted.) 1 W. Horton & K. Knox, supra, § 16-23, pp. 739–40.

In this case, the defendants submitted a written request to charge that contained proposed instructions, each of which contained a citation to a specific section or sections of the Connecticut Judicial Branch Civil Jury Instructions, which are available at http://www.jud.ct.gov/ji/Civil/Civil.pdf (last visited June 7, 2017). The request contained no facts or evidence tailored to this particular case, it contained none of the statutory references that the defendants argue are relevant on appeal, and it gave no guidance to the court as to how the principles of comparative negligence applied *to the facts* of this case. Although the arguments that the defendants make on appeal, arguably, may be persuasive in light of the transcripts, the trial court did not have the benefit of any of these arguments when it considered the defendants' request to charge or when it heard oral argument on the request. The court specifically told counsel that it did not recall evidence of any sightlines, and, even with that statement by the court, counsel did not seek to explain what evidence warranted a comparative negligence instruction.

In reaching our conclusion, in addition to Practice Book §§ 60-5, 16-20, 16-21 and 16-23, we also are guided

by our Supreme Court's decision in *Hall* v. *Burns*, 213 Conn. 446, 569 A.2d 10 (1990). In holding that the trial court did not improperly refuse to charge the jury in accordance with one of the plaintiff's requested instructions, our Supreme Court concluded that "[t]he request was defective"; id., 482; because it "did not refer to any evidence and was an abstract proposition of law." Id., 483. The court explained: "The object in filing a request to charge is to inform the trial court of a party's claim of the applicability of a principle of law to the case. . . . Our rules provide that each request to charge should contain a single proposition of law clearly and concisely stated with the citation of authority upon which it is based, *and the evidence to which the proposition would apply* . . . . A proper request to charge cannot, therefore, under our practice merely be a statement of an abstract proposition of law . . . ." (Emphasis in original; internal quotation marks omitted.) Id., 482–83; see also *Konover Development Corp.* v. *Zeller*, 228 Conn. 206, 214 n.5, 635 A.2d 798 (1994) ("[t]he purpose of [Practice Book § 16-23] is to require parties to inform the trial court of the manner in which a rule of law applies to a particular case, rather than simply stating an abstract proposition of law").

In the present case, the defendants cited abstract theories of law in their request to charge with no tailoring of the facts so that the court could ascertain how those theories fit this case. When the defendants' counsel was given a further opportunity during argument on his request to charge, he told the court that the instruction was warranted because there was evidence in the form of "the configuration of this intersection, the sightlines available, [and] the opportunity to perceive and react . . . ." The trial court then stated that it had no recollection of any evidence regarding

sightlines, and that the defendants had not presented anything that would persuade the court that an instruction was warranted.[1] Although, on appeal, the defendants point to evidence, statutes, and case law that might be relevant to a comparative negligence instruction in this case, that information was not presented to the trial court. The defendants cite no authority that stands for the proposition that the trial court has an obligation to scour the record in order to substantiate counsel's request to charge, and we are not aware of any such authority. On the basis of this record, we conclude that it would amount to ambuscade of the trial court to find error on these particular facts. See generally *State* v. *Johnson*, 288 Conn. 236, 287–88, 951 A.2d 1257 (2008) ("to afford petitioners on appeal an opportunity to raise different theories of objection would amount to ambush of the trial court because, [h]ad specific objections been made at trial, the court would have had the opportunity to alter [the charge] or otherwise respond" [internal quotation marks omitted]).

II

The defendants also claim that the court improperly permitted the plaintiff, over their objection on the basis of relevancy, to introduce character evidence in the form of his driving history. Specifically, the defendants argue that "the trial court allowed the plaintiff to testify that he had only been involved in one other car accident, which occurred approximately twenty years ago, when

[1] We also have found no evidence related to sightlines in the record. Furthermore, we are unable to ascertain how the "configuration of this intersection" supports a comparative negligence instruction, and the defendants did not attempt to explain this to the court. We also are unable to ascertain, and the defendants did not explain to the trial court, exactly what they meant by "the opportunity to perceive and react" and how that might relate to a comparative negligence instruction.

a car bumped him while he was stopped at a light."[2] We conclude that this claim is not preserved for our review.[3]

"[T]he standard for the preservation of a claim alleging an improper evidentiary ruling at trial is well settled. This court is not bound to consider claims of law not made at trial. . . . In order to preserve an evidentiary ruling for review, trial counsel must articulate the basis of the objection so as to apprise the trial court of the precise nature of the objection and its real purpose, in order to form an adequate basis for a reviewable ruling. . . . Once counsel states the authority and ground of [the] objection, any appeal will be limited to the ground asserted." (Citation omitted; internal quotation marks omitted.) *Birkhamshaw* v. *Socha*, 156 Conn. App. 453, 486, 115 A.3d 1 (trial objections on ground of relevance failed to preserve for appellate review claim that testimony was improper character evidence), cert. denied, 317 Conn. 913, 116 A.3d 812 (2015).

[2] The specific testimony, which occurred on direct examination by the plaintiff's attorney, was as follows:

"Q: Other than this accident, have you ever been in any other car accident in your life?

"[The Defendants' Attorney]: Objection, relevance.

"[The Plaintiff's Attorney]: It's relevant.

"The Court: You know, it'll go to the weight. I'm going to allow it. It will be up to the jury to determine what weight to give it.

"Q: Other than this accident, have you ever been in any other accident, car accident, in your life.

"A: I think about twenty years ago, a car bumped me when I was stationed at a—standing at a stop light, but that's it."

[3] Additionally, although recognizing that we "previously [have] concluded than an objection based on relevancy fails to preserve [for appellate review] an objection regarding the admission of improper character evidence," the defendants ask that we reconsider our prior "position." "[I]t is axiomatic that one panel of this court cannot overrule the precedent established by a previous panel's holding. . . . This court often has stated that this court's policy dictates that one panel should not, on its own, reverse the ruling of a previous panel. The reversal may be accomplished only if the appeal is heard en banc." (Citation omitted; internal quotation marks omitted.) *State* v. *Carlos P.*, 171 Conn. App. 530, 546 n.12, A.3d (2017).

"These requirements are not simply formalities. They serve to alert the trial court to potential error while there is still time for the court to act. . . . Assigning error to a court's evidentiary rulings on the basis of objections never raised at trial unfairly subjects the court and the opposing party to trial by ambush." (Internal quotation marks omitted.) *Perez* v. *D & L Tractor Trailer School*, 117 Conn. App. 680, 693, 981 A.2d 497 (2009) (trial objections on ground of relevance failed to preserve for appellate review claim that testimony was improper character evidence), cert. denied, 294 Conn. 923, 985 A.2d 1062 (2010). As in *Birkhamshaw* and *Perez*, the defendants in the present case objected to the subject testimony on the basis of relevance, not improper character evidence, and they, therefore, failed to preserve this claim for appellate review.

III

The defendants also claim that the court abused its discretion in denying their motion to set aside the verdict. Specifically, the defendants argue: "More particularly, the trial court should have set aside the verdict based on the jury's failure to consider comparative [negligence], the improper jury charge regarding comparative [negligence] and/or the improper admission of evidence regarding the plaintiff's driving history." We disagree.

"[T]he proper appellate standard of review when considering the action of a trial court granting or denying a motion to set aside a verdict and motion for a new trial . . . [is] the abuse of discretion standard. . . . In determining whether there has been an abuse of discretion, every reasonable presumption should be given in favor of the correctness of the court's ruling. . . . Reversal is required only where an abuse of discretion is manifest or where injustice appears to have been

done. . . . We do not . . . determine whether a conclusion different from the one reached could have been reached. . . . A verdict must stand if it is one that a jury reasonably could have returned and the trial court has accepted." (Internal quotation marks omitted.) *Bolmer* v. *McKulsky*, 74 Conn. App. 499, 510, 812 A.2d 869, cert. denied, 262 Conn. 954, 818 A.2d 780 (2003).

We conclude that our resolution of the defendants' preceding claims; see parts I and II of this opinion; which form the basis of the present claim, is determinative of the outcome of the present claim. See *Kramer* v. *Petisi*, 91 Conn. App. 26, 37, 879 A.2d 526 (2005) (when claimed basis for improper denial of motion to set aside verdict is same error alleged and decided in another part of present appeal, previous conclusion of no error is determinative of outcome of this claim), aff'd, 285 Conn. 674, 940 A.2d 800 (2008); *Bolmer* v. *McKulsky*, supra, 74 Conn. App. 510–11 (same). Accordingly, the court did not abuse its discretion in denying the defendants' motion to set aside the verdict.

The judgments are affirmed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* DEMETRICE LEWIS (AC 38087)

DiPentima, C. J., and Beach and Bishop, Js.

Syllabus

The defendant, who, after a conditional plea of nolo contendere, was convicted of the crimes of carrying a pistol without a permit and criminal possession of a pistol or revolver, appealed to this court claiming that the trial court improperly denied his motion to suppress evidence that was alleged to be unlawfully seized during a police stop and ensuing search. The defendant was discovered standing alone, outside in the pouring rain, in the dark early morning hours, by a police officer in close proximity to an alleged domestic violence crime scene, which was

located in an area known for its high crime and drug usage. The defendant was wearing clothing that generally matched the description of the alleged suspect given to the police by a 911 caller, and he exhibited guarded and evasive behavior when questioned by the officer. Subsequently, the police officer conducted a brief patdown, during which the defendant dropped his hand toward his side, and when the police officer reached for the defendant's waistband, he felt the butt end of a firearm and removed a nine millimeter handgun. In denying the defendant's motion to suppress the introduction of the pistol, the trial court concluded that the police officer had not seized the defendant when he stopped his patrol car nearby the defendant, but rather the defendant was seized when the officer physically touched the defendant and commenced the patdown. The trial court further concluded that the seizure was justified because the officer had a reasonable and articulable suspicion that the defendant was engaged in criminal activity, and that the officer's patdown was supported by a reasonable belief that the defendant might have been armed and dangerous. On appeal, the defendant claimed that he was seized by the officer when the officer stopped his patrol car nearby the defendant and called out to him or, in the alternative, when the officer exited his vehicle and approached him. The defendant further claimed that the officer did not have a reasonable and articulable suspicion that the defendant was engaged in criminal activity at the time of the seizure and, therefore, the seizure was unlawful regardless of when it occurred, and that because he was unlawfully seized, the officer's subsequent patdown also was unlawful because the officer did not have a reasonable suspicion that the defendant was armed and dangerous. *Held*:

1. Contrary to the defendant's claim, he was not seized by the police until the officer physically touched him: the defendant was not seized or restrained when the officer called to him from the patrol car because the officer stopped his vehicle fifteen to twenty feet from the defendant, he did not activate his lights or siren, he did not use any language or tone that connoted a display of authority, and he did not use the patrol car in an aggressive manner to block or control the defendant's movement; furthermore, the defendant was not detained when the officer exited the patrol car and approached the defendant, as the officer took no measures to impede the defendant's movement either by blocking his means of egress or by any threatening behavior.
2. Even though the officer here was charged with the collective knowledge of the police department under the collective knowledge doctrine, which imputes to an arresting officer the collective knowledge of the law enforcement organization at the time of an arrest, the officer had a reasonable and articulable suspicion to believe that the defendant was the suspect involved in the alleged domestic violence incident, and therefore the seizure of the defendant was lawful; although there was some discrepancy between the defendant's clothing and the clothing

described by the 911 caller that the domestic disturbance assailant was wearing, under the totality of the circumstances here, including the proximity in time and location between the alleged crime and the defendant, the general matching of the defendant's clothing to that of the suspect, and the circumstances in which the officer found the defendant, it was reasonable for the officer to briefly detain the defendant.

