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# SUPREME COURT

OF THE

## STATE OF CONNECTICUT

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JUDICIAL DISTRICT OF NEW HAVEN

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**S.C. 19336**

STATE OF CONNECTICUT

v.

LATASHA R. OBRYAN

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BRIEF OF THE STATE OF CONNECTICUT- APPELLEE  
WITH ATTACHED APPENDIX

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## NATURE OF THE PROCEEDINGS

On November 7, 2011, a jury found the defendant, Latasha O'Bryan, guilty of attempted first degree assault, in violation of 53a-49 and 53a-59 (a) (1); and second degree assault, in violation of General Statutes § 53a-60 (a) (2). R. 3, 5, 9-9a. On April 26, 2012, the court, *Moore*, J., sentenced the defendant to a total effective term of five years of incarceration. R. 3-4, 9a.

## COUNTERSTATEMENT OF THE FACTS

In the spring of 2010, the victim and the defendant lived in the same apartment building along with several other residents. T11/1/11 at 51-52, 59; T11/3/11 at 4-9. Initially, the victim and the defendant were friendly with each other. T11/1/11 at 60; T11/3/11 at 36. Over time, however, the two developed a strong dislike for each other such that they avoided contact and often engaged in verbal fights. T11/1/11 at 62-66, 76, 167; T11/2/11 at 63; T11/3/11 at 36-38.

At approximately 12:45 a.m., on May 31, 2010, the victim and her cousin returned to the victim's apartment from a cookout. T11/1/11 at 67-68, 125-126. When they arrived, the victim noticed the defendant with a group of other individuals on the front porch. T11/1/11 at 70-71, 73-74, 126, 162-163, 194; T11/2/11 at 8, 89, 91. Remembering that the last words the defendant stated to her were, "I'm gonna F you up," and fearing that she would get "jumped" by the defendant and the others in the group, the victim directed her cousin to drive around the corner. T11/1/11 at 76-77, 79, 81, 126, 154-155, 163, 194; T11/2/11 at 51, 68, 70, 92-94, 110; T11/3/11 at 10, 41-43; T11/4/11 at 92, 128. The victim then called her uncle for help. T11/1/11 at 78-79, 81, 154-155, 194, 201; T11/2/11 at 68, 70, 93-94.

Shortly thereafter, the victim's aunt and uncle arrived and escorted the victim onto the porch and into the apartment building. T11/1/11 at 80, 83-84, 127, 155, 161-162, 196; T11/2/11 at 96-98; T11/3/11 at 42, 46. When the groups met on the porch, the victim and

her uncle had verbal altercations with the defendant and another individual. T11/1/11 at 84-86, 128, 145-146, 163-167, 208; T11/2/11 at 98-102, 112, 119-122, 125, 139-143; T11/3/11 at 47-49, 51-52. During the victim's verbal altercation with the defendant, the defendant said she wanted a fair fight with the victim to resolve their differences. T11/1/11 at 86-87, 128-129, 171-172; T11/2/11 at 104-105; T11/3/11 at 51-52. The victim believed a fair fight meant a one-on-one fist fight without weapons. T11/1/11 at 86-87, 133-134, 175-176; T11/2/11 at 105.

The victim, intending to fight, went up to her apartment to change. T11/1/11 at 87-88, 128-129, 168-169; T11/2/11 at 47, 49-50, 104-106, 123, 126; T11/3/11 at 54. While she did so, she saw her landlord, who convinced her not to fight. T11/1/11 at 89-92, 130, 170. The victim, unarmed, then returned back downstairs in order to leave the location with her cousin. T11/1/11 at 92, 99, 109, 131, 172, 190-191, 208; T11/2/11 at 62, 74, 106, 108; T11/3/11 at 77. When the victim arrived outside again, she initially did not see the defendant, but then saw her, accompanied by two individuals, walking on the sidewalk toward the apartment building. T11/1/11 at 93, 95, 129-131, 173-174; T11/2/11 at 107, 122-123, 126-128, 136-137, 142-144. As the victim attempted to leave through the front gate, the defendant engaged the victim stating, "oh no, I want my fair one." T11/1/11 at 96-97; T11/3/11 at 15-17; T11/3/11 at 59-60. The two then assumed "fighting positions." T11/1/11 at 97-98, 175-177; T11/2/11 at 59-60; T11/3/11 at 17, 59-63, 70-71. The defendant, with a knife, swung at the face of the victim, who attempted to dodge the blow. T11/1/11 at 99-100, 177-178, 208; T11/3/11 at 64-66, 72, 79. The victim then swung her fist back, but did not make contact with the defendant. T11/1/11 at 101. As she did so, because she realized that the defendant's attack had cut her severely, the victim shouted "you cut me," and retreated toward her apartment. T11/1/11 at 100-106, 146, 177-178, 181; T11/2/11 at 60-61, 128-130, 135; T11/3/11 at 17-19, 26, 65-67, 73, 76. The defendant

shouted, "you cut yourself, you cut yourself" and passed her knife to an individual who left the scene. T11/1/11 at 103, 178-182, 190, 198-199, 206-208; T11/3/11 at 22-23, 26, 67, 73, 102-103. Seeing this, the victim's aunt yelled, "I seen you pass that blade, I'm calling the cops." T11/1/11 at 104; T11/3/11 at 66-67, 74-75, 102-103. The defendant claimed that she did not cut the victim and that it must have been a fingernail. T11/1/11 at 184-185, 208-209; T11/3/11 at 22-23, 26, 67, 73.

Thereafter, the victim's uncle transported her to the hospital. T11/1/11 at 105-106; T11/3/11 at 75. At the hospital, the victim was treated in the trauma department for a two inch wide laceration, which penetrated her right breast and extended more than three and one-half inches deep to her rib cage. T11/2/11 at 152, 154, 158, 162, 170, 177-183, 200-201; Ex. 10. This wound compromised the chest wall, muscles and ribs and caused extensive bleeding into the pleural cavity, which created a danger that victim's lung would collapse. T11/2/11 at 172, 177, 200-202, 206-207. Following her injury, the victim remained in the intensive care unit for twelve hours and was hospitalized for another three days. T11/1/11 at 109; T11/2/11 at 173, 203-204, 207.

Meanwhile, Officer Dwayne Biros arrived at the apartment building where the fight occurred. T11/1/11 at 187; T11/2/11 at 6-7. When he spoke with the defendant, she did not admit to fighting with the victim, but, instead, claimed that the victim went inside the apartment building and came out stating that she was cut. T11/2/11 at 15-18. She also did not express any fear of the victim. T11/2/11 at 18-19, 35.

