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STATE OF CONNECTICUT *v.* RAYMOND HARDY
(SC 17324)

Sullivan, C. J., and Borden, Norcott, Katz and Zarella, Js.*

Argued November 28, 2005—officially released May 9, 2006

Deborah G. Stevenson, special public defender, for the appellant (defendant).

Marjorie Allen Dauster, senior assistant state's attorney, with whom, on the brief, were *David I. Cohen*, state's attorney, and *Michael DeJoseph*, deputy assistant state's attorney, for the appellee (state).

Opinion

SULLIVAN, C. J. The defendant, Raymond Hardy, was convicted of robbery in the first degree in violation of General Statutes § 53a-134 (a) (2)[1] after a trial to the court. The Appellate Court affirmed the judgment of conviction in part and reversed it in part. *State* v. *Hardy*, 85 Conn. App. 708, 719, 858 A.2d 845 (2004).We granted the defendant's petition for certification to appeal from the judgment of the Appellate Court as to the following issue: ''Does a 'deadly weapon' as defined in General Statutes § 53a-3 (6)[2] require that a shot be discharged by gunpowder?''[3] *State* v. *Hardy*, 272 Conn. 906, 863 A.2d 699 (2004). We affirm the judgment of the Appellate Court.

The opinion of the Appellate Court sets forth the following facts and procedural history. ''On December 9, 2000, the victim, an employee of Norwalk Taxi, was dispatched to 12 North Taylor Avenue in Norwalk. Upon arrival, Leland Brown approached the victim's taxicab from the front of the vehicle and got in through the back door on the driver's side. The victim turned his head to ask Brown where he wanted to go and Brown put the barrel portion of a gun to the victim's neck. Brown demanded that the victim give him all of his money and, in response, the victim gave him more than $800 in cash. Brown then exited the taxicab, and the victim informed his dispatcher of the incident. The dispatcher notified the police and, shortly thereafter, the police arrived at the scene of the robbery. The victim told the police that the robber was an African-American male who wore dark jeans, a jacket patterned in camouflage or animal print and a wool hat. The victim also told the police that one of the bills stolen had an order for Chinese food written on it in brown marker.

''After Brown exited the taxicab, he and the defendant, who waited nearby, ran back to the defendant's apartment at 16 Ferris Avenue. While running, the men were spotted by Tirso Gomez, a United States Postal Service employee who was working in the area. A short time later, Gomez was questioned by the police. Gomez informed the police that he saw the defendant and another man running toward the defendant's apartment from the direction of the robbery, which was approximately one-half block away. Gomez was familiar with the defendant, provided the police the defendant's name and address, and told them that the defendant was wearing a yellow jacket or sweater and that one of the men was wearing a cap.

''Acting on that information, the police surrounded 16 Ferris Avenue and began calling the telephone in the defendant's apartment. Eventually, Brown exited the building, wearing a camouflage jacket and a hat, and was arrested and taken into custody. The police searched Brown and found $339 on his person, includ-

ing a bill that 'had some kind of writing on it.' Outside the defendant's apartment, the victim identified Brown as the man who robbed him earlier that day.

"Eventually, the police forcibly entered the defendant's apartment. Once inside, the police found a silver Crosman air pistol hidden in a clothes hamper between the defendant's bedroom and his mother's bedroom, an information manual for the air pistol, and the defendant, wearing a yellow and gray sweater, hiding underneath his couch. The defendant was arrested and, after he was in custody, told the police that the rest of the money taken during the robbery was hidden in his videocassette recorder. The police returned to the defendant's apartment and recovered an additional $555 from inside the videocassette recorder in his bedroom.

"The defendant was tried under the accessory theory of liability and was convicted of robbery in the first degree in violation of § 53a-134 (a) (2) and criminal use of a firearm or electronic defense weapon in violation of [General Statutes] § 53a-216. The court sentenced the defendant to twenty years incarceration, suspended after ten years, on the robbery conviction, five years incarceration to run concurrent to his twenty year sentence on his conviction of criminal use of a firearm or electronic defense weapon, and five years probation." *State* v. *Hardy*, supra, 85 Conn. App. 710–12.