3. Under the totality of the circumstances existing at the time, it was reasonable for the officer to be concerned for his safety and to make the judgment that the defendant might be armed and dangerous, and, therefore, the officer had a reasonable basis to pat down the defendant and, once discovered during the patdown, to seize the weapon from the defendant; the reasonableness of a police officer's conduct must be assessed from the perspective of a reasonable officer on the scene, and the circumstances here reasonably suggested to the officer that the defendant was under the influence of a controlled substance.

Argued March 16—officially released June 20, 2017

Procedural History

Substitute information charging the defendant with the crimes of carrying a pistol without a permit, criminal possession of a firearm, and criminal possession of a pistol or revolver, brought to the Superior Court in the judicial district of New Haven, where the court, *Cradle, J.*, denied the defendant's motion to suppress certain evidence; thereafter, the state entered a nolle prosequi as to the charge of criminal possession of a firearm; subsequently, the defendant was presented to the court, *Keegan, J.*, on a conditional plea of nolo contendere to the charges of carrying a pistol without a permit and criminal possession of a pistol or revolver; judgment of guilty; from which the defendant appealed to this court. *Affirmed.*

Laila M. G. Haswell, senior assistant public defender, with whom, on the brief, was *Lauren Weisfeld*, chief of legal services, for the appellant (defendant).

Mitchell S. Brody, senior assistant state's attorney, with whom, on the brief, were *Patrick J. Griffin*, state's attorney, and *Karen A. Roberg*, assistant state's attorney, for the appellee (state).

BISHOP, J. The defendant, Demetrice Lewis, appeals from the judgment of conviction after the court's denial of his motion to suppress evidence in which he sought to suppress the introduction of a pistol found on his person by a police officer. Following the denial of his motion, the defendant entered conditional pleas of nolo contendere to the offenses of carrying a pistol without a permit and criminal possession of a pistol. Subsequently, the court rendered a judgment of conviction and sentenced the defendant to ten years of incarceration, execution suspended after one year, followed by a three year conditional discharge. On appeal, the defendant claims that the court erroneously denied his motion to suppress the pistol because it was obtained from him in violation of his constitutional rights against unlawful search and seizure. We affirm the judgment of the trial court.

The following background facts and procedural history are relevant to our consideration of the issues on appeal. On May 28, 2013, in a short form information, the defendant was charged with carrying a pistol without a permit in violation of General Statutes § 29-35 (a), criminal possession of a firearm in violation of General Statutes § 53a-217 (a) (1), and criminal possession of a pistol or revolver in violation of General Statutes § 53a-217c (a) (1). These charges were restated in a long form information dated January 9, 2015. Thereafter, on February 19, 2015, the defendant filed a written motion to suppress evidence on the basis of his claim that any evidence taken from him had been unlawfully seized during an unlawful stop and ensuing search of his person by Officer Milton DeJesus.

On October 24, 2014, following an evidentiary hearing on the defendant's motion to suppress at which DeJesus testified, the trial court, *Cradle*, *J.*, issued a written

memorandum of decision in which it found the following facts, all of which find substantial support in the evidentiary record: "On the evening of May 24 and into the early morning hours of May 25, 2013, Officer DeJesus of the New Haven Police Department was assigned to patrol the area of district four in New Haven. District four encompasses the area of Chapel Street and Derby Avenue, which is known for its problems with drug sales and prostitution. At approximately 4:20 a.m., officers were dispatched to 36 Derby Avenue in response to a report of a domestic disturbance. The call from dispatch indicated that a female had reported that she had been choked by an individual named 'Antoine' who had fled the residence. The caller indicated that she believed she heard 'Antoine' outside in the bushes. Dispatch described the perpetrator as a black male dressed in all black. Officer DeJesus was working alone that evening, in uniform, in a marked patrol vehicle. At the time of the call, he was in the area of Whalley Avenue, approximately one quarter mile from 36 Derby Avenue and was the only officer nearby. Being in close proximity, he was able to respond to the call and proceeded to 36 Derby Avenue. Approximately one minute after receiving the call from dispatch, while en route to 36 Derby Avenue, he approached the corner of Chapel Street and Derby Avenue and spotted the defendant, a black male, in dark clothing in the driveway to the right of 1494 Chapel Street, which is almost at the corner of Chapel Street and Derby Avenue. The location where the defendant was standing is less than a one minute walking distance from 36 Derby Avenue, and in close proximity to 1494 Chapel Street.

"Based on the testimony provided by Officer DeJesus and photographs taken after his arrest, although the defendant was not wearing all black when he was apprehended, he was wearing dark clothing more specifically, dark blue jeans, a dark grey jacket, and a navy blue

skull cap. Officer DeJesus testified, however, that due to the heavy rain that evening, the defendant's clothing appeared to be 'all black' when he first spotted the defendant. When Officer DeJesus first identified the defendant on the corner of Chapel and Derby, he was standing alone, in the pouring rain and appeared to be talking on a cell phone. At that hour of the morning it was dark, and the area was only lit by a street lamp that illuminated the street onto the sidewalk area. Although Officer DeJesus could see the defendant, the area was not well lit. Given the circumstances and the nature of the clothing the defendant was actually wearing, he matched the general description provided by dispatch of the suspect in the domestic violence incident.

"Observing the defendant and believing him to match the description of the suspect, Officer DeJesus stopped his patrol vehicle on the left side of the Chapel-Derby intersection about fifteen to twenty feet away from the defendant to investigate further. While seated within his patrol vehicle, Officer DeJesus rolled down the window and inquired, 'yo my man, what's your name?' The defendant did not respond or acknowledge Officer DeJesus in any way. Officer DeJesus then exited his patrol vehicle to investigate further. As he approached the defendant, he attempted to engage the defendant in a dialogue to determine who he was and what he was doing in the area. He asked for his name and identification but the defendant did not give a coherent answer and was 'just . . . mumbling back' and 'trying to make words, but not being clear or concise . . . .' Based upon the defendant's conduct [and] appearance, Officer DeJesus believed the defendant to be intoxicated and/or under the influence of drugs. The officer approached the defendant at an angle, so as not to appear confrontational, and again asked for the defendant's name. The defendant mumbled what sounded like 'Michael,' and continued to appear to talk on his cell phone.

"Officer DeJesus observed that the defendant was 'not . . . staying stable,' and kept 'swaying' and 'moving around.' He noted the defendant's 'eyes were not right' and that he was not acting normal. The officer further described the defendant's stance as 'guarded.' When Officer DeJesus asked the defendant where he was coming from, the defendant muttered, 'I'm in a program.' On the basis of his training and experience, Officer DeJesus deduced that because (1) the defendant fit the description of the suspect wanted in connection with a violent domestic assault in that area, (2) the defendant acted in a guarded and evasive manner, and (3) individuals under the influence of alcohol or narcotics are more likely to be violent or aggressive, a patdown of the defendant was warranted for officer safety.

"Officer DeJesus approached the defendant and conducted a brief patdown that he described as a 'sweep' for weapons. The entire encounter lasted less than one minute. During the course of the patdown, the defendant dropped his hand toward his side at which point Officer DeJesus told him 'no, hold on a second.' Officer DeJesus simultaneously reached for the defendant's waistband and felt the butt end of a firearm. He then removed a nine millimeter handgun from the defendant's waistband. Upon removing the gun, the defendant initiated a struggle for the weapon and the two wrestled for a brief moment, ultimately rolling into the street. In the interim, responding officers arrived on the scene and were able to subdue the defendant with the assistance of a canine. The defendant was then arrested and taken into custody."

In denying the defendant's motion to suppress, the trial court concluded first that the police officer had not seized the defendant at the moment he stopped his patrol car nearby the defendant, but rather later, after DeJesus had approached the defendant and physically touched him. The court found: "When Officer DeJesus

first approached the defendant in his police cruiser, he stopped fifteen to twenty feet away from him. He did not activate his lights or sirens, and he did not use any language that connoted a display of authority. He asked his initial question from a seated position within his cruiser. In fact, the initial colloquial dialog with the defendant beginning with Officer DeJesus addressing the defendant as 'my man,' connotes a casual encounter." The court continued: "After the defendant failed to respond to his inquiry, Officer DeJesus exited his vehicle and approached the defendant to merely ask questions to determine his identity and investigate. The officer approached the defendant at an angle, so as not to appear confrontational and at no time did Officer DeJesus brandish his weapon. The officer did not engage in coercive or threatening behavior." The court concluded: "In the present case, the officer did not display any authority until he observed the defendant's questionable and guarded behavior. On the basis of this evidence, the court concludes that the defendant was not seized until Officer DeJesus physically touched him and commenced the patdown."

The court next concluded that the seizure was justified because DeJesus had a reasonable and articulable suspicion that the defendant was engaged in criminal activity. The court found: "[T]he nature of the 911 call coupled with Officer DeJesus' observations of the defendant immediately after the crime occurred, warranted a brief stop of the defendant. Here, the alleged criminal activity had occurred only moments before Officer DeJesus encountered the defendant in very close proximity to the location of the alleged crime. Further, the defendant's clothing, although not identical, was dark and generally matched the description of the suspect as described by the dispatcher. Additionally, it was early morning and the defendant was standing alone, in the dark, and in pouring rain. Based on the

defendant's identifying features, clothing, location, and overall behavior, the officer had reasonable and articulable suspicion to stop the defendant to determine if he was involved in the domestic incident under investigation." The court found further support for this finding in the defendant's evasive behavior, stating that DeJesus' "initial suspicion was further aroused by the defendant's response to the officer's inquiry when the officer was seated in his vehicle. That response led the officer to step out of his vehicle and conduct a further inquiry. . . . Officer DeJesus believed the defendant was under the influence because of his conduct and demeanor. When considered in connection to violent crime . . . here—the assault of a female—a reasonable officer could conclude that, on the basis of his evasive behavior, that the defendant had recently been involved in criminal activity." (Citation omitted; internal quotation marks omitted.)

Lastly, the court concluded that DeJesus' patdown of the defendant was supported by a reasonable belief that the defendant might have been armed and dangerous. The court found: "Under the totality of the circumstances, including (1) the nature of the crime under investigation, (2) the defendant's close proximity to the crime scene, (3) that his clothing sufficiently matched the description of the suspect, (4) his location and the time of day, and (5) his appearance and behavior, the court finds that a reasonable officer would have an objective suspicion, based on articulable facts, to conclude that the defendant might be armed and dangerous." On the basis of those three conclusions, the court denied the defendant's motion to suppress the evidence.