After speaking with the defendant, Biros then interviewed the victim at the hospital. T11/2/11 at 21-23, 32. The victim identified the defendant as her attacker. T11/2/11 at 23. Biros then arrested the defendant. T11/2/11 at 25-27.

In her defense, the defendant testified as follows: She believed the victim was dangerous and had a reputation for violence. T11/4/11 at 85, 87, 89, 125-126. On the day

she cut the victim, when the victim arrived with her aunt and uncle at the apartment building and started arguing with her and the other individuals on the porch, she left the area to her friend's house because she was afraid. T11/4/11 at 95-101, 122, 131-134. Her friend then walked her back home. T11/4/11 at 102, 104. When they arrived, the defendant saw one of the individuals on the porch hand the victim a lime green item. T11/4/11 at 107-110, 118, 142-144, 168. The victim, who told the defendant that she was going to beat her up, then charged the defendant and swung at her with a sharp object. T11/4/11 at 111-112, 114, 118, 143-148, 154, 159, 168. As the victim did so, rather than run away, the defendant, "in self-defense," reached her arms up for cover, took a knife from her pocket and swung aimlessly at the victim. T11/4/11 at 112-118, 123-125, 146, 148-150, 154, 159, 168. The defendant did not realize that she had cut the victim until the victim told her. T11/4/11 at 117, 119, 149-150, 155. The defendant claimed that she never said that the victim cut herself and that she initially denied cutting the victim because she was scared. T11/4/11 at 124, 150-152, 160.

Additional facts will be set forth as necessary.

### ARGUMENT

#### **I. THE DEFENDANT'S CLAIM THAT THE TRIAL COURT IMPROPERLY INSTRUCTED THE JURY ON THE ISSUE OF COMBAT BY AGREEMENT MUST FAIL**

The defendant claims that, in its instructions as to the exception to the combat by agreement self-defense disqualifier,<sup>1</sup> the trial court erred in requiring the jury to find that the

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<sup>1</sup> Because a finding of "combat by agreement" disqualifies an individual from relying on self-defense, when referring to the combat by agreement provision of our statute, this brief will use the terms "combat by agreement disqualifier" or, simply, "disqualifier." When referring to the exception to the combat by agreement disqualifier, which the trial court provided for in its instructions, this brief will use the terms "exception to combat by agreement" or, simply, "exception."

defendant "knew," rather than reasonably believed, that the victim had violated the agreement.<sup>2</sup> D. Br. 19-24. The defendant's claim fails because existing Connecticut law is to the contrary. Moreover, the defendant fails to present any explanation of why the instruction is incorrect, but, instead, simply asserts that it is. Consequently, the defendant cannot demonstrate, as is required pursuant to *State v. Golding*, 213 Conn. 233, 240, 567 A.2d 823 (1989), that "the alleged constitutional violation clearly exists and clearly deprived [her] of a fair trial." Alternatively, even if this court were to conclude that the instruction was an incorrect statement of the law, the defendant was not harmed thereby because our law does not recognize an exception to combat by agreement, and thus, the instruction thereon gave the defendant a benefit to which she was not entitled. For these reasons, the defendant's claim must be rejected.

**A. Specific Facts**

Pursuant to the state's oral request; T11/7/11 at 2-7; the court provided the following combat by agreement instruction:

Now, another circumstance under which a person is not justified in using any degree of physical force in self-defense against another is when the physical force is the product of an illegal combat by agreement. Under this provision, it is not necessary that there be a formal agreement. Such agreement may be inferred from the conduct of the parties. To infer such an agreement, you must look at all the circumstances leading up to and preceding the event in question as well as all of the circumstances surrounding this event itself based on the entire evidence presented in your own credibility assessments. ***This exception would not apply despite an agreement for mutual combat if you find that the terms were violated by [the victim] and that her conduct towards the defendant was in violation***

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<sup>2</sup> Because neither this claim nor her other claims were raised in the trial court, the defendant requests review pursuant to *State v. Golding*, 213 Conn. 233, 239-240, 567 A.2d 823 (1989), and the plain error doctrine. Because the record is adequate for review and the defendant's claims relate to the trial court's instructions on self-defense, *Golding* review is appropriate.

The defendant also presents lengthy facts, analysis and argument as to why her instructional claims were not waived. Based on the record, the state does not set forth a waiver argument.

**of their agreement. And further, that the defendant knew of such a violation.** Violation means that [the victim's] use of force exceeded the terms of the agreement with the defendant and that it escalated beyond what they had then agreed to as either -- as to either the extent or form of conduct -- combat.

(Emphasis added.) T11/7/11 at 82-83.

**B. The Defendant Has Failed To Demonstrate That The Trial Court's Instruction Clearly Violated Her Constitutional Rights Such That She Was Clearly Denied A Fair Trial**

General Statutes § 53a-19 (c) provides, in part, "Notwithstanding the provisions of subsection (a) of this section, a person is not justified in using physical force when . . . **the physical force involved was the product of a combat by agreement not specifically authorized by law.**" In its instructions, which tracked our model instructions, the trial court charged that there was an exception to this combat by agreement disqualifier (i.e. self-defense would be available), if the victim violated the terms of the combat by agreement, and the defendant **knew** of such violation. T11/7/11 at 83. The defendant challenges this instruction because she claims that the exception to combat by agreement embraces a subjective/objective reasonable belief standard, rather than a knowledge standard. Connecticut law, however, is to the contrary. D. Br. 19-24. In addition, the defendant does not present any reasoned analysis or support for this contention. Therefore, her claim must be rejected because she cannot demonstrate, as is required under the third prong of *State v. Golding*, supra, 213 Conn. 240, that "the alleged constitutional violation clearly exists and clearly deprived [her] of a fair trial."<sup>3</sup>

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<sup>3</sup> In considering the merits of the defendant's claim, the state also notes that the defendant did not challenge this instruction below. As this Court has stated, "[w]hen the principal participant in the trial whose function it is to protect the rights of [her] client does not deem an issue harmful enough to press in the trial court, the appellate claim that the same issue clearly deprived the defendant of a fundamental constitutional right and a fair trial . . . is seriously undercut." (Internal quotation marks omitted.) *State v. Terwilliger*, 105 Conn. App. 219, 226, 937 A.2d 735 (2008), aff'd, 294 Conn. 399, 984 A.2d 721 (2009).