The following additional facts and procedural history are relevant to our resolution of the certified issue. Evidence presented at trial established that the air pistol found in the defendant's apartment used carbon dioxide cylinders as a propellant and was designed to shoot .177 caliber pellets. Although the pistol was unloaded when it was found, it was tested by a police detective and was operational. The state also submitted as a full exhibit the pistol's operating manual, which stated that the pistol was "NOT A TOY. . . . MISUSE OR CARELESS USE MAY CAUSE SERIOUS INJURY OR DEATH. MAY BE DANGEROUS UP TO 400 YARDS . . . ."[4] The state argued to the court that, as a matter of common sense, the gun, particularly when used at close range, could be a deadly weapon and could cause serious physical injury. The defendant argued that the pellet pistol did not use gunpowder and could not cause death or serious physical injury and, therefore, did not fit within the statutory definition of a deadly weapon.

The Appellate Court, sua sponte, reversed the defendant's conviction of criminal use of a firearm and directed the trial court to vacate that conviction and to resentence the defendant accordingly. *State* v. *Hardy*, supra, 85 Conn. App. 719.[5] The court affirmed the judgment in all other respects.

On appeal to this court, the defendant challenges his conviction under § 53a-134 (a) (2) of robbery in the first degree, which required proof that he was armed with

a deadly weapon, on the ground that the air gun used by the defendant was not a deadly weapon. He argues that deadly weapons that discharge shots, as defined in § 53a-3 (6), are necessarily firearms, which discharge shots by gunpowder, and, therefore, the Appellate Court improperly concluded that the air pistol, which does not use gunpowder, was a deadly weapon. See id., 718. In response, the state claims: (1) the Appellate Court properly concluded that the air pistol was a weapon from which a shot may be discharged within the meaning of § 53a-3 (6); and (2) in the alternative, even if we find that the trial court improperly concluded that deadly weapons must discharge shots by use of gunpowder, the state presented sufficient evidence for the trial court to find the defendant guilty of the lesser included offense of robbery in the third degree under General Statutes § 53a-136. We agree with the state's first claim, and thus need not reach its second.

Whether § 53a-3 (6) requires that the shot be discharged by gunpowder is a question of statutory interpretation. ''Statutory construction is a question of law and therefore our review is plenary.'' (Internal quotation marks omitted.) *State* v. *Ramos*, 271 Conn. 785, 791, 860 A.2d 249 (2004).

''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 § 1-2z. ''In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly.'' General Statutes § 1-1 (a).

With these principles in mind, we begin by examining the language of § 53a-3 (6). Section 53a-3 (6) defines a '' '[d]eadly weapon' '' in relevant part as ''any weapon, whether loaded or unloaded, from which a shot may be discharged . . . . The definition of 'deadly weapon' in this subdivision shall be deemed not to apply to section 29-38 or 53-206 . . . .'' Thus, the legislature has defined deadly weapon to mean any *weapon* from which a *shot* may be *discharged*. The defendant does not claim that the air gun was not a weapon or that it did not fire shots. Instead, he claims that the ''discharge'' of the weapon, as used in § 53a-3 (6), must take place through the use of gunpowder. We disagree.

First, the plain language of § 53a-3 (6) does not require that the shot be discharged by gunpowder. Rather, the statute refers to ''*any* weapon, whether loaded or unloaded . . . from which a shot may be

discharged . . . .'' (Emphasis added.) Had the legislature intended to include in its definition only those weapons that discharged by use of gunpowder, it could have done so expressly through the language of the statute. See *State* v. *Payne*, 240 Conn. 766, 776, 695 A.2d 525 (1997).

Second, although this court previously has not considered the question before us, the Appellate Court has considered it indirectly and has suggested that an air pistol is a deadly weapon. In *State* v. *Osman*, 21 Conn. App. 299, 300–301, 305, 573 A.2d 743 (1990), the defendant was charged with robbery in the first degree involving the use of a dangerous instrument under § 53a-134 (a) (3)[6] after he robbed a convenience store and threatened to shoot a store clerk with an unloaded .177 Crosman air pistol. The Appellate Court, in determining whether the unloaded air pistol could be considered a dangerous instrument as defined by § 53a-3 (7),[7] discussed the distinction between deadly weapons and dangerous instruments. The court noted that ''[o]ur modern penal code preserves, to a great extent, the distinction between those weapons that are deadly per se and those that are not. . . . The term deadly weapon is confined to those items *designed for violence*.'' (Emphasis added.) Id., 306; see also Commission to Revise the Criminal Statutes, Penal Code Comments, Conn. Gen. Stat. Ann. § 53a-3 (West 2001), comments, p. 239 (''[d]eadly weapon' is confined to those items designed for violence'').[8] The court concluded that, because the defendant did not threaten to bludgeon the clerk with the unloaded pistol, the pistol was not a dangerous instrument under the circumstances in which it was used. *State* v. *Osman*, supra, 307. In dictum, however, the court noted that the state could have charged the defendant under § 53a-134 (a) (2) because the pellet pistol was a deadly weapon, i.e., a weapon designed for violence.[9] Id., 307 n.3.