Following the denial of his motion, the defendant pleaded nolo contendere[1] to one count of carrying a

[1] The court found that the denial of the motion to suppress was dispositive of the case.

pistol without a permit and one count of criminal possession of a pistol.[2] The court, *Keegan*, *J.*, on May 15, 2015, sentenced the defendant to five years of incarceration, execution suspended after the mandatory minimum one year of incarceration, followed by a three year conditional discharge on the count of carrying a pistol without a permit, and five years of incarceration, execution fully suspended, with a three year conditional discharge on the count of criminal possession of a pistol.[3] The sentences were to run consecutively for a total effective sentence of ten years of incarceration, execution suspended after one year, and a three year conditional discharge.

On appeal, the defendant disputes the court's findings and argues that he was seized by DeJesus when DeJesus stopped his patrol cruiser nearby the defendant and called to him. In the alternative, he argues that he was seized when DeJesus exited his vehicle and approached him. He argues, as well, that DeJesus did not have a reasonable and articulable suspicion that the defendant was engaged in criminal activity at the time of the seizure and, therefore, it was unlawful regardless of when it occurred. Lastly, the defendant argues that because he was unlawfully seized, the officer's subsequent patdown of his person was similarly unlawful because DeJesus did not have reasonable suspicion that the defendant was armed and dangerous. In response, the state claims that the defendant was not seized until the officer physically touched him before patting him down for weapons. Further, the state claims that DeJesus' patdown of the defendant was justified by a reasonable belief that the defendant was armed and dangerous.

[2] The state entered a nolle prosequi with respect to the remaining count, criminal possession of a firearm in violation of General Statutes § 53a-217 (a) (1).

[3] The court noted on the record that at the time of the offense § 53a-217c did not carry a mandatory minimum jail sentence.

The evidentiary record and the application of pertinent decisional law support the state's claims.[4]

We begin our analysis with a discussion of the standard of review. On appeal from the court's denial of a motion to suppress evidence, "it is the function of this court to determine whether the decision of the trial court is clearly erroneous. . . . The trial court's conclusions must stand unless they are legally and logically inconsistent with the facts." (Internal quotation marks omitted.) *State* v. *Oquendo*, 223 Conn. 635, 645, 613 A.2d 1300 (1992). The court's "finding of fact will not be disturbed unless it is clearly erroneous in view of the evidence and pleadings in the whole record . . . . [W]here 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 . . . ." (Citations omitted; internal quotation marks omitted.) *State* v. *Joyce*, 243 Conn. 282, 288, 705 A.2d 181 (1997), cert. denied, 523 U.S. 1077, 118 S. Ct. 1523, 140 L. Ed. 2d 674 (1998). When, however, the basis of a defendant's claim is that the police conducted an unconstitutional search and seizure, we must, on review, "undertake a more probing factual review of allegedly improper seizures, so that we may come to an independent legal determination of whether a reasonable person in the defendant's position would have believed that he was not free to leave. . . . A proper analysis of this question is necessarily fact intensive, requiring a careful examination of the entirety of the circumstances in order to determine whether the police engaged in a coercive display of authority . . . . Although we must, of course, defer to the trial court's factual findings, our usual deference . . . is qualified by the necessity for

[4] In the alternative, the state claims that the exclusionary rule's new crime exception bars suppression of the gun. Because we affirm the court's denial of the motion on other grounds, we need not address this argument.

a scrupulous examination of the record to ascertain whether [each] finding is supported by substantial evidence . . . . Furthermore, in reviewing the record, we are bound to consider not only the trial court's factual findings, but also the full testimony of the arresting officers; in particular, we must take account of any undisputed evidence that does not support the trial court's ruling in favor of the state but that the trial court did not expressly discredit." (Citations omitted; internal quotation marks omitted.) *State* v. *Edmonds*, 323 Conn. 34, 39, 145 A.3d 861 (2016).

Before turning to the defendant's specific arguments, we briefly discuss the overarching legal principles relevant to the defendant's claim. Interactions between the police and members of the public in public places can implicate the public's right to be free from unreasonable searches and seizures. "The fourth amendment [to the United States constitution], like article first, § 7 [of the Connecticut constitution], proscribes only 'unreasonable' searches and seizures. . . . A search or seizure is presumptively unreasonable when it is conducted without a warrant issued upon probable cause. . . . Nevertheless, several categories of searches and seizures have been deemed reasonable, and therefore lawful, even when officers lack probable cause or a warrant. . . . For instance, under *Terry* [v. *Ohio*, 392 U.S. 1, 30–31, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)], officers may temporarily seize an individual if they have a reasonable and articulable suspicion that he is involved in criminal activity. . . . As the court stated in *Terry*, 'we deal here with an entire rubric of police conduct—necessarily swift action predicated [on] the on-the-spot observations of the officer on the beat—which historically has not been, and as a practical matter could not be, subjected to the warrant procedure. Instead, the conduct involved in this case must be tested by the [f]ourth [a]mendment's general proscription

against unreasonable searches and seizures.' . . . After balancing the state's legitimate interests in crime prevention and detection against a suspect's liberty interest . . . the court concluded that, when an officer has a reasonable basis for suspecting that an individual is committing or has committed a criminal offense, it is constitutionally permissible for the officer to briefly detain the individual for investigative purposes. . . . An accompanying patdown search is similarly justified if the police also have a reasonable basis to believe that the person stopped is armed and dangerous. . . . This latter action does not violate the fourth amendment because of the immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him." (Citations omitted; footnote omitted; internal quotation marks omitted.) *State* v. *Kelly*, 313 Conn. 1, 16–17, 95 A.3d 1081 (2014).

I

We address first the defendant's two alternative arguments that he was seized by DeJesus either when DeJesus stopped his patrol cruiser nearby the defendant and called to him, or when DeJesus exited his vehicle and approached him. A seizure occurs when "by means of physical force or a show of authority, [an individual's] freedom of movement is restrained. . . . The key consideration is whether, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." (Citation omitted; footnote omitted; internal quotation marks omitted.) *State* v. *Burroughs*, 288 Conn. 836, 844–45, 955 A.2d 43 (2008). While the show of authority or coercion necessary to establish restraint is fact specific, our law is clear that the fact that an officer is in uniform when approaching a member of the public is not, alone, viewed as a sufficient sign of authority or coercion

to constitute detention. See id., 849 ("[a]lthough we recognize that a uniformed law enforcement officer is necessarily cloaked with an aura of authority, this cannot, in and of itself, constitute a show of authority sufficient to satisfy the test for a seizure . . . ."); see also *State* v. *Hill*, 237 Conn. 81, 91, 675 A.2d 866 (1996) ("[t]he mere approach by a police officer, either in a police car or on foot, does not alone constitute a show of authority sufficient to cause the subject of the officer's attention reasonably to believe that he or she is not free to leave").

Although the assessment of whether a police officer's conduct vis-à-vis a member of the public constitutes a stop is necessarily fact-specific, the United States Supreme Court has provided some guidance for our analysis. The court opined: "Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." *United States* v. *Mendenhall*, 446 U.S. 544, 554, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980). In determining whether a seizure has occurred, our Supreme Court has also considered whether the police activated a siren or flashers, commanded the defendant to halt, displayed any weapons, or operated the police cruiser in an aggressive manner to block the defendant's course or otherwise control the direction or speed of his movement. *State* v. *Burroughs*, supra, 288 Conn. 847.

With this guidance in mind, we turn to the defendant's specific claim that he was seized by DeJesus when DeJesus parked his marked police cruiser fifteen to twenty feet from where the defendant was standing and called to him "yo my man, what's your name?" The court rejected this claim and we agree. As noted by

the court, when DeJesus stopped his cruiser fifteen to twenty feet from the defendant, he did not activate his lights or siren, he did not use any language or tone that connoted a display of authority, and he did not use his police cruiser in an aggressive manner to block or control the defendant's movement. He was still seated in his cruiser when he initially tried to speak with the defendant. On the basis of our jurisprudence on the matter, these circumstances do not constitute restraint. Accordingly, the defendant was not seized when DeJesus called to him from the police cruiser.

The defendant claims, in the alternative, that once DeJesus alighted from his cruiser and walked toward him, the officer's movements limited the defendant's movements and, accordingly, served to seize him. In this regard, he asserts that the location of the interaction in a fairly isolated area in the early morning hours of the day heightened the aura of the officer's authority. Thus, he claims, he was detained as soon as the officer began to approach him. The court found, however, that at this juncture DeJesus was approaching the defendant merely to ask him questions, that the officer approached at an angle so as not to appear confrontational, and that the officer did not, at any time in this process, brandish his weapon. Accordingly, the court concluded, the officer's approach to the defendant did not constitute a seizure. We agree. Under these circumstances, where the record is plain that the officer took no measures to impede the defendant's movement either by blocking his means of egress or by any threatening behavior, the officer's conduct in walking toward the defendant did not constitute restraint under all the existing circumstances. Accordingly, the defendant was not seized when DeJesus began walking toward him.

The court found, and the state argues, that the defendant was not seized until DeJesus physically touched the defendant. We agree. The record is clear that once

DeJesus reached the defendant and physically touched him, the officer's conduct, at that juncture, constituted a detention of the defendant. Accordingly, the defendant was not seized until DeJesus physically touched him.

II

We turn next to the defendant's argument that the seizure was unlawful, regardless of when it began, because DeJesus did not have a reasonable and articulable suspicion that the defendant was engaged in criminal activity at the time of the seizure. On this point the state and the defendant have different perceptions of the underlying factual circumstances and their implications. The defendant argues that when DeJesus reached out and physically touched the defendant, he was acting on a mere hunch that the defendant might be the suspect in the domestic violence incident, which was unreasonable because the defendant's clothing did not match the description issued by police dispatch. The defendant further argues that his behavior did not give rise to a reasonable suspicion for DeJesus to seize him. The state, on the other hand, claimed that DeJesus was justified in stopping the defendant because he sufficiently fit the description of the domestic violence suspect, because of his lack of response to the officer's questions and muddled behavior, and because he was found in an area geographically close to the alleged violent crime scene within minutes of the notification from the police dispatcher of having received a 911 call.

With respect to the defendant's clothing, the defendant argues that the clothing he was wearing did not match the description of clothing given by the 911 caller to dispatch regarding the alleged domestic violence assailant, and that, even though the 911 caller's description was not passed on by dispatch to DeJesus, he is charged with knowing that description under the collective knowledge doctrine. The defendant argues

that, as a consequence, DeJesus reasonably could not have suspected the defendant as being the perpetrator. In response to the defendant's claim regarding the collective knowledge doctrine, the state argues that even if the officer could be charged with knowledge of the clothing description given by the 911 caller, the defendant's appearance in dark clothing in the rain and in the dark early morning hours was sufficiently alike to the description given by the 911 caller to be a factor supporting his reasonable suspicion that the defendant could be the domestic violence suspect.

The following additional information is relevant to this argument. The record reflects that the 911 caller described her assailant to the dispatcher as a black man dressed in a "black hoodie, black sweatpants, a chain around his neck, a fitted [hat], I believe an orange and grey fitted [hat]." Dispatch, however, did not relay this complete description. Rather, it described the alleged perpetrator as "Antoine," "a black male in all black," who had allegedly choked the victim and was believed to be hiding in the bushes outside the victim's home. The defendant, when approached by DeJesus, was not wearing all black, but instead, dark blue jeans, a dark grey jacket, and a navy blue skull cap. DeJesus testified at the suppression hearing, though, that due to the heavy rain, the defendant's clothing looked all black.