In *State v. Abraham*, 84 Conn. App. 551, 557-560, 854 A.2d 89, cert. denied, 271 Conn. 938, 861 A.2d 514 (2004), this Court addressed a defendant's claim that the combat by agreement instructions, which were nearly identical to those provided in this case, "incorrectly recited the law and potentially confused or misled the jury." In considering the defendant's claim, this Court concluded that "[h]aving reviewed the charge in its entirety . . . the court's instructions were not misleading" and that the "instructions were correct in law, adapted to the issues and sufficiently guided the jury on the combat by agreement exception to self-defense." *Id.*, 559. Because this Court previously has upheld the instructions given in this case, the defendant's claim should be rejected.

Moreover, our Supreme Court has specifically rejected the contention that the self-defense disqualifiers in § 53a-19 (c) are to be assessed from the defendant's perspective and his reasonable beliefs. Specifically, in *State v. Silveira*, 198 Conn. 454, 470, 503 A.2d 599 (1986), the Court concluded that "[t]he trial court did not err in refusing to instruct that the [disqualifications] of provocation, aggression and combat by agreement must be considered from the perspective of the defendant." In doing so, the Court stated,

[t]he issue under subsection (c) is not whether the defendant reasonably believed that he provoked the use of force, or that he was the initial aggressor, or that there existed an agreement to engage in combat. The issue, rather, is whether the defendant *did* provoke the use of force, or *was* the initial aggressor, or *did* agree to engage in combat.

*State v. Silveira*, *supra*, 198 Conn. 470. Thus, the decision in *Silveira* makes clear that, although self-defense incorporates a subjective/objective "reasonable belief" standard, the statutory disqualifiers do not. Because there is no support in our law for the defendant's claim that the subjective/objective "reasonable belief" standard is applicable to any exception to the combat by agreement disqualifier, the defendant's claim fails.

Moreover, the defendant's claim fails because it is based on mere assertion, rather than supported with reasoned analysis. Indeed, although she cites and discusses other

aspects of self-defense law, namely initial aggressor and duty to retreat, and asserts that certain aspects of that law should govern combat by agreement law, she never explains why or how that law controls or is analogous. D. Br. 19-23. She simply cites the law and then asserts that it is analogous and should govern this Court's resolution of this issue. D. Br. 23. Because the defendant has failed to fully analyze and explain her claim and, thus, cannot demonstrate a clear constitutional violation that deprived her of a fair trial, this Court should reject it.

Furthermore, even when the defendant sets forth aspects of Connecticut's self-defense law and asserts and/or implies their application to the issue before this Court, she does so incompletely and unpersuasively. For instance, the defendant cites the dissent in *Anthony v. State*, 136 S.W. 1097, 1114 (Tex. Crim. App. 1911), for the proposition that, under common law, if one combatant escalates the encounter in a combat by agreement situation, and the other combatant declines the offer to escalate and attempts to withdraw, but is unable, he may then lawfully defend himself from the escalated attack. D. Br. 19. Although this may be a correct statement of law in states that have a withdrawal provision within their combat by agreement statutes; see Cal. Penal Code § 197; Georgia Code Ann. § 16-3-21; N.D. Cent. Code Ann. § 12.1-05-03; Utah Code Ann. § 76-2-402; Connecticut's combat by agreement statute does not have a withdrawal provision; General Statutes § 53a-19 (c). Moreover, this statement of law does not support the defendant's claim because it does not express a reasonable belief standard as to the escalation of the encounter, but, instead, speaks in certainties.

In addition, citing *State v. Tipton*, 232 A.2d 289, 292 (Md. App. 1967), cert. denied, 246 Md. 742 (1967), and *Irvin v. State*, 56 S.W. 845, 849 (Tenn. 1900), the defendant discusses the common law rule that an initial aggressor may regain the right of self-defense when the victim counterattacks in a manner disproportionate to the initial aggressor's

attack. D. Br. 22-23. This discussion and the standards applicable to this situation, however, are irrelevant to the issue in this case because in *State v. Singleton*, 292 Conn. 734, 764-766, 974 A.2d 679 (2009), relying on the “plain and unambiguous” initial aggressor statutory language, our Supreme Court expressly rejected this common law rule. Instead, *Singleton*, establishes that in this state, any exceptions to the disqualification provisions of Connecticut's self-defense statute are “for the legislature, not for this court.” *State v. Singleton*, supra, 292 Conn. 766. Consequently, any analogy the defendant makes to the initial aggressor disqualifier actually undermines, rather than supports her claim.

Because Connecticut law is to the contrary and because the defendant has failed to demonstrate, beyond mere assertion, that the trial court's instructions clearly violated the constitution and clearly deprived her fair trial, this Court should reject her claim.

**C. If There Was Error In The Court's Instructions, It Was Harmless Because The Instructions Benefitted The Defendant**

Under Connecticut's self-defense law, once the state has proven that the defendant and the victim engaged in combat by agreement, self-defense is no longer available to the defendant to justify her assaultive conduct. Therefore, the trial court's charge and the model instructions which it tracked, incorrectly provide an exception to combat by agreement. That error, however, could only have been beneficial to the defendant. Consequently, any error was harmless.

Statutory interpretation is a question of law over which this court exercises plenary review. . . . When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable

results, extratextual evidence of the meaning of the statute shall not be considered. . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter. . . .

(Citation omitted; internal quotation marks omitted) *State v. Menditto*, 147 Conn. App. 232, 239, \_ A.3d \_ (2013).

The text of General Statutes § 53a-19 (c) provides, in part, "Notwithstanding the provisions of subsection (a) of this section, a person is not justified in using physical force when . . . the physical force involved was the product of a combat by agreement not specifically authorized by law." The text of this statutory provision does not provide for any exception.<sup>4</sup> Plainly by the statutory language, where there is combat by agreement, the combatants are barred from relying on the principles of self-defense, subsection (a), to justify their use of physical force.

This reading of the statute is consistent with the concept of self-defense, public policy and our Supreme Court's strict reading of our self-defense statute. Self-defense, by its very definition, is defensive force. See *State v. Cartegena*, 47 Conn. App. 317, 321-322, 708 A.2d 694 (1997), cert. denied, 244 Conn. 904, 714 A.2d 3 (1998). Where two parties agree to engage in combat, both parties are using offensive force, not defensive force and, thus, neither party is entitled to justify their actions as "self-defense." P. Robinson, *Criminal Law Defenses*, (1984), § 132, pp. 98-99. Providing for an exception to the combat by agreement disqualifier, therefore, conflicts with the concept of self-defense.