Many other courts that have confronted the question directly also have concluded that an air or pellet gun is both designed for violence and capable of causing death or serious bodily injury. In *McCaskill* v. *State*, 648 So. 2d 1175, 1178 (Ala. Crim. App. 1994), the Court of Criminal Appeals of Alabama concluded that a BB gun could constitute a deadly weapon where the term was defined as ''[a] firearm or anything manifestly designed, made or adapted for the purposes of inflicting death or serious physical injury, and such term includes, but is not limited to, a pistol, rifle or shotgun; or any billy, black-jack, bludgeon or metal knuckles.'' Id. Likewise, in *State* v. *Cordova*, 198 Ariz. 242, 243, 8 P.3d 1156 (1999), the Arizona Court of Appeals concluded that a pellet gun was a deadly weapon for purposes of an aggravated assault conviction when '' 'deadly weapon' '' was defined as '' 'anything designed for lethal use,' including a 'firearm.' [Ariz. Rev. Stat.] § 13-105 (13) [2001].''

In *People* v. *Lochtefeld*, 77 Cal. App. 4th 533, 535, 540, 91 Cal. Rptr. 2d 778 (2000), the California Court of Appeals held that a pellet gun is not a firearm because it does not use an explosive to project a bullet. The court concluded, however, that because the pellet pistol was ''a gun . . . capable of inflicting great bodily injury''; id., 541; it was a deadly weapon within the meaning of a provision of the Penal Code prohibiting the use of a ''deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer . . . .'' (Internal quotation marks omitted.) Id., 535. The court noted that a deadly weapon is statutorily defined as ''any object, instrument, or weapon which is used in such a manner as to be capable of producing and likely to produce, death or great bodily injury.'' (Internal quotation marks omitted.) Id., 538–39. A criminalist, who had examined and test fired the defendant's gun, testified that it was capable of firing projectiles at speeds of over 380 feet per second, faster than the speed necessary to penetrate human skin, muscles, and eyeballs. Id., 536–37. The court concluded that ''the determinative question is not the distinction between 'firearms' and 'pellet guns,' but between those guns capable of inflicting great bodily injury, and those that are not.'' Id., 540.

Likewise, in *Merriweather* v. *State*, 778 N.E.2d 449, 453, 458 (Ind. App. 2002), the Indiana Court of Appeals concluded that two BB guns[10] that the defendant's accomplices had used to threaten victims during the robbery of a restaurant were deadly weapons. The legislature had defined ''deadly weapon . . . as a loaded or unloaded firearm . . . or other material that in the manner it is used, or could ordinarily be used, or is intended to be used, is readily capable of causing serious bodily injury. . . .

''Thus, based on the statute, there are two categories of deadly weapons: (1) firearms; and (2) weapons capable of causing serious bodily injury. . . . The question of whether a weapon is a deadly weapon is determined from a description of the weapon, the manner of its use, and the circumstances of the case. . . . The fact finder may look to whether the weapon had the actual ability to inflict serious injury under the fact situation and whether the defendant had the apparent ability to injure the victim seriously through use of the object during the crime.'' (Citations omitted; internal quotation marks omitted.) Id., 457. Testimony at trial had established that the BB guns could ''propel a projectile up to [200] feet per second'' and that ''a projectile traveling [200] to [250] feet per second can pierce human skin and enter the body.'' Id., 458. The court determined that ''[t]his evidence shows that the BB guns were actually able to inflict serious bodily injury.'' Id. On the basis of this finding, the court concluded that a BB gun is a

deadly weapon. Id., 458–59.