At the outset, we agree that DeJesus is chargeable with the collective knowledge of the police department. The collective knowledge doctrine imputes onto an arresting officer the collective knowledge of the law enforcement organization at the time of the arrest. *State* v. *Butler*, 296 Conn. 62, 72–73, 993 A.2d 970 (2010). Therefore, the knowledge of both the arresting officer and the police department must be considered in determining whether there is probable cause for an arrest. Id. In *Butler*, our Supreme Court extended the application of the collective knowledge doctrine

beyond determinations of probable cause, to circumstances warranting an officer's reasonable suspicions in a search and seizure context. Id., 73–74. In *Butler*, the question was whether the state could utilize the collective knowledge of the police department to substantiate its claim that the officer on the scene had a reasonable basis to suspect the defendant of criminal activity. Id., 74–75. The court opined: "Although this court typically has applied the collective knowledge doctrine to determinations of probable cause, we conclude that it is equally applicable to the reasonable suspicion determination. See, e.g., *United States* v. *Thompson*, 533 F.3d 964, 969 (8th Cir. 2008) ('[t]he collective knowledge of law enforcement officers conducting an investigation is sufficient to provide reasonable suspicion, and the collective knowledge can be imputed to the individual officer who initiated the traffic stop when there is some communication between the officers') . . . ." Id., 73. If the collective knowledge of the police department can be attributed to an officer on the scene in order to bolster the basis of the officer's reasonable suspicions, we can conceive of no reason that the doctrine should not be applied, with equal force, to information that can be imputed to the officer on scene that would tend to erode the reasonableness of an officer's suspicion.

That, however, does not complete our analysis regarding the collective knowledge doctrine because, in order to apply the doctrine to the case at hand, we would have to know that the person who received the 911 call from the alleged domestic violence victim was, in fact, a member of the New Haven Police Department. In that regard, the record reveals only that the alleged domestic violence victim called 911 and that the phone was answered by an individual who responded to the call by stating "New Haven 911." We know, as well, that DeJesus testified that he was dispatched to a certain

address and given a description by dispatch of the assailant's clothing not as detailed as, and at some variance with, the description given by the 911 caller. Thus, we do not know whether the individual who answered the 911 call was a member of the New Haven Police Department whose knowledge, fairly, could be attributed to the officer on the scene under the collective knowledge doctrine.[5] For purposes of our resolution of this appeal, however, we will assume that the collective knowledge doctrine is applicable.

That said, we are aware that the description of clothing is merely one factor in all the circumstances an officer may consider in deciding whether to detain a member of the public. *State* v. *Gregory*, 74 Conn. App. 248, 257–58, 812 A.2d 102 (2002), cert. denied, 262 Conn. 948, 817 A.2d 108 (2003). The defendant's argument regarding the discrepancy between the defendant's clothing and that of the alleged domestic violence perpetrator is not unlike the argument made by the defendant before this court in *Gregory*. There, the defendant claimed that there was a discrepancy in the description of an assailant's clothing between the victim's claims and the actual clothing worn by the defendant when detained. Id., 258–59. On appeal, this court stated: "The police are . . . not required to confirm every detail of

[5] It does not appear that our Supreme Court or this court has had the occasion to determine whether the "collective knowledge" doctrine applies in a situation in which information is received by a civilian 911 dispatcher and then relayed to a police officer. In short, we have not determined whether information in possession of a civilian dispatcher can be attributed to a police officer on the scene. As noted in the state's brief, federal Circuit Courts are not in agreement on this question. See *United States* v. *Whitaker*, 546 F.3d 902, 909–10 n.12 (7th Cir. 2008) (knowledge of civilian 911 dispatcher can be imputed onto police officer); *United States* v. *Colon*, 250 F.3d 130, 135–38 (2d Cir. 2001) (knowledge of 911 dispatcher cannot be imputed onto arresting officer where no evidence dispatcher had special training in assessing the existence of probable cause). In the case at hand, however, we need not answer this question for reasons set forth in our opinion. Thus, we leave this issue for another day.

a description of the perpetrator before that person can be detained. . . . Rather, [w]hat must be taken into account [when determining the existence of a reasonable and articulable suspicion] is the strength of those points of comparison which do match up and whether the nature of the descriptive factors which do not match is such that an error as to them is not improbable . . . .'' (Citation omitted; internal quotation marks omitted.) Id., 259. Along with its discussion on the comparison of the defendant's clothing to that of the suspect, the court in *Gregory* further noted: ''The nature of the crime under investigation, the degree of suspicion, the location of the stop, the time of day, the reaction of the suspect to the approach of police are all facts which bear on the issue of reasonableness. . . . Proximity in the time and place of the stop to the crime is highly significant in the determination of whether an investigatory detention is justified by reasonable and articulable suspicion.'' (Citation omitted; internal quotation marks omitted.) Id., 257–58. Thus, even though the description of the assailant's clothing by the 911 caller is a relevant factor to the reasonableness of the officer's suspicion and subsequent detention of the assailant, the discrepancy in the clothing description is but one factor to consider in the overall circumstances bearing on the issue of reasonableness. With that in mind, we turn to a consideration of the other factors that led the court to find that DeJesus had a reasonable and articulable suspicion that the defendant was engaged in criminal activity at the time of the seizure.

The record reflects that DeJesus came upon the defendant at approximately 4:30 a.m. while it was dark and rainy and, from the patrol car, believed that he was wearing dark clothing, a description that matched that from the dispatcher's call. The defendant was located within a minute's walk from the scene of the alleged violent assault in a high crime and high drug use area.

When the officer called to the defendant, the defendant was standing in the rain using a cell phone. Initially ignoring the officer, the defendant then mumbled to him while appearing to the officer to be under the influence of a controlled substance. Given the totality of those circumstances, and even assuming some discrepancy in the clothing description between what was told by the 911 caller to dispatch and what was relayed to DeJesus, it was nevertheless reasonable for him to suspect the defendant of criminal activity and, thus, to briefly detain him for the purpose of questioning him.

Additionally, given the high crime and drug usage character of the neighborhood where DeJesus discovered the defendant and the known association between violence and drug use, it was reasonable for the officer to conduct a patdown of the defendant for the officer's own safety before asking him more pointed questions. As noted, the court looked to "the nature of the 911 call coupled with Officer DeJesus' observations of the defendant immediately after the crime occurred" in determining that a brief stop of the defendant was warranted. The court relied on the proximity in time and location between the alleged criminal activity and the defendant, the general matching of the defendant's clothing to that of the suspect, the circumstances in which DeJesus found the defendant, namely alone in the dark and pouring rain, and the defendant's "evasive behavior" when engaged by DeJesus. The court concluded: "Based on the defendant's identifying features, clothing, location, and overall behavior, the officer had reasonable and articulable suspicion to stop the defendant to determine if he was involved in the domestic incident under investigation. . . . Thus, based upon the totality of the circumstances, Officer DeJesus had reasonable and articulable suspicion to believe that the defendant was indeed the suspect that had recently committed an assault." Contrary to the defendant's

assertions, the record amply supports the court's conclusions. We agree with the court that the defendant's detention by DeJesus was reasonable under all the circumstances.

III

Lastly, we turn to the defendant's claim that even if the investigatory stop by DeJesus was reasonable, the patdown and ensuing seizure of a weapon from him by the officer was unlawful because DeJesus did not have a reasonable suspicion that the defendant was armed and dangerous. In support of this claim, the defendant argues that even if his clothing could have been seen by DeJesus from his patrol car as resembling the description given by the 911 caller, once he got closer to the defendant he should have seen that the clothing did not match. The defendant also argues that his behavior in not cooperating with DeJesus and his intoxicated appearance cannot support a reasonable suspicion that he was armed and dangerous. Therefore, the defendant claims, the possibility that he was the perpetrator of the violent crime of domestic assault cannot be factored in to the calculus of whether, at the moment of the patdown, DeJesus had a reasonable basis for believing that the defendant could be armed and dangerous. We disagree.

Our Supreme Court has recognized that "[a] police officer is not entitled to seize and search every person whom he sees on the street or of whom he makes inquiries. Before he places a hand on the person of a citizen in search of anything, he must have constitutionally adequate, reasonable grounds for doing so. In the case of the self-protective search for weapons, he must be able to point to particular facts from which he reasonably inferred that the individual was armed and dangerous. . . . The authority to permit a reasonable search for weapons for the protection of the police

officer is narrowly drawn applying only where he has reason to believe that he is dealing with an armed and dangerous individual . . . . The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. . . . And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or hunch, but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience." (Internal quotation marks omitted.) *State* v. *Jenkins*, 298 Conn. 209, 234, 3 A.3d 806 (2010).[6] Additionally, "[w]hen making a split second decision, an officer is not required to calculate the probability that the defendant would proceed in a certain way before taking reasonable steps to protect himself and his fellow officers." (Internal quotation marks omitted.) *State* v. *Kelly*, supra, 313 Conn. 34.

On the basis of this jurisprudence, the court concluded: "Under the totality of the circumstances, including (1) the nature of the crime under investigation, (2) the defendant's close proximity to the crime scene, (3) that his clothing sufficiently matched the description of the suspect, (4) his location and the time of day, and (5) his appearance and behavior, the court finds that a

[6] Thus, like the trial judge, we do not weigh the reasonableness of DeJesus' conduct by reference to his stated practice, reflected in his statement to the court that "I pat everybody down. . . . I pat [them] down for my safety. . . . [T]his is not the first time that somebody pulled a gun on me, so, you know, I'm [going to] protect myself." We echo the court's affirmation that the judicial review of a police stop and patdown of a member of the public can only be based on an objective test of reasonableness under the particular circumstances and not by reference to an officer's general proclivities. Indeed we disapprove of such a practice as presenting a high risk of being an unconstitutional intrusion, saved, perhaps, only by the operative facts of any such police-public interaction.

reasonable officer would have an objective suspicion, based on articulable facts, to conclude that the defendant might be armed and dangerous."

While we believe the defendant's argument regarding the discrepancy between the clothing description given by the 911 caller and the clothing worn by the defendant, that discrepancy, as we have noted, is not the only factor to be considered in assessing the objective reasonableness of the patdown and seizure. Additionally, in assessing the officer's conduct, we must be mindful that he did not have the benefit of quiet contemplation before deciding what reasonable steps were appropriate to guard his safety. The United States Supreme Court's assessment of a police officer's reasonable use of force is germane to the reaction of a police officer in an interaction with a member of the public. The court has opined: "The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. . . . The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." (Citation omitted; internal quotation marks omitted.) *Graham* v. *Connor*, 490 U.S. 386, 396–97, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989). As with a court's assessment of an officer's reasonable use of force, our assessment of the reasonableness of the officer's decision to conduct a patdown of the defendant must be guided by a realization that the officer was required, for the sake of his own safety, to make an immediate on the spot assessment of whether the defendant was likely to be armed and dangerous under all the circumstances then existing. Those circumstances included, as well as the physical description of the domestic violence suspect and the clothing

he was wearing, the fact that the defendant was found in an area close by the crime scene, at approximately 4:30 a.m., in the dark, in a high crime and drug use area, standing in the rain, and when the officer approached the defendant, he observed that he was mumbling and swaying, behaving in a way that reasonably suggested to the officer that the defendant was under the influence of a controlled substance.