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<sup>4</sup> By comparison, some state statutes provide that in a combat by agreement situation a combatant can justify the use of force if he withdraws from the encounter and effectively communicates such withdrawal to the other combatant, but the other combatant continues his use of force. See Cal. Penal Code § 197; Georgia Code Ann. § 16-3-21; N.D. Cent. Code Ann. § 12.1-05-03; Utah Code Ann. § 76-2-402.

Additionally, the combat by agreement self-defense disqualifier serves an important public policy interest by discouraging combat by agreement at its outset. Given the nature of combat, where two parties agree to fight, both should, and reasonably can be expected to, know that, during the course of that fight, one party may use a degree of force that was not contemplated. This is a risk both parties take when agreeing to fight. The legislature's decision not to provide an exception to the combat by agreement disqualifier recognizes this and, as a matter of policy, attempts to discourage all combat by agreement by putting the combatants on notice that their actions within any combat by agreement are unlawful and cannot thereafter be justified as self-defense.

Finally, a reading of the combat by agreement disqualifier as not embodying any exception comports with this state's strict construction of our self-defense statute. For example, in *State v. Singleton*, supra, 292 Conn. 764-766, the defendant, relying on common law, claimed that the trial court's instructions "failed to make clear that the initial aggressor using nondeadly force who is met with deadly force by the victim may be justified in using deadly force to repel the victim." Id., 764-765. Relying on the "plain and unambiguous" language of the initial aggressor provision, our Supreme Court out rightly rejected the defendant's claim because the initial aggressor provision did not provide for the exception contemplated by the defendant. Id., 765-766. In doing so, the Court observed:

we cannot accomplish a result that is contrary to the intent of the legislature as expressed in the [statute's] plain language. . . . As we recently have reiterated, a court must construe a statute as written. . . . Courts may not by construction supply omissions . . . or add exceptions merely because it appears that good reasons exist for adding them. . . . The intent of the legislature, as this court has repeatedly observed, is to be found not in what the legislature meant to say, but in the meaning of what it did say. . . . It is axiomatic that the court itself cannot rewrite a statute to accomplish a particular result. That is a function of the legislature.

(Internal quotation marks omitted.) Id., 765-766. In conclusion, our Supreme Court stated,

"[i]t is thus for the legislature, not for this court" to decide statutory exceptions. *Id.*, 766. The court's decision in *Singleton*, therefore, supports the state's contention that our law does not embody an exception to the combat by agreement disqualifier.

For the foregoing reasons, our statute plainly does not provide an exception to the combat by agreement provision of our self-defense statute. To the extent that the defendant believes that such an exception is warranted, her remedy is in the legislature, not this Court. Consequently, the trial court's instruction and our model instruction, which provide for such an exception, are incorrect.<sup>5</sup>

This incorrect instruction, however, could not have harmed the defendant because it was beneficial to her. Because our statute makes clear that there is no exception to the combat by agreement disqualifier, upon the jury's finding of a combat by agreement, self-defense becomes inapplicable. Consequently, because the court's instruction as to a combat by agreement exception made the state's case more difficult to prove, it could have only inured to the defendant's benefit by providing her a justification for her use of force that does not exist in our law. See *State v. Miller*, 186 Conn. 654, 662, 443 A.2d 906 (1982) (defendant not harmed by self-defense instruction that made the state's case "more difficult

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<sup>5</sup> The trial court's instruction was derived from our current model instructions. See State of Connecticut Judicial Branch, *Criminal Jury Instructions* (4th Ed.2010) §§ 2.8-2, available at <http://www.jud.ct.gov/JI/criminal/part2/2.8-2.htm> (last visited January 13, 2014). The model instruction was taken from the instruction provided and upheld by this Court in *State v. Abraham*, supra, 84 Conn. App. 558. See *Criminal Jury Instructions* (4th Ed.2010) §§ 2.8-2, n.1, available at <http://www.jud.ct.gov/JI/criminal/part2/2.8-2.htm> (last visited January 13, 2013). It is not entirely unclear, however, from where the instruction in *State v. Abraham*, supra, 84 Conn. App. 558, originated. The state has been unable to find any case upon which the trial court in *Abraham* may have relied for its instruction. In addition, the current model instruction does not appear in other model instructions upon which our courts have previously relied. J., Pellegrino, *Connecticut Selected Jury Instructions: Criminal* (3rd Ed. 2001) §§ 2.38-2.40, pp. 103-124, A. Ment & R. Fracasse, *A Collection of Connecticut Selected Jury Instructions: Criminal* (3d Ed.1995, updated 1996) §§ 2.38-2.40, pp. 2-63- 2-81; D. Borden & L. Orland, 5 Connecticut Practice Series, *Connecticut Criminal Jury Instructions*, (1986) § 6.1, pp. 174-184; D. Wright, *Connecticut Jury Instructions*, (2d Ed. 1975), § 664, pp. 1020-1021, 1024-1026.

to prove"). Because any error in the court's instruction benefited the defendant, it was harmless.

## II. THE TRIAL COURT PROPERLY USED THE TERMS "HONEST" AND "SINCERE" TO DEFINE THE TERM ACTUAL WHEN REFERRING TO THE NATURE OF THE SUBJECTIVE BELIEF REQUIRED BY OUR SELF-DEFENSE LAW

The defendant claims that it was reversible error for the court to instruct the jury in accord with this state's model self-defense instruction, which defines an "actual" belief as an "honest and sincere" belief. D. Br. 29-37. The defendant's claim fails because the court's instructions properly defined "actual" as "honest and sincere." In addition, even if incorrect, it is not reasonably possible that the instructions misled the jury.

### A. Specific Facts

The trial court instructed the jury on self-defense, in relevant part, as follows:

The task you are to apply is a subjective objective test, meaning that it has some subjective aspects and some objective aspects. You must consider the situation from the perspective of the defendant; that is, ***what did the defendant actually believe*** as best as can be inferred from the evidence. This is the subjective aspect of the test. The statute requires, however, that the defendant's belief be reasonable and not irrational or unreasonable under the circumstances; that is, would a reasonable person in the defendant's circumstances have reached that belief. This is the objective aspect of the test.

Each of the reasonable belief requirements of the Statute ask that you -- requires that you ask two questions of yourself. ***The first question you must ask is simply as a matter of fact whether the defendant actually, that is honestly and sincerely, entertained the belief in question*** when she acted as she did. The second question you must ask is ***whether the defendant's actual belief*** was reasonable in the sense that a reasonable person in the defendant's circumstances at the time of her actions viewing those circumstances from the defendant's point of view would have shared that belief. ***A defendant cannot justifiably act on her actual belief however honestly or sincerely she held it*** if that belief would not have been shared by a reasonable person in our circumstances viewing those circumstances from the defendant's point of view.

