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BORDEN, J., concurring. I agree with the result reached by the majority opinion affirming the conviction of the defendant, Raymond Hardy, of robbery in the first degree, and with much of the reasoning of that opinion. I write separately, however, to provide some additional analysis that supports the result reached by the majority and that responds somewhat to the dissent.

I first note that the determinative issue presented in this certified appeal is whether “a ‘deadly weapon’ as defined in General Statutes § 53a-3 (6)<sup>1</sup> require[s] that a shot be discharged by gunpowder?” *State v. Hardy*, 272 Conn. 906, 863 A.2d 699 (2004). The defendant’s sole argument in this regard is that the term “deadly weapon” is synonymous with the term “firearm,” and that, under our decision in *State v. Brown*, 259 Conn. 799, 809, 792 A.2d 86 (2002), a firearm is a gun that discharges a shot by gunpowder. The defendant does not claim that the air pistol involved in this case is not a weapon. Rather, he argues only that, in order for the air pistol to be a deadly weapon, it must discharge a shot by gunpowder, not compressed air. I fully agree with the majority’s reasoning in rejecting that argument. That reasoning is sufficient to answer the certified question in this case.

I part company, however, with both the majority and the dissent in their heavy emphasis on the reference in the commentary to the Penal Code (commentary) to a “deadly weapon” as requiring an inquiry into whether a particular weapon is “designed for violence.”<sup>2</sup> Commission to Revise the Criminal Statutes, Penal Code Comments, Conn. Gen. Stat. Ann. § 53a-3 (West 2001) comments, p. 239. That language does not appear in the statute. As commentary, it should be used only to illuminate the meaning of the statutory language. Its usefulness as an interpretive tool, however, should not be transformed into language that itself must be interpreted as if it were a statutory element of the crime. In other words, it does not provide an additional set of words that themselves must be subject to our interpretive function. Rather, the commentary, albeit not as lucid in hindsight as it could have been, tells us that the drafters of the Penal Code and the legislature that adopted it considered all weapons from which a shot may be discharged *to be designed for violence* and that, therefore, if one were armed with such a weapon while committing a robbery, that would constitute robbery in the first degree in violation of General Statutes § 53a-134 (a) (2).<sup>3</sup> This is what was meant by the commentary’s reference that the term “‘[d]eadly weapon’ is confined to those items designed for violence.” *Id.*

This does not mean, however, that none of the commentary is useful in deciding this case. The commentary

states: “The 1971 General Assembly eliminated the prior requirement, in the definition of ‘deadly weapon’ that a gun be loaded; thus, any gun ‘from which a shot may be discharged,’ whether loaded at the time or not, would be a ‘deadly weapon.’ ” Id. This commentary indicates that, when the drafters and the legislature used the word “weapon” in the definition of “deadly weapon,” they intended it to mean a “gun,” of whatever type, from which a shot may be discharged. That intent is fully consistent with the structure of the robbery sections of the Penal Code, which elevates robbery to first degree if the perpetrator is armed with a “deadly weapon,” namely, a gun from which a shot may be discharged, by whatever technology. This interpretation also answers the contention raised by the dissent that a broad definition of “deadly weapon” could include a sling shot. Under my definition, a sling shot would not be a “deadly weapon,” not because the shot is discharged by other than gunpowder, but because it is not a “weapon” within the meaning of the statute. Moreover, to answer another question raised by the dissent, in my view a BB gun *would* be a deadly weapon.

To sum up, in my view, a “deadly weapon” within the meaning of § 53a-3 (6) means any gun from which a shot may be discharged, irrespective of whether the discharging power is gunpowder. It is not necessary to go through a case-by-case analysis of whether the type of gun is one “designed for violence.” Of course, the gun must be a true gun, not a toy; and what is discharged must be a “shot,” not, for example, a paintball. There may be future cases in which we will have to grapple with the questions of whether the device involved is a gun, and whether what is discharged is a shot. This case, however, does not present those questions. There is no question that the defendant’s air pistol was a gun, and that the projectile discharged from it was a shot. The defendant does not contend otherwise. I therefore join the majority in affirming the judgment of the Appellate Court upholding the defendant’s conviction of robbery in the first degree. See *State v. Hardy*, 85 Conn. App. 708, 719, 858 A.2d 845 (2004).

<sup>1</sup> 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. The definition of ‘deadly weapon’ in this subdivision shall be deemed not to apply to section 29-38 or 53-206 . . . . ”

<sup>2</sup> I recognize, of course, the usefulness of the commentary to the interpretation of the language of the Penal Code, as do both the majority and the dissent in the present case. I also recognize the irony in the fact that I am questioning the degree of reliance that both the majority and dissent appear to place on that commentary, because, as the executive director of the commission to revise the Penal Code in 1963 through 1971, I was heavily involved in drafting both the Penal Code and its commentary.

<sup>3</sup> 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 . . . . ”