Under all those circumstances, it was reasonable for DeJesus to be concerned for his safety and to make the judgment that the defendant might be armed and dangerous. Therefore, he had a reasonable basis to pat down the defendant and, once discovered during the patdown, to seize the weapon from the defendant.

The judgment is affirmed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* VICTOR ANDINO (AC 38475)

DiPentima, C. J., and Keller and Prescott, Js.

Syllabus

The defendant, who had been convicted of assault in the first degree and criminal possession of a firearm, appealed to this court, claiming that the trial court improperly denied his motion to suppress an inculpatory statement that he made to a police detective and that there was insufficient evidence to support his conviction of criminal possession of a firearm. The defendant had waived his rights pursuant to *Miranda* v. *Arizona* (384 U.S. 436) before he orally told the detective that he shot the victim during an argument about money and the victim's alleged sales of drugs. The trial court denied the defendant's motion to suppress his statements, ruling that the detective testified credibly that he advised the defendant of his *Miranda* rights and that the defendant voluntarily waived them before making his statements. The court further determined that the defendant waived those rights despite finding that his signature on the *Miranda* form did not appear to be the same as other examples of his signature that were admitted into evidence during the suppression

hearing. The defendant also claimed that absent his inculpatory statements to the detective, the corpus delicti rule required the reversal of his conviction of criminal possession of a firearm *Held*:

1. The defendant could not prevail on his claim that the trial court improperly found that he voluntarily waived his *Miranda* rights, which was based on his assertion that the court made contradictory factual findings that the detective testified credibly, and that the defendant's signature on the *Miranda* waiver of rights advisement form did not appear to be the same as his other signatures that were admitted into evidence in the suppression hearing, thus undermining the detective's testimony that the defendant had signed the form; the *Miranda* waiver form and the detective's testimony about the advisement procedures he employed amply supported the court's finding that the defendant knowingly waived his *Miranda* rights by speaking to the detective after having been advised of those rights, and to the extent that the defendant's signature on the *Miranda* form did not appear to be the same as other examples of his signature, the court reasonably could have inferred that the same person could generate signatures that appear to be dissimilar; moreover, the state was not required to prove that a written waiver had been made, the court resolved the waiver issue by relying solely on the evidence that the detective orally had advised the defendant of his rights, and the defendant's conduct here during his interview with the detective indicated that defendant was willing to speak with the detective after the oral advisement.
2. The evidence was sufficient to support the defendant's conviction of criminal possession of a firearm; the state sufficiently corroborated the defendant's inculpatory statement to the detective with evidence that the defendant was at the crime scene, that he was involved in an altercation with the victim, that he threatened to shoot the victim, that a shooting occurred, and that the victim sustained a gunshot injury, and, notwithstanding the defendant's claim that absent his inculpatory statement, the corpus delicti rule required the reversal of his firearms conviction, the trial court properly considered that inculpatory statement in evaluating the evidence in support of the jury's guilty verdict, the defendant having raised and the court having rejected the corpus delicti claim in denying his motions for a judgment of acquittal.

Argued February 14—officially released June 20, 2017

Procedural History

Two part substitute information charging the defendant, in the first part, with the crimes of assault in the first degree and criminal possession of a firearm, and, in the second part, with being a persistent serious felony offender, brought to the Superior Court in the judicial

district of New Britain, where the court, *Alander*, *J.*, denied the defendant's motion to suppress certain evidence; thereafter, the first part of the information was tried to the jury; verdict of guilty; subsequently, the defendant was presented to the court on a plea of nolo contendere to the second part of the information; thereafter, the court denied the defendant's motion for a judgment of acquittal and rendered judgment of guilty in accordance with the verdict and the plea, from which the defendant appealed to this court; subsequently, the court, *Alander*, *J.*, issued an articulation of its decision. *Affirmed*.

Daniel J. Krisch, assigned counsel, for the appellant (defendant).

Jonathan M. Sousa, special deputy assistant state's attorney, with whom, on the brief, were *Gail P. Hardy*, state's attorney, and *Brett J. Salafia*, senior assistant state's attorney, for the appellee (state).

Opinion

KELLER, J. The defendant, Victor Andino, appeals from the judgment of conviction, rendered following a jury trial, of assault in the first degree in violation of General Statutes § 53a-59 (a) (1) and criminal possession of a firearm in violation of General Statutes § 53a-217 (a) (1). Additionally, following a plea of nolo contendere, the trial court found the defendant guilty of being a persistent serious felony offender under General Statutes § 53a-40 (c).[1] The defendant claims (1) that the court improperly denied his motion to suppress an inculpatory oral statement that he provided to the police and (2) that the evidence did not support his conviction of criminal possession of a firearm. We affirm the judgment of the trial court.

[1] The court sentenced the defendant to a total effective term of incarceration of twelve years, followed by twelve years of special parole.

On the basis of the evidence presented at trial, the jury reasonably could have found the following facts. On September 29, 2010, the defendant and the victim,[2] Jorge David Aponte, were arguing with one another in the parking lot of an apartment complex on South Whiting Street in New Britain. The argument between the two men, portions of which were overheard and witnessed by residents who lived nearby,[3] was related to the victim's illegal drug selling activities in the neighborhood. At one point during the argument, the victim was holding a large stick and the defendant was holding what appeared to be a machete or a knife. The defendant threatened to shoot the victim, and, ultimately, he shot the victim in his left shoulder before fleeing the scene. Gunshots were overheard by multiple witnesses around the time of the defendant's argument with the victim and in the vicinity of where the defendant and the victim were arguing. The victim drove away from the scene and received medical treatment for his injury, which was not life threatening, at Hartford Hospital.

A bystander notified the police that a shooting had occurred and, following an investigation of the shooting, New Britain police obtained an arrest warrant for the defendant. On October 18, 2011, the police located the defendant and executed the arrest warrant. The

[2] The state presented evidence that, on September 29, 2010, following the defendant's argument with and subsequent shooting of the victim, New Britain police officers met with the victim, who was obtaining medical treatment for a gunshot wound at Hartford Hospital. At that time, a police officer photographed the victim. Two photographs taken of the victim, while he was in the hospital, were admitted into evidence. One of the police officers testified that the victim was not cooperative in terms of being photographed or in terms of providing the police officers with any information relative to their investigation. The victim did not testify at trial.

[3] Two bystanders recognized the defendant and identified him by his street name, Lagrima. One bystander videotaped a small portion of the incident, thereby capturing images of the victim, holding an object that appeared to be a long stick, during the argument.

defendant waived his *Miranda* rights[4] and, during an interview conducted by Jonathan Webster, then a detective with the New Britain Police Department, the defendant stated that, during an argument with the victim related to money and the sale of drugs in the neighborhood, he shot the victim. The defendant stated that he was unhappy that the victim was selling drugs in an area that he and others controlled. He stated that he shot the victim after the victim charged at him with a large stick. Because the defendant did not want others to know that he had provided a statement to the police, however, he declined to provide the police with a written statement. Additional facts will be set forth as necessary.

I

First, the defendant claims that the court improperly denied his motion to suppress the oral statement that he provided to the police. We disagree.

The following additional facts are relevant to the present claim. By written motion filed on August 6, 2014, the defendant moved to suppress "any and all statements made by [him] . . . including, but not limited to, statements made regarding his alleged involvement in a shooting in September, 2010." In relevant part, the defendant alleged in the motion to suppress that he had been subjected to custodial interrogation by Webster and that "Webster never notified [him] . . . of his constitutional rights as required by *Miranda* v. *Arizona*, [384 U.S. 436, 444, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)]." On September 2, 2014, the court held a hearing on the motion during which it received documentary evidence and heard testimony from both Webster and the defendant.

[4] See *Miranda* v. *Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

In relevant part, Webster testified that, on October 18, 2011, he and another detective observed the defendant enter a building in New Britain. After the defendant exited the building, the defendant laid down in the backseat of a truck. The police stopped the truck as it was being driven away. The police placed the defendant under arrest and transported him to the police department. The defendant was taken to an interview room in the detective bureau, where he met with Webster. During the interview, the defendant was restrained in leg shackles. Webster testified that he began his conversation with the defendant by advising him of his *Miranda* rights. He testified that, initially, his advisement was verbal in nature, but that he subsequently had the defendant complete a *Miranda* rights advisement form. Webster testified that he communicated with the defendant in English, and that he wrote the defendant's name, address, date of birth, educational information, and information about the defendant's reading and writing skills on the form. Webster read each right listed on the *Miranda* rights advisement form to the defendant, and the defendant wrote his initials next to each listed right.

Webster testified that, thereafter, he asked the defendant if he was willing to speak to him. Webster testified that the defendant stated that he was willing to talk to him, and that, in Webster's presence, the defendant signed the bottom portion of the *Miranda* rights advisement form, thereby indicating that he had been advised of, understood, and freely waived his *Miranda* rights.[5] Webster testified that he did not write the defendant's initials on the form or sign the defendant's name on

[5] The bottom portion of the *Miranda* rights advisement form, entitled "WAIVER OF RIGHTS," states: "I have been advised of my rights, I fully understand these rights, I am willing to be interviewed and answer questions. I do not wish the presence of an attorney at this time. I am waiving my rights freely and voluntarily, without any fear, threat or promises made to me." The defendant's signature appears on the form after this language.

the form. Webster testified, however, that he signed his own name on the form.[6] The court admitted the signed *Miranda* rights advisement form into evidence.

During the interview, in Webster's presence, the defendant also signed a uniform arrest report that, among other things, reflected personal information about the defendant as well as the charges being brought against him. Webster signed the uniform arrest report, as well. The court admitted the signed report into evidence.

Webster testified further that, after the defendant waived his *Miranda* rights, the defendant told him that on the day of the shooting he had gotten into an argument with the victim about drug sales and money. According to Webster, the defendant related to him that the argument escalated, the victim was armed with a machete and an item that the defendant described as a long board and, ultimately, the defendant shot the victim. During the interview, the defendant was provided with food and water, and he was permitted to use the bathroom. At the conclusion of the interview, the defendant stated that the information that he provided was true and accurate.

At the suppression hearing, the defendant testified that his *Miranda* rights were not explained to him and that he did not initial or sign the *Miranda* rights advisement form or the uniform arrest report. The defendant testified that he did not sign any paperwork at the police department on October 19, 2011. The court admitted into evidence two examples of the defendant's signature. One example came in the form of an identification card that he claimed to have signed five years prior to his testimony. The other example came in the form of

[6] Webster's signature appears in the waiver portion of the *Miranda* rights advisement form, in the space provided for "Officer Administering Warnings."

a blank sheet of paper that he signed during his testimony at the suppression hearing. The defendant testified that, in relation to the events at issue, he was not questioned until he arrived at the police headquarters and that nobody had advised him of his *Miranda* rights. Moreover, the defendant testified that he did not make the statements that Webster attributed to him, and that he had not stated that he shot anyone. Instead, the defendant testified that, while he was in police custody, he merely asked Webster why he had been arrested.