Therefore, the defense of self-defense has four elements. One, that ***the defendant actually believed*** that someone was using or was about to use physical force against her. . . .

Element three, that ***the defendant actually believed*** that the degree of force she used was necessary to repel the attack. Again, if you find that that force used by the defendant was deadly physical force, then this element

requires that **the defendant actually believed** that deadly physical force was necessary to repel the attack. . . .

Now, I'll go over these elements again . . . . The first element is that when the defendant used offensive force against [the victim], **she actually, that is honestly and sincerely, believed** that the other person was using or about to use physical force against her. . . .

If you have found that the force used by the defendant was deadly physical force, then you must find **the defendant actually believed** that [the victim] was not only using or about the use physical force upon her but that the other person, namely [the victim], was about -- was either using or about to use deadly physical force against the defendant or inflicting or about to inflict great bodily harm upon her. . . .

The next element is that **the defendant's actual belief** about force being used or about to be used against her was a reasonable belief. And this means that on the -- that -- that -- that on the circumstances of the case, viewing these circumstances from the defendant's point of view, **the defendant's actual belief** that [the victim] was using or about to use physical force or deadly physical force against her was reasonable because a reasonable person in the defendant's situation at the time of her actions viewing the circumstances from the defendant's point of view will have shared that belief.

The third element is that when the defendant used physical force upon [the victim] for the purposes of defending herself **she actually, that is honestly and sincerely, believed** that the degree of force she used was necessary for that purpose. . . .

And the [fourth] element is that **the defendant's actual belief** about the degree of force necessary to defend herself was a reasonable belief. This means that under the circumstances of the case, viewing those circumstances from the defendant's point of view, **the defendant's actual belief** that the degree of force used was necessary to defend herself and it was reasonable because a reasonable person in the defendant's circumstances at the time of her actions, excuse me, viewing those circumstances from the defendant's point of view would have shared that belief.

(Emphasis added.) T11/7/11 at 77-81.

#### **B. Because "Honest" and "Sincere" Are Synonyms, The Trial Court Properly Used Those Terms In Defining The Term "Actual"**

In reviewing jury instructions,

[a]s long as [the instructions] are correct in law, adapted to the issues and sufficient for the guidance of the jury . . . we will not view the instructions as improper. . . . Additionally, we have noted that [a]n [impropriety] in instructions in a criminal case is reversible [impropriety] when it is shown that it is reasonably possible for [improprieties] of constitutional dimension . . . that the jury [was] misled.

(Internal quotation marks omitted.) *State v. Cutler*, 293 Conn. 303, 317, 977 A.2d 209 (2009).

In determining whether it was indeed reasonably possible that the jury was misled by the trial court's instructions, the "charge to the jury is not to be critically dissected for the purpose of discovering possible inaccuracies of statement, but it is to be considered rather as to its probable effect upon the jury in guiding them to a correct verdict in the case.

(Internal quotation marks omitted) *State v. Prioleau*, 235 Conn. 274, 284, 664 A.2d 743 (1995).

Under our law, self-defense has both a subjective and objective component. *State v. Clark*, 264 Conn 723, 731-732, 826 A.2d 128 (2003); *State v. Prioleau supra*, 235 Conn. 284. The subjective component requires that the defendant "in fact" believed that she was in danger and that the degree of force she used was necessary. *State v. Clark, supra*, 264 Conn 731-732; *State v. Prioleau supra*, 235 Conn. 286. Because the term "actual" means "in fact",<sup>6</sup> our model instructions use the term "actual" to explain the nature of the subjective belief required under our self-defense statute.<sup>7</sup> See State of Connecticut Judicial Branch, *Criminal Jury Instructions* (4th Ed.2010) §§ 2.8-2, available at <http://www.jud.ct.gov/JI/Criminal/part2/2.8-1.htm> (last visited January 13, 2014). Our model instructions, and the court's instruction in this case, also use the terms "honest" and "sincere" to describe the term "actual." Because the terms "honest," and "sincere" are synonyms of the term "actual," our model instructions, and the trial court in this case, properly used those terms to define "actual" in the context of emphasizing that the defendant must have in fact

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<sup>6</sup> "Actual" is defined as "existing in fact or reality." Merriam-Webster Online Dictionary, available at <http://www.merriam-webster.com/dictionary/actual> (last visited January 13, 2014).

<sup>7</sup> The defendant makes no claim that the court improperly used the term "actual" to describe the nature of the subjective belief required by our self-defense statute.

believed that she was in danger and that the degree of force she used was necessary.<sup>8</sup>

The defendant's argument to the contrary is flawed. In arguing that the jury could have ascribed an improper or unintended meaning to the terms "honest" and "sincere," the defendant separates the terms from each other and also from the term "actual." The instructions, however, do not do this. Instead, the instructions use the words in combination to express the same thing. Thus, in context, the words "honest" and "sincere" could only mean one thing, "actual" or "in fact," which is a proper description of the nature of the subjective belief required by our self-defense statute.

In addition, our Courts have repeatedly used the term "honest" to describe the nature of the subjective belief required by our self-defense law. See *State v. Saunders*, 267 Conn. 363, 373-74, 838 A.2d 186 ("defendant's honest belief"), cert. denied, 541 U.S. 1036 (2004); *State v. Clark*, supra, 264 Conn. 732 (same); *State v. Lemoine*, 256 Conn. 193, 207, 770 A.2d 491 (2001) (same); *State v. Prioleau*, supra, 235 Conn. 287 (same); *State v. Wortham*, 80 Conn. App. 635, 645, 836 A.2d 1231 (2003) (same), cert. denied, 268 Conn. 901, 845 A.2d 406 (2004); *State v. Smith*, 73 Conn. App. 173, 185, 807 A.2d 500 (same), cert. denied, 262 Conn. 923, 812 A.2d 865 (2003); *State v. Collins*, 68 Conn. App. 828, 835, 793 A.2d 1160 (same), cert. denied, 260 Conn. 941, 835 A.2d 58 (2002); *State v. Adams*, 52 Conn. App. 643, 651, 727 A.2d 780 (1999) (same), aff'd, 252 Conn. 752, 748 A.2d 872, cert. denied, 531 U.S. 876 (2000); *State v. Scarpiello*, 40 Conn. App. 189, 206–

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<sup>8</sup> The synonyms of "actual" include "existent," "factual," "genuine," "real," and "true." Merriam-Webster Online Dictionary, available at <http://www.merriam-webster.com/dictionary/actual> (last visited January 13, 2014).