In *Campbell* v. *State*, 577 S.W.2d 493, 495 (Tex. Crim. App. 1979), a defendant accused of aggravated robbery argued that the .22 caliber air pistol with which he threatened the victim was not a deadly weapon, which was defined as " 'a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or . . . anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.' " Id., quoting Tex. Penal Code Ann. § 1.07 (a) (11) (Vernon 1974), now codified at Tex. Penal Code Ann. § 1.07 (a) (17) (Vernon 2003). The court concluded that the pistol was a deadly weapon because it had been used to threaten the complainant and "was capable of inflicting death or serious bodily injury and was designed for that purpose." *Campbell* v. *State*, supra, 496; see also *Mitchell* v. *State*, 698 So. 2d 555, 560 (Fla. App. 1997) (jury reasonably could find that BB gun was deadly weapon, defined as " 'any instrument that, when used in the ordinary manner contemplated by its design and construction, will or is likely to cause death or great bodily harm,' " or dangerous weapon, defined as " 'milder' then 'deadly weapon,' but 'otherwise of the same meaning,' " when defendant implied that weapon was loaded and operable and when likelihood of injury analyzed from perspective of victim).

In comparison, in *State* v. *Coauette*, 601 N.W.2d 443, 445, 447–48 (Minn. App. 1999), the Minnesota Court of Appeals held, inter alia, that a " '68 caliber pump-action [carbon dioxide] powered' " paintball gun was neither a firearm under a drive-by shooting statute nor a dangerous weapon under the assault statute.[11] The court first noted that, in *State* v. *Seifert*, 256 N.W.2d 87, 88 (Minn. 1977), the Minnesota Supreme Court had held that a carbon dioxide BB pistol qualified as a firearm because the term should be "defined broadly to include guns using newer types of projectile propellants and should not be restricted in meaning to guns using gunpowder." (Internal quotation marks omitted.) *State* v. *Coauette*, supra, 446. In *Coauette*, the court considered "not just . . . the propellant . . . but also . . . the purpose of the projectile the gun is designed to discharge." Id. "In contrast to *Seifert* . . . in which the air guns were designed to shoot BB pellets that would pierce and harm the objects struck—whether bird, rodent, or human . . . the [paintball] gun here was designed for use in a game and . . . its projectiles are liquid-paint capsules designed to burst on impact, rather than to pierce. . . . [A] paintball has nothing like the destructive capacity of a bullet or BB." Id., 446–47. The court thus reasoned that a paintball gun also was not a dangerous weapon, which was defined as "any device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm." (Internal quotation marks omitted.)

Id., 447. The court concluded that paintballs are ''intended and designed to break on contact and simply . . . splash a dose of nontoxic liquid paint'' and are not '' 'calculated or likely to produce death or great bodily harm.' '' Id. In reaching its conclusion that BB guns are firearms and dangerous weapons, but that paintball guns are not, the court in *Coauette* considered the intent of the legislature to include only those weapons that are *designed* to cause severe injury or death. Id., 446–47.

With these authorities in mind, we conclude that the legislature did not intend to restrict the definition of deadly weapon in § 53a-3 (6) to weapons that discharge ammunition by the use of gunpowder. We recognize that the persuasive value of these cases is limited by differences between our statute and the statutes of other states. Specifically, we recognize that § 53a-3 (6) does not expressly define deadly weapons as instruments that are *designed* or *intended* to cause death or serious bodily injury, as the statutes in many other states do. See, e.g., *McCaskill* v. *State*, supra, 648 So. 2d 1178; *People* v. *Lochtefeld*, supra, 77 Cal. App. 4th 538; *Merriweather* v. *State*, supra, 778 N.E.2d 457. As the Appellate Court recognized in *State* v. *Osman*, supra, 21 Conn. App. 306, however, § 53a-3 (6) was intended to encompass ''items *designed for violence*.'' (Emphasis added.) See also Commission to Revise the Criminal Statutes, Penal Code Comments, supra, § 53a-3. Moreover, all of the items listed in the statute are capable of causing death or serious bodily injury. We therefore conclude that, if a weapon from which a shot may be discharged is designed for violence[12] and is capable of inflicting death or serious bodily harm, it is a deadly weapon within the meaning of § 53a-3 (6), regardless of whether the shot is discharged by gunpowder.[13] We further conclude that the trial court in the present case reasonably could have concluded that the air pistol used by the defendant was designed for violence and was capable of causing death or serious bodily injury. Accordingly, we conclude that the air pistol was a deadly weapon.