During argument on the motion to suppress, defense counsel argued that the evidence demonstrated that the police had not advised the defendant of his *Miranda* rights, either orally or in writing, prior to his interrogation. Defense counsel argued that the defendant's signatures on the *Miranda* rights advisement form and the uniform arrest report, both of which, Webster testified, had been signed by the defendant in his presence, did not appear to match the defendant's signature on his identification card, the signature that he provided during his testimony, or the defendant's signatures that appeared on two other uniform arrest reports that were introduced into evidence by the state. Defense counsel argued that the defendant had not been advised of his rights as Webster testified, the defendant had not been afforded an opportunity to sign the documents at issue, and the documents at issue had been "signed by somebody else." Defense counsel argued that the signatures appeared to have been written by the same person, namely, Webster, and that this had been done because the police had an interest in filling up "this hole" in their case against the defendant.

The prosecutor argued that Webster credibly testified at the suppression hearing that he had advised the defendant of his *Miranda* rights, that the *Miranda* rights advisement form memorialized that the defendant was so advised, and that the form reflected that

the defendant waived his *Miranda* rights. The court asked the prosecutor to comment on defense counsel's argument that the signatures on the forms at issue in the present case were dissimilar to the other examples of the defendant's signature that were in evidence. The prosecutor acknowledged that the signatures appeared to be "somewhat different," but argued that, in light of Webster's testimony, any dissimilarity did not support a conclusion that the defendant did not sign the forms at issue. Also, the prosecutor argued that, if the police had fabricated the defendant's confession, it is unlikely that they would have concocted the "halfway self-defense claim" reflected in the confession.

Following argument by counsel, the court orally rendered its decision. In relevant part, the court stated: "[B]ased upon the evidence presented, I find the following facts: that on October 18, 2011, at approximately 4:30 p.m. . . . the defendant was at the New Britain police station in the presence of . . . Webster . . . [and] I credit Detective Webster's testimony that prior to questioning [the defendant] with respect to an incident that occurred on September 29, 2010, at South Whiting Street, that he verbally advised [the defendant] of his *Miranda* rights, all of his rights; that [the defendant] spoke English; that he understood English, the verbal, oral English; and that he voluntarily waived those *Miranda* rights and then spoke to Detective Webster about the incident on September 29, 2010.

"I do agree with [defense counsel's argument that] those signatures are not the same. They don't appear to be the same. However, I don't find that difference to be determinative here as to the truthfulness of Detective Webster's testimony. I find that he did verbally advise [the defendant] of his *Miranda* rights, which [the defendant] voluntarily waived and subsequently gave his statement. So, for those reasons, the motion to suppress is denied."

During the pendency of the present appeal, the defendant asked the court to articulate with respect to several of its findings. Relevant to the present claim, the defendant asked the court to articulate whether he had initialed or signed the *Miranda* rights advisement form and whether Webster had testified falsely that the defendant had initialed and signed the form. The court granted articulation with respect to these inquiries and, in an articulation dated June 30, 2016, the court stated in relevant part: "The only factual finding that I made with respect to the signatures on the defendant's [identification] card and the exemplar and the signature on the defendant's waiver of rights form is that the signatures did not appear to be the same. I did not find that the signatures were made by two different individuals. I also did not find that Detective . . . Webster testified falsely that the defendant initialed and signed the waiver of rights form. I found that Detective Webster verbally advised the defendant of his *Miranda* rights and that the defendant voluntarily and knowingly waived those rights prior to speaking with Detective Webster."

At trial, following the court's denial of the defendant's motion to suppress, the state presented evidence of the defendant's inculpatory statements to the police. In relevant part, Webster testified that after he advised the defendant of his *Miranda* rights both orally and in writing, the defendant waived his *Miranda* rights and answered questions about his involvement in the victim's shooting. Webster testified that the defendant told him that the defendant and some of his associates were engaged in an ongoing dispute with the victim concerning money and the fact that the victim was selling drugs illegally in what they believed was "their drug territory and taking their sales from them." Webster testified, as well, that the defendant stated to him that he was involved in a physical altercation with the victim on September 29, 2010, the victim was armed with a

machete and a large stick during the altercation, and that, using a firearm that one of his associates, Richard Ruiz, had given to him, "he shot [the victim] because [the victim] was coming at him." Webster testified that the defendant told him that he fled the area after the victim fled.

The defendant challenges the court's finding that he was advised of and waived his *Miranda* rights. The defendant's challenge to the court's ruling, thus, focuses on the court's resolution of a question of fact that was essential to a legal determination that implicated the defendant's constitutional rights. "To be valid, a [*Miranda*] waiver must be voluntary, knowing and intelligent. . . . The state has the burden of proving by a preponderance of the evidence that the defendant voluntarily, knowingly and intelligently waived his *Miranda* rights. . . . Whether a purported waiver satisfies those requirements is a question of fact that depends on the circumstances of the particular case." (Citations omitted; internal quotation marks omitted.) *State* v. *Reynolds*, 264 Conn. 1, 50, 836 A.2d 224 (2003), cert. denied, 541 U.S. 908, 124 S. Ct. 1614, 158 L. Ed. 2d 254 (2004). There is no requirement in our law that a valid *Miranda* waiver must be evidenced by a written waiver. "[T]he state must demonstrate: (1) that the defendant understood his rights, and (2) that the defendant's course of conduct indicated that he did, in fact, waive those rights. . . . In considering the validity of [a] waiver, we look, as did the trial court, to the totality of the circumstances of the claimed waiver." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *State* v. *Santiago*, 245 Conn. 301, 320, 715 A.2d 1 (1998).

The defendant acknowledges the established proposition that this court is obligated to defer to the trial court with respect to matters related to the credibility of witnesses. The defendant argues that the court's factual

findings with respect to the waiver issue are clearly erroneous on the ground that the court, in ruling on the motion to suppress, essentially made contradictory factual findings in that it found Webster to be a credible witness and that the signature on the *Miranda* rights advisement form did not appear to be the same as the other signatures of the defendant that were admitted into evidence. Any difference in the appearance of the signatures, the defendant posits, undermines Webster's testimony that the defendant signed the form. Thus, the defendant argues that although the court found that Webster had testified in a credible manner, in light of the disparity in the appearance of the signatures at issue, it nonetheless should not have relied on any of Webster's testimony when making its factual findings. The defendant argues: "The court found that the defendant had waived his *Miranda* rights based solely on Webster's testimony. . . . However, the court also found that the signature on the waiver of rights form was 'not the same' as four known samples of the defendant's signature (including an in-court exemplar). . . . This disparity casts grave doubt on Webster's testimony; and the conflict between the court's acknowledgement of that disparity and its belief of Webster makes its ultimate finding of a valid waiver clearly erroneous. Moreover, the error was not harmless beyond a reasonable doubt because the defendant's statements [to Webster] were the linchpin of the state's case: no one saw the defendant shoot [the victim]; the police never recovered a gun; and no physical evidence tied the defendant to the crime." (Citations omitted.) The defendant argues that "[a] scrupulous examination of the record should leave this court with the 'definite and firm conviction' that the defendant did not voluntarily, knowingly, and intelligently waive his *Miranda* rights." In challenging the court's ultimate reliance on Webster's version of events, the defendant argues: "It is clearly

erroneous for a trial court to make a finding that its other findings contradict . . . or that is inescapably incongruent with its decision to credit a witness' testimony. . . . While the trial court may choose between conflicting testimony of different witnesses . . . the substantial evidence requirement remains." (Citations omitted; internal quotation marks omitted.)

"[T]he standard of review for a motion to suppress is well settled. A finding of fact will not be disturbed unless it is clearly erroneous in view of the evidence and pleadings in the whole record . . . . [W]hen a question of fact is essential to the outcome of a particular legal determination that implicates a defendant's constitutional rights, [however] and the credibility of witnesses is not the primary issue, our customary deference to the trial court's factual findings is tempered by a scrupulous examination of the record to ascertain that the trial court's factual findings are supported by substantial evidence. . . . [W]here the legal conclusions of the court are challenged, [our review is plenary, and] 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 . . . .

"Notwithstanding our responsibility to examine the record scrupulously, it is well established that we may not substitute our judgment for that of the trial court when it comes to evaluating the credibility of a witness. . . . It is the exclusive province of the trier of fact to weigh conflicting testimony and make determinations of credibility, crediting some, all or none of any given witness' testimony. . . . Questions of whether to believe or to disbelieve a competent witness are beyond our review. As a reviewing court, we may not retry the case or pass on the credibility of witnesses. . . . We must defer to the trier of fact's assessment of the credibility of the witnesses that is made on the basis of its firsthand observation of their conduct, demeanor and

attitude." (Citation omitted; internal quotation marks omitted.) *State* v. *Kendrick*, 314 Conn. 212, 222–23, 100 A.3d 821 (2014); *State* v. *DeMarco*, 311 Conn. 510, 519–20, 88 A.3d 491 (2014). "The question of the credibility of witnesses is for the trier to determine. . . . Where testimony is conflicting the trier may choose to believe one version over the other . . . as the probative force of the evidence is for the trier to determine." (Citation omitted; internal quotation marks omitted.) *State* v. *Madera*, 210 Conn. 22, 37, 554 A.2d 263 (1989); see also *Normand Josef Enterprises, Inc.* v. *Connecticut National Bank*, 230 Conn. 486, 507, 646 A.2d 1289 (1994).

"A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . . Because it is the trial court's function to weigh the evidence and determine credibility, we give great deference to its findings. . . . In reviewing factual findings, [w]e do not examine the record to determine whether the [court] could have reached a conclusion other than the one reached. . . . Instead, we make every reasonable presumption . . . in favor of the trial court's ruling." (Internal quotation marks omitted.) *State* v. *Ray*, 290 Conn. 602, 631, 966 A.2d 148 (2009).

The United States Supreme Court has explained: "When findings are based on determinations regarding the credibility of witnesses, Rule 52 (a) [of the Federal Rules of Civil Procedure][7] demands even greater deference to the trial court's findings; for only the trial judge can be aware of the variations in demeanor and tone

[7] Rule 52 (a) (6) of the Federal Rules of Civil Procedure provides: "Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility."

of voice that bear so heavily on the listener's understanding of and belief in what is said. . . . This is not to suggest that the trial judge may insulate his findings from review by denominating them credibility determinations, for factors other than demeanor and inflection go into the decision whether or not to believe a witness. Documents or objective evidence may contradict the witness' story; or the story itself may be so internally inconsistent or implausible on its face that a reasonable factfinder would not credit it. Where such factors are present, the court of appeals may well find clear error even in a finding purportedly based on a credibility determination. . . . But when a trial judge's finding is based on his decision to credit the testimony of one of two or more witnesses, each of whom has told a coherent and facially plausible story that is not contradicted by extrinsic evidence, that finding, if not internally inconsistent, can virtually never be clear error." (Citations omitted; footnote added; internal quotation marks omitted.) *Anderson* v. *Bessemer City*, 470 U.S. 564, 575, 105 S. Ct. 1504, 84 L. Ed. 2d 518 (1985).