The synonyms of "honest" include "genuine," "real," "sincere," and "true." Merriam-Webster Online Thesaurus, available at <http://www.merriam-webster.com/thesaurus/honest> (last visited January 13, 2014).

The synonyms of "sincere" include "genuine," "honest," "real," and "true." Merriam-Webster Online Thesaurus Dictionary, available at <http://www.merriam-webster.com/thesaurus/actual> (last visited January 13, 2014).

207, 670 A.2d 856 (same), cert. denied, 236 Conn. 921, 674 A.2d 1327 (1996); *State v. Peters*, 40 Conn. App. 805, 814-815, 673 A.2d 1158 (same), cert. denied, 237 Conn. 925, 677 A.2d 949 (1996). This Court has also used the term "sincere" to describe the nature of the subjective belief required by our self-defense law. See *State v. Peters*, supra, 40 Conn. App. 815 ("sincere belief").

Moreover, even if the terms "honest" and "sincere," when viewed separately and out of context, connote a different meaning than intended, the terms were always used in conjunction with the term "actual." Thus, in the context of the entire charge, it was not reasonably possible that the court's use of the terms misled the jury. See *State v. Ward*, 306 Conn. 718, 747, 51 A.3d 970 (2012) (individual jury instructions must be viewed in context of entire charge, not in "artificial isolation").

Finally, the state also notes that although it has not raised the issue of waiver, the defendant's failure to object to the challenged instructions seriously undermines her claim of error and harm.

[W]hen the principal participant in the trial whose function it is to protect the rights of [her] client does not deem an issue harmful enough to press in the trial court, the appellate claim that the same issue clearly deprived the defendant of a fundamental constitutional right and a fair trial . . . is seriously undercut.

(Internal quotation marks omitted.) *State v. Terwilliger*, 105 Conn. App. 219, 226, 937 A.2d 735 (2008), aff'd, 294 Conn. 399, 984 A.2d 721 (2009).

For all of these reasons, our model instructions, and, more specifically, the trial court's instructions in this case, properly use the terms "honest" and "sincere" to describe the term "actual" and to explain the nature of the subjective belief required in a self-defense case. In addition, it was not reasonably possible that the court's use of the terms "honest" and "sincere" misled the jury.

### **III. THE TRIAL COURT PROPERLY INSTRUCTED THE JURY AS TO THE STATE'S BURDEN OF PROOF REGARDING COMBAT BY AGREEMENT**

The defendant claims that the trial court improperly failed to instruct the jury that the state had the burden to disprove the exception to combat by agreement—i.e., to prove that the victim had not violated the terms of the agreement. D. Br. 38-40. He contends that this failure to instruct "(1) had the effect of shifting the burden of proof from the State . . . ; (2) had the effect of directing a verdict by eliminating her defense; and (3) at minimum left the jury to figure out for itself that the non-application of the combat by agreement disqualifier was something the state had to disprove, not merely the fact of the combat by agreement itself." D. Br. 39. The defendant's claim must be rejected because the trial court's instructions properly informed the jury as to the state's burden of proof. Moreover, given the entirety of the trial court's instructions, it is not reasonably possible that the jury was misled. Finally, as discussed, *supra*, I.C., any error in the instruction could not have harmed the defendant because she benefitted from an instruction to which she was not entitled.

#### **A. Specific Facts**

Initially, the trial court instructed the jury as to the defendant's presumption of innocence and the state's burden to prove her guilt beyond a reasonable doubt:

Now, I'm going to talk to you for a moment about the presumption of innocence and the concept of reasonable doubt and the concept of the burden of proof.

In this case, as in all criminal prosecution[s], the defendant is presumed to be innocent unless and until guilty -- until proven guilty beyond a reasonable doubt. This is the presumption -- this presumption of innocence was with this defendant when she was first presented for trial in this case. It continues with her throughout this trial unless and until such time as all the evidence produced here in the orderly conduct of the case considered in light of these instructions of law and deliberated upon [by] you in the jury room satisfies you beyond a reasonable doubt that she is guilty. The presumption of innocence applies individually to each crime charged, and it may be overcome as to each specific crime only after the State introduces evidence that establishes the defendant's guilt as to each crime charged beyond a

reasonable doubt.

If and when the presumption of innocence has been overcome by evidence, proving beyond a reasonable doubt that the accused is guilty of the crime charged, then it is the sworn duty of the jury to enforce the law and to render a guilty verdict. This means that the State must prove beyond a reasonable doubt each and every element necessary to constitute the crime charged as I will explain those crimes to you in a moment. It is not enough for the State to prove only certain of those elements because proof of even one - - if proof of even one element is lacking, you must find the accused not guilty. The State, in other words, can sustain the burden resting on it only if the evidence before you establishes the existence of every element constituting the crime charged beyond a reasonable doubt.

T11/7/11 at 55-56.

Subsequently, in its instructions, the court instructed the jury as to the crimes charged and the elements thereof. T11/7/11 at 64-74. Within these instructions, the court repeatedly charged the jury that the state had the burden to prove each of the elements beyond a reasonable doubt and that the defendant did not have any burden whatsoever.

T11/7/11 at 64-74.

The court then introduced the concept of self-defense:

Now, the evidence in this -- evidence in this case raises the issue of self-defense. Now, self-defense applies to the charges of assault in the second degree and criminal attempt of assault in the first degree. After you have considered all of the evidence in this case, if you find that the State has proved beyond a reasonable doubt each of the elements to which self-defense applies, you must go on to consider whether or not the defendant acted in self-defense. In this case, therefore, you must consider this defense in connection with both count one and count two of the Information. A person is justified in the use of force against another person that would otherwise be illegal if she is acting in the defense of self. It is a complete defense to certain crimes including assault in the second degree and criminal attempt of assault in the first degree.

When, as in this case, evidence of self-defense is introduced at trial, the State must not only prove beyond a reasonable doubt all of the elements of the crime charged in order to obtain a conviction but must also disprove beyond a reasonable doubt that the defendant acted in self-defense. If the State fails to disprove beyond a reasonable doubt the defendant acted in self-defense, you must find the defendant not guilty despite the fact that you have found the elements of the crime proved beyond a reasonable doubt. The defendant has no burden of proof whatsoever in respect to this defense.

T11/7/11 at 74-75.

After reading the self-defense statute, the court provided the instructions as to self-defense. T11/7/11 at 75-81. In doing so, in conjunction with explaining to the jury the elements of self-defense, the court instructed:

Now, I remind you that the defendant has no burden of proof regarding any of these elements. Instead, the State bears the sole and exclusive burden of proving beyond a reasonable doubt that the defendant did not act in self-defense, a burden that it can disprove or it -- a burden that it can meet by disproving at least one of these elements beyond a reasonable doubt.