The defendant claims, however, that the legislature's use of ''identical language'' in defining deadly weapon; General Statutes § 53a-3 (6); and firearm; General Statutes § 53a-3 (19);[14] necessarily implies that the definitions are coextensive. Section 53a-3 (19) defines a firearm as a ''weapon, whether loaded or unloaded from which a shot may be discharged . . . .'' The defendant argues that, because the same words are used in the two statutes, they must '' 'be given the same meaning in each instance.' '' *Connecticut Light & Power Co.* v. *Dept. of Public Utility Control*, 266 Conn. 108, 123, 830 A.2d 1121 (2003). The defendant further argues that, because all of the weapons listed as firearms in § 53a-3 (19), namely ''any sawed-off shotgun, machine gun, rifle, shotgun, pistol, [or] revolver,'' use gunpowder as their method of discharge, under the principle of ejus-

dem generis, a weapon must use gunpowder as a method of discharge to be considered a firearm. Thus, he argues, deadly weapons from which a shot can be discharged must be firearms. We disagree.

The defendant relies on *State* v. *Brown*, 259 Conn. 799, 809, 792 A.2d 86 (2002), in support of his argument that all firearms must use gunpowder. In *Brown*, the defendant was convicted of, inter alia, robbery in the first degree in violation of § 53a-134 (a) (4), and received an enhanced penalty pursuant to General Statutes § 53-202k.[15] Id., 801. He appealed from the judgment to the Appellate Court, which affirmed his conviction. Id., 805. We granted his petition for certification to appeal limited to the question of whether the trial court improperly had failed to define the term firearm when instructing the jury on the sentence enhancement provision of § 53-202k. Id. The defendant argued on appeal that the court's failure to instruct the jury on the statutory definition of firearm rendered the instruction constitutionally defective. Id., 808. We disagreed. We recognized that ''it is generally preferable for a jury to be instructed on the statutory definition of a word where one exists . . . .'' Id. We also recognized, however, that ''[s]pecific words in a statute need not be defined if they are being used and understood in their ordinary meaning.'' Id. We then noted that § 53a-3 (19) provides that, ''[f]irearm means any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded from which a shot may be discharged . . . . This definition requires that a firearm be (1) a weapon, with a list of examples, and (2) capable of discharging a shot. The commonly understood meaning of firearm, found in Merriam-Webster's Collegiate Dictionary (10th Ed.), is a weapon from which a shot is discharged by gunpowder . . . . *This commonly understood meaning of the word comprises the same two elements as the statutory definition—a firearm is a weapon capable of discharging a shot.* Therefore, the dictionary definition that we presume was applied by the jury and the definition found in § 53a-3 (19) are essentially the same.'' (Emphasis added; internal quotation marks omitted.) *State* v. *Brown*, supra, 809. Accordingly, we concluded that there was no constitutional violation. Id.

Thus, in *Brown*, we merely held that the jury, in the absence of an instruction from the trial court, could be presumed to have applied the dictionary definition of firearm, which included the two elements expressly required by statute, namely, that the weapon *discharge* a *shot*. There was no claim in that case that the gun used by the defendant was not a firearm because it did not discharge a shot by use of gunpowder. Any misunderstanding by the jury that a discharge by use of gunpowder was a requirement under the statute would, therefore, have been harmless. Accordingly, we reject the defendant's argument that we held in *Brown* that all

firearms must be discharged by gunpowder. We further note that, in *Brown*, we referred to the dictionary definition of firearm only because the trial court had failed to provide the statutory definition of the term in its jury instructions, and only for the purpose of resolving whether the dictionary, or commonly used, definition was sufficiently dissimilar to the statutory definition as to affect the jury's deliberations. Id., 808–809. Our reference to the dictionary definition of the term under these circumstances does not indicate that, as a rule, this court considers the common meanings of terms where a statutory definition exists and was relied on by the fact finder.

Even if it is assumed, however, that, because all of the weapons listed in § 53a-3 (19) are discharged by gunpowder, the principle of ejusdem generis would suggest that all firearms must be discharged by gunpowder, that would not mean that all deadly weapons that discharge shots must use gunpowder. In short, it does not logically follow from the fact that all firearms are deadly weapons that all deadly weapons that discharge shots must be firearms. As we have indicated, if the legislature had wanted to limit § 53a-3 (6) in this way, it could have done so expressly.