Consistent with the principles set forth previously in this opinion, we defer to the court's assessment of Webster's *credibility*.[8] That does not mean, however,

[8] We note that, in a letter of supplemental authority submitted to this court by the defendant, he argues that this court's recent decision in *State* v. *Brito*, 170 Conn. App. 269, 154 A.3d 535, cert. denied, 324 Conn. 925, 155 A.3d 755 (2017), stands for the proposition that this court may evaluate whether a trial court's decision to credit the testimony of a witness is clearly erroneous. In setting forth the claim raised by the appellant in *Brito*, this court, quoting from the appellant's brief, stated that the appellant's claim was whether "[t]he court's decision to credit [a witness'] testimony . . . was clearly erroneous . . . ." (Internal quotation marks omitted.) Id., 288. After scrupulously examining the record, we reviewed the factual finding that was based on the witness' testimony and "[w]e conclude[d] that the court's *factual determination* with respect to [the witness'] observations was supported by substantial evidence." (Emphasis added.) Id., 289. In its analysis of the claim, this court rejected the appellant's argument that other evidence contradicted the witness' version of events, on which the trial court relied, and, thus, it concluded that such evidence did not undermine the trial court's reliance on the witness' testimony in making the finding at

that in similar fashion we defer to the court's ultimate *factual finding* with respect to the conduct underlying the purported waiver. Such finding must be supported by substantial evidence. With respect to the court's factual findings, we scrupulously have examined the record and conclude that they are supported by substantial evidence. Webster testified concerning the verbal advisement procedures he employed. Specifically, Webster testified that he sat down next to the defendant, he read each right listed on the *Miranda* rights advisement form to the defendant, he asked the defendant if he understood each right and he asked the defendant if he had any questions. Thereafter, he asked the defendant if he was still willing to talk to him. Webster testified that, in addition to this verbal advisement procedure, he asked the defendant if he understood each right, and to place his initial next to each right on the *Miranda* rights advisement form. Webster's testimony concerning the advisement procedures he employed, which the court found to be credible, and the *Miranda* rights advisement form, which was consistent with Webster's testimony and introduced into evidence by the state, amply support the court's factual finding that the defendant verbally was advised of and knowingly waived his *Miranda* rights by speaking to Webster after having been advised of his rights. To the extent that the defendant argues that the court's findings, viewed as a whole and in light of all of the evidence presented, should undermine our confidence in the trial court's fact-finding process or leave us with the definite and firm conviction that the court made a factual mistake, we are not persuaded.

issue. Id., 290–91. Accordingly, in *Brito*, this court afforded proper deference to the trial court's assessment of the witness' credibility while focusing its analysis on whether extrinsic evidence undermined the trial court's decision to rely on such testimony in determining the facts at issue in that case. Accord *Anderson* v. *Bessemer City*, supra, 470 U.S. 575.

At the heart of the defendant's argument is what he describes as the " 'inescapably incongruent' " reliance by the court on Webster's testimony and its finding that the signature on the *Miranda* rights advisement form and the other examples of the defendant's signature "did not *appear* to be the same." (Emphasis added.) In contrast with the arguments advanced by the defendant before the trial court, the court did not draw any sinister inferences from its finding with respect to the distinctiveness of the signature on the form. Consistent with the arguments the defendant advanced before the trial court, his argument is based on the premise that any disparity with respect to the appearance of the signature and the appearance of the other signatures in evidence suggests factual error because it necessarily conflicts with the court's subordinate finding that Webster's testimony was truthful. Thus, the defendant suggests that, once the court found that the signatures appeared to be distinct, it could only have found that a valid waiver did not occur.

The court, however, expressly stated that it *did not find* that the signatures at issue were made by two different individuals and *did not find* that Webster had testified falsely. The court *did not find* that the defendant's signature had been forged, let alone that Webster had forged the signature. Certainly, it is not unusual for a court to be confronted with conflicting evidence. To the extent that any conflict existed between the court's subordinate findings of fact with respect to whether the defendant signed the waiver portion of the *Miranda* advisement form, in its evaluation of the ultimate factual issue before it, the court reasonably could have reconciled its subordinate findings by inferring that, whether intentionally or unintentionally, the same person, at different times and under different circumstances, may generate multiple signatures that appear to be dissimilar.

Moreover, whether the defendant signed the *Miranda* rights advisement form was not dispositive of the waiver issue. As we stated previously in this opinion, the state was not obligated to prove that a written waiver had been made. The court resolved the waiver issue by relying solely on the evidence that Webster verbally had advised the defendant of his rights, asked the defendant if he understood them, and asked the defendant if he wished to speak with him. There was evidence that the defendant's *course of conduct* during the interview process indicated that he had waived his *Miranda* rights after Webster orally advised him of such rights. The court based its finding that a valid waiver occurred on the evidence that Webster verbally advised the defendant of his *Miranda* rights and, thereafter, the defendant indicated that he was still willing to speak with Webster. Thus, the court's general observation with respect to the appearance of the signatures at issue does not undermine our confidence in the correctness of its factual findings that were consistent with Webster's testimony.

II

Next, the defendant claims that the evidence did not support his conviction of criminal possession of a firearm. We disagree.

The following additional facts are relevant to this claim. As discussed in part I of this opinion, the defendant moved to suppress the statements that he made to Webster. The defendant's motion was grounded in his claim, of a constitutional nature, that his statement was made while he was in police custody, while he was subjected to a custodial interrogation, and when he had not been advised of his *Miranda* rights. The court denied the motion.

At the close of the state's case-in-chief, the defendant moved for a judgment of acquittal as to both counts.

Defense counsel argued that the state had not disproven self-defense beyond a reasonable doubt and that "the only evidence that we have of any violence or altercation . . . comes in from the defendant's own testimony." Defense counsel argued: "If you want to discount [the defendant's] statement, then there's [no] evidence that anybody actually shot [the victim]. There's no other witness that corroborates any shooting, short of the statement by [the defendant]." The court denied the motion after determining (1) that the state had presented evidence, other than the defendant's statement to the police, to demonstrate that the defendant intentionally shot the victim, and (2) that the jury reasonably could disbelieve that the defendant had acted in self-defense.

Following the jury's verdict, the defendant filed a second motion for a judgment of acquittal,[9] in which he sought a judgment of acquittal or, in the alternative, a new trial. Therein, the defendant argued that, with respect to his conviction of criminal possession of a firearm, "[t]he sole evidence that [he] possessed any firearm introduced by the state came through [his] own unsworn, unwritten statement to . . . Webster" and that "[n]o other corroborating evidence of possession was introduced, nor could be considered by the jury." In this motion, the defendant explicitly challenged the admission of his incriminatory statement. The defendant argued that, "[p]ursuant to the corpus delicti rule and the fact that the gravamen of the conviction for violating § 53a-217 rests in the possession, not the use, of the firearm, [his] statement should not have been admitted against him without corroborating evidence

[9] Following the jury's verdict, the defendant filed a separate motion for a judgment of acquittal in which he reasserted his argument that the state failed to disprove beyond a reasonable doubt his claim that he acted in self-defense. The court denied that motion, and the resolution of that separate motion is not a subject of this appeal.

. . . .” During oral argument concerning the motion, the prosecutor argued that the state had presented sufficient evidence to corroborate the statement in that it presented evidence that supported a finding that, on September 29, 2010, the defendant and the victim were engaged in a dispute, a bystander overheard the defendant threaten to shoot the victim, multiple bystanders heard gunshots, a bystander was observed picking up what appeared to be spent shells from the ground where the shooting occurred, and the victim received medical treatment for a gunshot wound in his shoulder. Moreover, the prosecutor argued that there was evidence that the defendant told Webster that he obtained the gun used in the shooting from his associate, Ruiz.

After setting forth the appropriate legal standard, the court stated: “There is corroborative evidence, which the jury could have credited, and apparently did, to support [the defendant’s statement that he possessed a firearm], and [it is] as follows: the evidence that [the victim] was shot by a gun; the evidence that the shots were fired that day in the vicinity of the defendant; the defendant was identified as being on-site at that time on that day; there’s evidence of a motive . . . that [the victim] and [the defendant] were in [a] dispute over who could be selling drugs in that area; the statement by the defendant . . . that he was going to shoot [the victim]; that the witnesses heard gunshots . . . all of that corroborates that [the defendant] shot [the victim] with a gun, and in order to shoot him he had to have held it and possessed it. So, there is in fact corroborative evidence supporting his statement.

“This isn’t a case where [the defendant] showed up at a police station and said, I shot somebody, I shot [the victim], and nobody found [the victim] with any gunshots, nobody knew of any gunshots, nobody knew of anybody firing a gun. This is totally different from that situation, which is the situation that the corpus

delicti rule is designed to prevent, convicting someone based solely on a naked statement; that's not this case. So, for the reasons stated, [the] motion for [a] judgment of acquittal is . . . denied."

In the present claim, the defendant reiterates in substance the corpus delicti claim that he arguably raised in his motion for a judgment of acquittal at the close of the state's case-in-chief and, more clearly raised in his postverdict motion for a judgment of acquittal. Conceding that the statement sufficiently was corroborated for purposes of the assault in the first degree conviction, his claim is directed at the use of the statement for purposes of proving the conviction of criminal possession of a firearm. The state, urging this court to conclude that the present claim is an unpreserved claim that is not reviewable, argues that the claim does not challenge the sufficiency of the evidence, but that, at its essence, it challenges the court's admission of the defendant's inculpatory statement. The state argues that the corpus delicti rule is a rule of admissibility and, in accordance with relevant precedent, is properly raised at trial by means of an objection to the admissibility of a defendant's inculpatory statement for lack of corroborative evidence. At no point during the trial did the defendant object to the admissibility of his statement on the basis of the corpus delicti rule; he raised the corpus delicti rule in the context of challenges to the evidentiary sufficiency of the state's case. The defendant, while acknowledging that he did not raise the claim in his motion to suppress, nonetheless argues that he preserved the claim because, on other grounds, he challenged the admissibility of his statement and, thereafter, twice raised the corpus delicti issue in the context of his motions for a judgment of acquittal. The defendant argues that, in light of the fact that he raised the issue before the trial court and the trial court addressed the issue on its merits, the claim is not unpreserved and

the claim does not reflect an attempt to ambush the trial court by means of raising a claim for the first time on appeal.

As the defendant acknowledges, in *State* v. *Leniart*, 166 Conn. App. 142, 151, 140 A.3d 1026, cert. granted, 323 Conn. 918, 150 A.3d 1149, and cert. granted, 323 Conn. 918, 149 A.3d 499 (2016),[10] this court recognized "that under Connecticut law the corpus delicti rule is an evidentiary rule regarding the admissibility of confessions rather than a substantive rule of criminal law to be applied in reviewing the sufficiency of the state's evidence." With respect to the reviewability of corpus delicti claims, the court stated: "A defendant who fails to challenge the admissibility of the defendant's confession at trial is not entitled to raise the corroboration rule on appeal because (1) the evidentiary claim is not of constitutional magnitude and, thus, cannot meet [the] second prong [of *State* v. *Golding*, 213 Conn. 233, 239, 567 A.2d 823 (1989); see *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015) (modifying *Golding*'s third prong)][11] . . . and (2) the rule does not implicate the

[10] In *Leniart*, in response to the defendant's petition for certification to appeal, our Supreme Court granted certification to appeal limited to the following issue: "Did the Appellate Court properly apply the corpus delicti rule in concluding that there was sufficient evidence to sustain the defendant's convictions for murder and capital felony?" (Internal quotation marks omitted.) *State* v. *Leniart*, 323 Conn. 918, 918–19, 149 A.3d 499 (2016). Additionally, in response to the state's petition for certification to appeal, our Supreme Court granted certification to appeal with respect to four issues, all of which are unrelated to this court's resolution of the corpus delicti claim. *State* v. *Leniart*, 323 Conn. 918, 150 A.3d 1149 (2016).