T11/7/11 at 78-79.

The court then explained the self-defense "statutory disqualifications," including the duty to retreat and combat by agreement. T11/7/11 at 81-83. In conjunction with its charge as to the duty to retreat, the court charged:

Again, it's important to remember that the defendant has no burden whatsoever to prove that she could have retreated with complete safety or that she didn't know that a safe retreat was possible before she used physical force against [the victim]. To the contrary, you may only reject her defense on the basis of this statutory disqualification if you find that the State has proved beyond a reasonable doubt that she did know that she could retreat with complete safety.

T11/7/11 at 82.

As to combat by agreement, the court charged,

Now, another circumstance under which a person is not justified in using any degree of physical force in self-defense against another is when the physical force is the product of an illegal combat by agreement. Under this provision, it is not necessary that there be a formal agreement. Such agreement may be inferred from the conduct of the parties. To infer such an agreement, you must look at all the circumstances leading up to and preceding the event in question as well as all of the circumstances surrounding this event itself based on the entire evidence presented in your own credibility assessments. This exception would not apply despite an agreement for mutual combat if you find that the terms were violated by [the victim] and that her conduct towards the defendant was in violation of their agreement. And further, that the defendant knew of such a violation. Violation means that [the victim] use of force exceeded the terms of the agreement with the defendant and that it escalated beyond what they had then agreed to as either -- as to either the extent or form of conduct -- combat.

It is important to remember that the defendant has no burden of proof to prove that her use of physical force was not the product of a combat by

agreement. To the contrary, you may only reject her defense on the basis of the statutory disqualification if you find that the State has proved that the -- has proved beyond a reasonable doubt that the defendant and -- that the defendant and [the victim] had engaged in conduct -- in combat by agreement.

T11/7/11 at 83.

The court then summarized its self-defense instructions, as follows:

I said this several times but it bears repeat[ing]. You must remember that the defendant has no burden of proof whatsoever in respect to the defense of self-defense. Instead, it is the State that must prove beyond a reasonable doubt that the defendant did not act in self-defense if it is to prevail on its charges of assault in the second degree and criminal attempt of assault in the first degree. To meet this burden, the State need not disprove all four of the elements of self-defense. Instead, it can defeat the defense of self-defense by disproving any one of the four elements of self-defense beyond a reasonable doubt to your unanimous satisfaction.

You must find that the defendant did not act in self-defense if you find any of the following:

The State has proved beyond a reasonable doubt when the defendant used physical force, she did not actually believe that [the victim] was using or about to use physical force against her. If you have found that the force used by the defendant was deadly physical force, then the State must prove that the defendant did actually -- did not actually believe that the other person, A, was using or was about to use deadly physical force against her or, B, was inflicting or about to inflict great bodily harm on her.

Or the State has proved beyond a reasonable doubt that the defendant's actual belief concerning the degree of force being or about to be used against her was unreasonable in the sense that a reasonable person viewing all the circumstances from the defendant's point of view would have not shared that belief.

Or you may find that the State has proved beyond a reasonable doubt that the defendant used physical force to defend herself against [the victim] and she did not actually believe that the degree of force she used was necessary for that purpose. Here, again as with the first requirement, the actual belief is an honest and sincere belief.

Or the State has proved beyond a reasonable doubt that the defendant did actually believe that the degree of force she used to defend herself against [the victim] was necessary for that purpose; however, that belief was unreasonable in the sense that a reasonable person viewing all the circumstances from the defendant's point of view would not have shared that belief.

You must also find that the defendant did not act in self-defense [sic] if you find that the State has proved beyond a reasonable doubt that the defendant had a duty to retreat from the physical encounter because she knew she could do so with complete safety or that the physical encounter between the defendant and [the victim] was a combat by agreement.

T11/7/11 at 83-85.

In summary, the court also provided the following instructions:

If you unanimously find that the State has failed to prove beyond a reasonable doubt any of the elements in the crime in this case, then you are to find the defendant not guilty and not consider the defense. If you unanimously find that all the elements of a crime to which self-defense applies has been proved beyond a reasonable doubt, you shall then consider the defense of self-defense. If you find that the State has disproved beyond a reasonable doubt at least one of the elements of the defense or has proved the statutory -- one of the statutory disqualifications, you must reject that defense and find the defendant guilty. If, on the other hand, you unanimously find that the State has not disproved beyond a reasonable doubt at least one of the elements of the defense or has not proven the statutory disqualifications, then on the strength of that defense alone, you must find the defendant not guilty despite the fact that you would of -- that you have found the elements of the -- of the crime proved beyond a reasonable doubt.

T11/7/11 at 85-86.

**B. It Is Not Reasonably Possible That The Court's Instructions As To The State's Burden Of Proof Regarding Combat By Agreement Misled The Jury**

As previously noted, supra,

[a]s long [instructions] are correct in law, adapted to the issues and sufficient for the guidance of the jury . . . we will not view the instructions as improper. . . . Additionally, we have noted that [a]n [impropriety] in instructions in a criminal case is reversible [impropriety] when it is shown that it is reasonably possible for [improprieties] of constitutional dimension . . . that the jury [was] misled.

(Citations omitted; internal quotation marks omitted.) *State v. Cutler*, supra, 293 Conn. 317.

In determining whether it was indeed reasonably possible that the jury was misled by the trial court's instructions, the "charge to the jury is not to be critically dissected for the purpose of discovering possible inaccuracies of statement, but it is to be considered rather as to its probable effect upon the jury in guiding them to a correct verdict in the case.

*State v. Prioleau*, supra, 235 Conn. 284.

The trial court's instructions as to the state's burden of proof were correct in law and it is not reasonably possible that they misled the jury. In the course of its combat by agreement instructions, the court charged that the exception did not apply if the victim

violated the agreement: "This exception would not apply despite an agreement for mutual combat if you find that the terms were violated by [the victim] and that her conduct towards the defendant was in violation of their agreement. And further, that the defendant knew of such a violation." T11/7/11 at 83. This instruction makes clear that there is not a "combat by agreement," if the initial terms of the combat were violated. Rather, the only way for the state to prove "combat by agreement" was to also prove that the exception did not apply—i.e. that the victim did not violate the agreement. Therefore, the court's instruction that it was the state's burden to prove beyond a reasonable doubt a combat by agreement necessarily included that the state also prove beyond a reasonable doubt that the victim did not violate the agreement. Consequently, the court's instructions properly conveyed to the jury the state's burden as to combat by agreement.