The defendant also relies on the genealogy and legislative history of the relevant statutes in support of his interpretation. He points out that the official commentary to § 53a-3, which was enacted in 1969 as part of the Penal Code; see Public Acts 1969, No. 828, § 3; states that ''any *gun* 'from which a shot may be discharged,' whether loaded at the time or not, would be a 'deadly weapon.' '' (Emphasis added.) Commission to Revise the Criminal Statutes, Penal Code Comments, supra, § 53a-3. In addition, the official commentary to § 53a-134 states that ''[s]imple robbery is raised to robbery in the first degree on the basis of . . . being armed with a deadly weapon (i.e. a pistol). . . .'' Id., § 53a-134. The statutory definition of firearm, which was enacted in 1975; Public Acts 1975, No. 75-380, § 1 (P.A. 75-380); includes pistols. See General Statutes § 53a-3 (19). Finally, the defendant points out that, when the legislature enacted the portion of P.A. 75-380 that is now codified at § 53a-3 (19), the legislative debate clearly indicated that the legislature understood firearms to be deadly weapons. See, e.g., 18 S. Proc., Pt. 5, 1975 Sess., p. 2293, remarks of Senator David M. Barry (''the only deadly weapon we're involved with in this [b]ill is a firearm''). The defendant argues that this history establishes that guns and pistols must be firearms in order to be deadly weapons.

We conclude, however, that this history establishes, at most, that all firearms are deadly weapons. As we have already indicated, it does not follow from the fact that all firearms are deadly weapons that all deadly weapons that discharge shots must be firearms. The

legislative history of P.A. 75-380, now codified in part at § 53a-3 (19), indicates that the legislature believed that, although firearms were deadly weapons, they were more dangerous than other deadly weapons. See 18 H.R. Proc., Pt. 10, 1975 Sess., p. 4858, remarks of Representative Paul C. DeMennato (''[w]e have to make it perfectly clear to the crime element in our society that uses a firearm, which is potentially [50 percent] more lethal than any other weapon he can use, that when he goes out with that firearm in his hand, he's in trouble''). Thus, although both deadly weapons and firearms are designed for violence and are capable of inflicting death or serious bodily injury, firearms are limited to the most dangerous weapons and deadly weapons include a broader class.

The defendant further claims that the state and the trial court were both confused about the nature of the charges before the court rendered its verdict. At trial, the state conceded that, to be considered a firearm, a weapon must use gunpowder to discharge.[16] We also recognize that the state called the pellet pistol variously a ''firearm,'' ''gun,'' ''pistol'' and ''weapon,'' and that only after closing arguments and before the court rendered its verdict did it become wholly clear that the defendant would be charged with robbery in the first degree while armed with a deadly weapon under § 53a-134 (a) (2), and not under § 53a-134 (a) (4), which would have required the state to prove that the defendant had committed the robbery with the aid of a firearm.[17] The defendant does not argue, however, that he was prejudiced by the confusion at trial and, therefore, that the state should be estopped from changing its tack on appeal to claim that the pellet gun may be a deadly weapon even though it is not a firearm. He merely argues that, as a matter of statutory interpretation, the fact that the state at trial called the pellet gun a firearm during trial means that a deadly weapon that discharges a shot must be a firearm. For the foregoing reasons, we disagree.

The judgment of the Appellate Court is affirmed.

In this opinion NORCOTT and ZARELLA, Js., concurred.

* The listing of justices reflects their seniority status on this court as of the date of argument.

[1] General Statutes § 53a-134 (a) provides in relevant part: ''A person is guilty of robbery in the first degree when, in the course of the commission of the crime of robbery as defined in section 53a-133 or of immediate flight therefrom, he or another participant in the crime . . . (2) is armed with a deadly weapon . . . .''

[2] General Statutes § 53a-3 (6) provides in relevant part: '' 'Deadly weapon' means any weapon, whether loaded or unloaded, from which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, or metal knuckles. . . .''

[3] We granted certification to appeal from the Appellate Court limited to the following two issues: ''1. Does a 'firearm' as defined in General Statutes § 53a-3 (19) require that a shot be discharged by gunpowder?

''2. Does a 'deadly weapon' as defined in General Statutes § 53a-3 (6) require that a shot be discharged by gunpowder?'' State v. Hardy, 272 Conn. 906, 863 A.2d 699 (2004). Upon motion of the state for reconsideration of the order granting certification as to the first question, we subsequently

ordered that the petition for certification be limited to the second issue.