[11] "Under [*Golding*], a defendant can prevail on a claim of constitutional error not preserved at trial only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt. . . . The first two *Golding* requirements involve whether the claim is reviewable, and the second two involve whether there was constitutional error requiring a new trial." (Emphasis

sufficiency of the state's evidence." (Citation omitted; footnote altered.) *State* v. *Leniart*, supra, 168. With respect to the corpus delicti claim before it, which was raised for the first time on appeal in the context of a sufficiency of the evidence claim, the court in *Leniart* determined that "because the defendant did not object to the admission of the confessions, he is not entitled to raise the corroboration rule on appeal, and, thus, the confessions are substantive evidence that can be used in analyzing his sufficiency of the evidence claims." Id., 168–69.

In *Leniart*, the court's analysis of the corpus delicti issue was guided by ample precedent that included our Supreme Court's decision in *State* v. *Uretek*, *Inc.*, 207 Conn. 706, 713, 543 A.2d 709 (1988), and this court's decision in *State* v. *Heredia*, 139 Conn. App. 319, 324–25, 55 A.3d 598 (2012), cert. denied, 307 Conn. 952, 58 A.3d 975 (2013). *State* v. *Leniart*, supra, 166 Conn. App. 159–62. In *Uretek*, *Inc.*, our Supreme Court declined to review a corpus delicti claim because the defendant "failed to object to the admission of the statements at trial or to move for a judgment of acquittal on the basis of a lack of corpus delicti evidence"; id., 160; see *State* v. *Uretek*, *Inc.*, supra, 713; and the claim did not warrant the type of extraordinary review afforded unpreserved constitutional claims because it did "not implicate a fundamental constitutional right . . . ." *State* v. *Uretek*, *Inc.*, supra, 713. In *Heredia*, this court, expressly relying on *Uretek*, *Inc.*, declined to review a claim, not raised in any manner before the trial court, that a "conviction must be set aside because the state failed to sufficiently corroborate [a defendant's] confessions with independent evidence and, thus, failed to comply with the rule of corpus delicti." *State* v. *Heredia*, supra, 323. This court, recognizing that corpus delicti is an evidentiary rule, adhered to the principle that "corpus delicti does not implicate a fundamental constitutional

added; internal quotation marks omitted.) *State* v. *Fabricatore*, 281 Conn. 469, 476–77, 915 A.2d 872 (2007); see *In re Yasiel R.*, supra, 317 Conn. 781.

right sufficient to satisfy the standard set forth in *Golding*."[12] Id., 324.

In *State* v. *Robert H.*, 168 Conn. App. 419, 421, 146 A.3d 995, cert. granted, 323 Conn. 940, 151 A.3d 845

[12] With respect to the authority on which we rely in analyzing the present claim, the defendant asserts that, because our Supreme Court has granted certification to appeal in *Leniart*, we should not rely on that decision because it "is not binding precedent while it is pending before the Supreme Court." Although the defendant relies, in part, on Practice Book § 84-3, that rule of practice does not support his novel argument because it pertains to proceedings to enforce or carry out the judgment of this court while the judgment is under further review; it does not address the precedential value of this court's decision while the judgment that emanated from it is under further review. Practice Book § 84-3 provides that, following a grant of certification by our Supreme Court, "*proceedings to enforce or carry out the judgment*" of this court "shall be stayed . . . until the final determination of the cause . . . ." (Emphasis added.) Practice Book § 84-3.

Additionally, the defendant relies on *State* v. *Jordan*, 151 Conn. App. 1, 35 n.9, 92 A.3d 1032, cert. denied, 314 Conn. 909, 100 A.3d 402 (2014), and *State* v. *Oral H.*, 125 Conn. App. 276, 280, 7 A.3d 444 (2010), cert. denied, 300 Conn. 902, 12 A.3d 573, cert. denied, 564 U.S. 1009, 131 S. Ct. 3003, 180 L. Ed. 2d 831 (2011). In *Jordan*, this court characterized another decision of this court, in which certification to appeal had been granted by our Supreme Court, as "lend[ing] little precedential support to the defendant's argument." *State* v. *Jordan*, supra, 35 n.9. In *Oral H.*, the defendant argued that, after this court held that a statute was unconstitutional and our Supreme Court granted certification to appeal from that decision, the state was precluded from charging him under the invalidated statute unless and until such time as our Supreme Court upheld the constitutionality of the statute. *State* v. *Oral H.*, supra, 280. In rejecting the defendant's argument, this court stated that the premise of the defendant's argument was flawed legally because "a stay on the judgment of this court remained in effect until our Supreme Court rendered its final determination of the cause . . . ." Id. In *Jordan*, the court addressed the issue of precedential authority very briefly, and it did not conclude, as the defendant suggests, that the precedent at issue lacked any authority. Likewise, in *Oral H.*, this court did not conclude that the precedent at issue lacked any authority. Instead, invoking Practice Book § 84-3, the court in *Oral H.* appears to have resolved the narrow issue before it, concerning the enforceability of this court's earlier decision to invalidate a statute, by determining that, following the grant of certification to appeal, the decision to invalidate the statute, like the judgment that flowed from the decision, should not be given legal effect. Having reviewed these authorities on which the defendant relies, we are not persuaded that they are dispositive of his argument.

"It is well settled that a denial of certification by an appellate court does not signify approval of the decision from which certification to appeal is sought." *A. Auidi & Sons, LLC* v. *Planning & Zoning Commission*, 72 Conn. App. 502, 512, 806 A.2d 77 (2002), aff'd, 267 Conn. 192, 837 A.2d 748 (2004). Similarly, there is no reason to conclude that a granting of certifica-

(2016),[13] a defendant raised a claim of evidentiary insufficiency. He argued that the evidence was insufficient to support his conviction and, relying on the corpus delicti rule, argued that an incriminatory statement that he provided to the police, which was admitted into evidence, should not be considered in an evaluation of the evidence. Id., 421–22. This court stated in relevant part: "Because this court recently held, in [*Leniart*] . . . that the corroboration rule is solely a rule of admissibility, we agree with the state that the defendant cannot raise his unpreserved [corpus delicti] claim as part of his claim of insufficient evidence. Accordingly, it is not necessary for us to decide whether there was substantial independent evidence tending to establish the trustworthiness of the defendant's confession, and we will consider his unobjected-to statements in the light most favorable to the state in evaluating his current claim of evidentiary insufficiency." Id., 422.

Although the present claim is couched as a claim of evidentiary insufficiency, which is a type of claim that is reviewable on appeal even if it is not preserved at trial; see, e.g., *State* v. *Revels*, 313 Conn. 762, 777, 99 A.3d 1130 (2014), cert. denied, U.S. , 135 S. Ct. 1451, 191 L. Ed. 2d 404 (2015); it is essentially based

tion by our Supreme Court necessarily signifies disapproval of the decision from which certification to appeal was granted. There is no authority to support the proposition that a grant of certification by our Supreme Court immediately invalidates or overrules this court's decision; a grant of certification stays further proceedings and subjects this court's decision to further review. In such circumstances, prior to a final determination of the cause by our Supreme Court, a decision of this court is binding precedent on this court. The defendant has not brought any persuasive authority to our attention to demonstrate otherwise.

[13] In *Robert H.*, our Supreme Court granted certification to appeal limited to the following issue: "Did the Appellate Court properly conclude that the corpus delicti rule is merely a rule of admissibility, in determining that there was sufficient evidence to sustain the defendant's second conviction of risk of injury to a child in violation of General Statutes § 53-21 (a) (1)?" (Internal quotation marks omitted.) *State* v. *Robert H.*, 323 Conn. 940, 151 A.3d 845 (2016).

on a violation of a rule of admissibility, the corpus delicti rule. A consideration of alleged error in the admission of evidence does not have a proper role in a consideration of the sufficiency of the evidence underlying the defendant's conviction; *State* v. *Leniart*, supra, 166 Conn. App. 169 n.20; and our consideration of the evidence properly would encompass the evidence as a whole. We recognize that the defendant did not object on the ground of insufficient corroboration at the time of the admission of his inculpatory statement yet, in light of the arguments that he raised in his motions for a judgment of acquittal, it is not accurate to state that he failed to raise the substance of the present evidentiary claim before the trial court. Indeed, when the defendant raised the issue in his motions for a judgment of acquittal,[14] the court carefully considered and rejected the claim on its merits. For these reasons, we conclude that the present claim is distinguishable from the corpus delicti claims in *Leniart* and *Robert H.* that were raised for the first time on appeal and, thus, were deemed to be unreviewable.

We will consider the defendant's claim as a challenge to the court's denial of his motions for a judgment of acquittal. We observe that, because the defendant's corpus delicti claim is evidentiary in nature, however, it would have been appropriate for the defendant to have raised the claim seasonably, at the time that the statement was offered in evidence by the state, rather than in the context of challenging the sufficiency of the evidence in the state's case. By the time that the defendant raised the present claim, the issue of the admissibility of the statement had been decided and the highly incriminatory evidence was before the jury. Thus, even if the court, following the motion for a judgment of acquittal made at the close of the state's case-in-chief, determined that it was appropriate to strike

[14] As noted previously, the defendant's postverdict motion entitled "Motion for Judgment of Acquittal" sought, in the alternative, a new trial.

the statement from the evidence, such a course of action may not have provided significant relief to the defendant. Additionally, by raising the corpus delicti claim at the time that the evidence is offered, the state would have been afforded a fair opportunity to have presented evidence, if any, that it deemed necessary to corroborate the statement, if it had not presented such evidence prior to offering the statement in evidence.

The present version of the corpus delicti rule, which applies to the admission of inculpatory statements involving all types of crimes, requires that the state present corroborative evidence to establish the trustworthiness of the statement, but that such evidence "need not be sufficient, independent of the statements, to establish the corpus delicti." (Internal quotation marks omitted.) *State* v. *Hafford*, 252 Conn. 274, 316, 746 A.2d 150, cert. denied, 531 U.S. 855, 121 S. Ct. 136, 148 L. Ed. 2d 89 (2000). Having reviewed the evidence in its entirety, we are persuaded that the court properly concluded that the defendant's inculpatory statement was sufficiently corroborated and that the court properly considered it in evaluating the evidence that supported a finding of the defendant's guilt of criminal possession of a firearm. As the court correctly observed, the state proved that the defendant's statement was trustworthy by means of evidence that demonstrated that the defendant was at the scene of the crime, that he was involved in an altercation with the victim, that he threatened to shoot the victim, that a shooting occurred, and that the victim sustained a gunshot injury. In denying the defendant's motions for a judgment of acquittal, the court adequately discussed the evidence that corroborated the statement and, ultimately, demonstrated that the state met its burden of proof. Accordingly, we reject the defendant's claim.

The judgment is affirmed.

In this opinion the other judges concurred.