Moreover, even if the court's instructions were unclear, viewing the charge in context and considering the entire jury charge, it was not reasonably possible that the jury was misled. Specifically, throughout its instructions the court repeatedly and continually instructed the jury as to the state's burden of proof. These instructions made it abundantly clear that the state had the burden as to every issue before the jury and that the defendant had no burden whatsoever. The court also made it clear that the state's burden was proof beyond a reasonable doubt. Therefore, to the extent that there may have been a lack of complete clarity in the court's instruction as to the state's burden to disprove the exception to combat by agreement, it is not reasonably possible that the jury was misled thereby.

Finally, as discussed, *supra*, I.C., our law does not provide for an exception to combat by agreement. Therefore, the defendant was not entitled to an instruction on this exception at all. *Supra*, I.C. Therefore, any error in the court's instruction was necessarily harmless because the inclusion of the exception instruction benefitted the defendant by making that state's case more difficult to prove. See *State v. Miller*, *supra*, 186 Conn. 662.

**CONCLUSION**

For all of the foregoing reasons, the State of Connecticut-Appellee asks this Court to affirm the judgment of conviction.

Respectfully submitted,

STATE OF CONNECTICUT

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**CERTIFICATION**

The undersigned attorney hereby certifies that this brief complies with all provisions of Connecticut Rules of Appellate Procedure § 67-2.

  
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January 2014

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**SUPREME COURT**  
OF THE  
**STATE OF CONNECTICUT**

\_\_\_\_\_  
**JUDICIAL DISTRICT OF NEW HAVEN**

\_\_\_\_\_  
**S.C. 19336**

**STATE OF CONNECTICUT**

**v.**

**LATASHA R. OBRYAN**

\_\_\_\_\_  
**APPENDIX**  
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## STATUTES

### **General Statutes § 1-2z. Plain meaning rule**

The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

### **General Statutes § 53a-19. Use of physical force in defense of person**

(a) Except as provided in subsections (b) and (c) of this section, a person is justified in using reasonable physical force upon another person to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force, and he may use such degree of force which he reasonably believes to be necessary for such purpose; except that deadly physical force may not be used unless the actor reasonably believes that such other person is (1) using or about to use deadly physical force, or (2) inflicting or about to inflict great bodily harm.

(b) Notwithstanding the provisions of subsection (a) of this section, a person is not justified in using deadly physical force upon another person if he or she knows that he or she can avoid the necessity of using such force with complete safety (1) by retreating, except that the actor shall not be required to retreat if he or she is in his or her dwelling, as defined in section 53a-100, or place of work and was not the initial aggressor, or if he or she is a peace officer, a special policeman appointed under section 29-18b, or a motor vehicle inspector designated under section 14-8 and certified pursuant to section 7-294d, or a private person assisting such peace officer, special policeman or motor vehicle inspector at his or her direction, and acting pursuant to section 53a-22, or (2) by surrendering possession of property to a person asserting a claim of right thereto, or (3) by complying with a demand that he or she abstain from performing an act which he or she is not obliged to perform.

(c) Notwithstanding the provisions of subsection (a) of this section, a person is not justified in using physical force when (1) with intent to cause physical injury or death to another person, he provokes the use of physical force by such other person, or (2) he is the initial aggressor, except that his use of physical force upon another person under such circumstances is justifiable if he withdraws from the encounter and effectively communicates to such other person his intent to do so, but such other person notwithstanding continues or threatens the use of physical force, or (3) the physical force involved was the product of a combat by agreement not specifically authorized by law.

**General Statutes § 53a-49. Criminal attempt: Sufficiency of conduct; renunciation as defense**

(a) A person is guilty of an attempt to commit a crime if, acting with the kind of mental state required for commission of the crime, he: (1) Intentionally engages in conduct which would constitute the crime if attendant circumstances were as he believes them to be; or (2) intentionally does or omits to do anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.

(b) Conduct shall not be held to constitute a substantial step under subdivision (2) of subsection (a) of this section unless it is strongly corroborative of the actor's criminal purpose. Without negating the sufficiency of other conduct, the following, if strongly corroborative of the actor's criminal purpose, shall not be held insufficient as a matter of law: (1) Lying in wait, searching for or following the contemplated victim of the crime; (2) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission; (3) reconnoitering the place contemplated for the commission of the crime; (4) unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed; (5) possession of materials to be employed in the commission of the crime, which are specially designed for such unlawful use or which can serve no lawful purpose of the actor under the circumstances; (6) possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, where such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances; (7) soliciting an innocent agent to engage in conduct constituting an element of the crime.

(c) When the actor's conduct would otherwise constitute an attempt under subsection (a) of this section, it shall be a defense that he abandoned his effort to commit the crime or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

**General Statutes § 53a-59. Assault in the first degree: Class B felony: Nonsuspendable sentences**

(a) A person is guilty of assault in the first degree when: (1) With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or (2) with intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or organ of his body, he causes such injury to such person or to a third person; or (3) under circumstances evincing an extreme indifference to human life he recklessly engages in conduct which creates a risk of death to another person, and thereby causes serious physical injury to another person; or (4) with intent to cause serious physical injury to another person and while aided by two or more other persons actually present, he causes such injury to such person or to a third person; or (5) with intent to cause physical

injury to another person, he causes such injury to such person or to a third person by means of the discharge of a firearm.

(b) Assault in the first degree is a class B felony provided (1) any person found guilty under subdivision (1) of subsection (a) shall be sentenced to a term of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court and (2) any person found guilty under subsection (a) shall be sentenced to a term of imprisonment of which ten years of the sentence imposed may not be suspended or reduced by the court if the victim of the offense is a person under ten years of age or if the victim of the offense is a witness, as defined in section 53a-146, and the actor knew the victim was a witness.

**General Statutes § 53a-60. Assault in the second degree: Class D felony**

(a) A person is guilty of assault in the second degree when: (1) With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person; or (2) with intent to cause physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument other than by means of the discharge of a firearm; or (3) he recklessly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or (4) for a purpose other than lawful medical or therapeutic treatment, he intentionally causes stupor, unconsciousness or other physical impairment or injury to another person by administering to such person, without his consent, a drug, substance or preparation capable of producing the same; or (5) he is a parolee from a correctional institution and with intent to cause physical injury to an employee or member of the Board of Pardons and Paroles, he causes physical injury to such employee or member.

(b) Assault in the second degree is a class D felony.