[4] The operating manual describes the gun itself as a ''pellet pistol,'' ''air-gun,'' or ''air pistol.'' It specifies that the gun has an ''8 Shot Revolver'' mechanism that shoots .177 caliber ''Lead Airgun Pellet'' ammunition. The gun is designed to shoot its ammunition at a muzzle velocity of at least 430 feet per second.

[5] The Appellate Court noted that General Statutes § 53a-216 (a) provides: ''A person is guilty of criminal use of a firearm or electronic defense weapon when he commits any class A, B or C or unclassified felony as defined in section 53a-25 and in the commission of such felony he uses or threatens the use of a pistol, revolver, machine gun, shotgun, rifle or other firearm or electronic defense weapon. No person shall be convicted of criminal use of a firearm or electronic defense weapon and the underlying felony upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information.'' (Emphasis in original; internal quotation marks omitted.) State v. Hardy, supra, 85 Conn. App. 713. The court reasoned that, ''[t]he defendant in this case was convicted of criminal use of a firearm and the underlying felony of robbery in the first degree. It was improper for the court to have convicted the defendant of both crimes charged in light of the statutory prohibition against such a double conviction.'' Id.

[6] General Statutes § 53a-134 (a) provides in relevant part: ''A person is guilty of robbery in the first degree when, in the course of the commission of the crime of robbery as defined in section 53a-133 or of immediate flight therefrom, he or another participant in the crime . . . (3) uses or threatens the use of a dangerous instrument . . . .''

[7] General Statutes § 53a-3 (7) defines '' '[d]angerous instrument' '' in relevant part as: ''[A]ny instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury . . . .''

[8] ''While the commission comment hardly has the force of enacted law, it, nevertheless, may furnish guidance.'' Valeriano v. Bronson, 209 Conn. 75, 94, 546 A.2d 1380 (1988).

Justice Borden states in his concurring opinion that he believes that we place too much emphasis on this portion of the commentary to the Penal Code. He believes that there is no need for the trial court to conduct a case-by-case inquiry into whether a particular item is '' 'designed for violence' '' because the legislature merely intended for that phrase to describe, not to limit, the term ''deadly weapon.'' In other words, Justice Borden believes that all weapons from which a shot may be discharged are '' 'designed for violence,' '' provided, ''[o]f course, [that] the gun must be a true gun, not a toy; and what is discharged must be a 'shot,' not, say, a paintball.''

We do not believe that our interpretation differs significantly from Justice Borden's. We hold only that, if there is some question, as there was in the present case, as to whether the item that the defendant is charged with using was a weapon or, instead, was a toy or some other relatively harmless instrument capable of discharging a shot, that question must be answered by determining whether the item was designed for violence and capable of inflicting serious bodily injury or death. To the extent that Justice Borden believes that the answer to that question always will be self-evident, we disagree.

[9] The court stated that ''[t]he defendant in the present case could have been charged with first degree robbery under either General Statutes § 53a-134 (a) (2) or § 53a-134 (a) (4). The pellet pistol used in the robbery is a weapon designed for violence. The weapon fits the definition of the term 'deadly weapon' at § 53a-3 (6). This term appears in § 53a-134 (a) (2). The weapon also fits the definition of 'firearm' in § 53a-3 (19). This term appears in § 53a-134 (a) (4).'' State v. Osman, supra, 21 Conn. App. 307 n.3.

[10] Merriam-Webster's Collegiate Dictionary (10th Ed. 1993) defines a BB in relevant part as ''a shot pellet 0.175 inch in diameter for use in an air gun.'' The Crosman pellet gun in question is designed to shoot pellets of roughly equivalent size, 0.177 inch in diameter.

[11] Minnesota does not define deadly weapon by statute. It defines dangerous weapon, however, as ''any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm . . . or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm. . . .'' Minn. Stat. Ann. § 609.02 (6) (West 2003).

Thus, items that are dangerous weapons under Minnesota law would be

deadly weapons under the laws of many other states. Coauette is instructive in the present case because it supports the conclusion that a weapon that is not discharged by gunpowder is capable of causing death or serious bodily injury.

[12] We recognize that not all items capable of discharging a shot are weapons or designed for violence. Cf. State v. Coauette, supra, 601 N.W.2d 443 (paint-ball gun is not dangerous weapon). We further recognize that many guns that are capable of causing death or serious bodily injury were not designed for violence against persons. Nevertheless, such guns are designed for violence in the sense that they are intended to cause damage or injury to their intended target.

In her dissent, Justice Katz agrees that a factfinder reasonably could conclude that the air pistol at issue in the present case was capable of causing serious injury or death to a person. She believes, however, that the legislature intended that the weapon must have been designed for the type of violence that could kill or seriously injure humans and that the trial court reasonably could not have concluded that the gun was designed for that purpose. We see no evidence, however, that the legislature intended to exclude from the definition of ''deadly weapon'' weapons that are capable of killing or seriously injuring a human but are designed only to penetrate targets or kill small animals. Rather, common sense leads to the conclusion that if a ''weapon . . . from which a shot may be discharged''; see General Statutes § 53a-3 (6); is capable of killing a human, the legislature intended to penalize the use of that weapon during the commission of a crime. Moreover, we have difficulty understanding how a weapon could be simultaneously (1) designed for violence and capable of killing or seriously injuring a human and (2) not designed for the type of violence that could kill or seriously injure a human.

To the extent that Justice Katz suggests the addition of yet another requirement to the statutory definition, namely, that a gun is a deadly weapon only if it was designed to inflict the type of violence that could kill or seriously injure a person when it was used as it was intended to be used, we also disagree. The fact that a pellet gun was intended to be used to penetrate a target at a range of 100 feet and cannot kill or injure a human unless aimed at a vulnerable part of the body at close range does not meaningfully distinguish it from a gun that was intended to be used to penetrate a target at a range of 1000 feet and can kill a human at a range of up to 100 feet. It would have been small comfort to the victim in the present case to know that, although he could have been seriously injured or killed if the defendant had followed through on his implied threat to shoot him in the neck at point blank range, he would have been in minimal danger if the defendant had been fifty feet away.

With respect to Justice Katz' argument that our interpretation would mean that a nail gun or a slingshot is a deadly weapon, we agree with Justice Borden that it is likely that the legislature intended for the phrase ''weapon . . . from which a shot may be discharged'' to include only items that ordinary persons would characterize as guns. Furthermore, if a nail gun or a slingshot can kill or seriously injure a person, we fail to see how Justice Katz can escape this result by imposing a requirement that the item be designed for the type of violence that can cause death or serious injury to a person. We need not definitively resolve these questions in the present case, however.

[13] We do not suggest that every item that is designed for violence and is capable of causing death or serious bodily injury is a deadly weapon, regardless of whether it is listed in § 53a-3 (6). We conclude only that any weapon from which a shot may be discharged and that is capable of causing such harm is a deadly weapon.

[14] General Statutes § 53a-3 (19) defines '' '[f]irearm' '' as ''any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded from which a shot may be discharged . . . .''

[15] General Statutes § 53-202k provides: ''Any person who commits any class A, B or C felony and in the commission of such felony uses, or is armed with and threatens the use of, or displays, or represents by his words or conduct that he possesses any firearm, as defined in section 53a-3, except an assault weapon, as defined in section 53-202a, shall be imprisoned for a term of five years, which shall not be suspended or reduced and shall be in addition and consecutive to any term of imprisonment imposed for conviction of such felony.''

[16] As we have indicated, we express no opinion on this question in the present case.

[17] The trial transcript includes the following discussion:

''[The Prosecutor]: In speaking with [defense counsel] I think that, so he may adequately prepare for sentencing, the court needs to articulate, if [the defendant] is found guilty of § 53a-134 [a], [subdivision] (1), (2), (3) or (4), it sounded to me from the court's ruling it was [subdivision] (2). . . . But

I just need—I think we just need that to be clear on the record.

"The Court: Sure. Let me go to the statutes so that we all know what we're talking about here. But I'm pretty sure about what I did but . . . I'll make sure that what my understanding is is exactly what . . . it is. [Section] 53a-134, I'm going right to the statute book. [Subdivision] (2), 'Robbery in the first degree: Class B felony.' Subsection (a) (2), references armed with a deadly weapon. Correct . . . ?

"[The Prosecutor]: Yes.

"The Court: All right. All right? Deadly weapon. That's my . . . finding.

"[The Prosecutor]: Thank you, Your Honor.

"[Defense Counsel]: Thank you, Your Honor.

"The Court: You're welcome.

"[The Prosecutor]: So [December 12], then, on all matters? [December 12] for imposition of sentence . . . .

"The Court: Very good."