STATE OF CONNECTICUT *v.* KATHLEEN PAMELA LAVIGNE
(SC 18675)

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

Argued September 25—officially released December 25, 2012

Martin Zeldis, public defender, for the appellant (defendant).

Melissa L. Streeto, senior assistant state's attorney, with whom, on the brief, were *Matthew C. Gedansky*, state's attorney, and *Brenda Hans*, assistant state's attorney, for the appellee (state).

Opinion

ROGERS, C. J. This appeal raises the question of whether a party who is named as a joint holder of a bank account necessarily is a joint owner of the funds deposited in that account and, therefore, may not be criminally prosecuted for the wrongful withdrawal of those funds. The defendant, Kathleen Pamela Lavigne, appeals[1] from the judgment of the Appellate Court upholding her conviction, after a jury trial, of larceny in the second degree by embezzlement from a person who is sixty years of age or older in violation of General Statutes § 53a-123 (a) (5).[2] *State* v. *Lavigne*, 121 Conn. App. 190, 192, 995 A.2d 94 (2010). The defendant claims that the Appellate Court improperly concluded that the trial court correctly instructed the jury that the ownership of funds in a jointly held account is a factual issue for the jury to resolve. According to the defendant, the trial court's instruction was improper because a joint holder of an account, as a matter of law, jointly owns the funds in the account and, consequently, cannot be charged with stealing those funds. We disagree and affirm the judgment of the Appellate Court.

The Appellate Court opinion recites the following relevant facts, which the jury reasonably could have found, and procedural history. "In February, 2002, the defendant went to Nashua, New Hampshire, to visit the home of the victim, her aunt, Cleopatra Matlis. Matlis, who was then eighty-seven years old, was born in New Hampshire and had lived there until 2002. On or about February 19, 2002, Matlis left New Hampshire and traveled with the defendant to Connecticut. On that same date, before departing from New Hampshire, the defendant and Matlis visited two banks in Nashua. At the first bank, the defendant removed stock certificates from a safe deposit box. At the second bank, Fleet Bank, Matlis withdrew $10,000 in cash. Once in Connecticut, the defendant and Matlis visited other banks and created accounts that named them as joint account holders. These accounts were opened with money obtained from accounts that were previously in the name of Matlis alone, as well as the proceeds from the sale of stocks that had been in Matlis' name. Two months later, on April 15, 2002, using Matlis' money for the down payment, the defendant purchased a house in Ellington. The defendant and Matlis lived together in this new house. The state alleged that over the next several months, Matlis' spending habits changed dramatically [from her previous style, which had been very frugal]. Prior to that, between February 27 and March 4, 2002, Matlis cashed stock certificates that she had inherited from her father, totaling $134,063.49. On August 2, 2002, the defendant executed a listing agreement with a realtor for the sale of Matlis' home in Nashua.

"On October 4, 2002, Matlis was diagnosed with pri-

mary degenerative dementia. On October 10, 2002, the Ellington Probate Court found that she was incapable of managing her affairs because of her dementia and that irreparable injury to her financial and legal affairs would result if a temporary conservator was not appointed. The Probate Court appointed attorney Steven Allen as the temporary conservator of her estate. On November 7, 2002, Allen accepted his appointment as permanent conservator of the estate and person of Matlis. Between October 10 and 22, 2002, the defendant withdrew approximately $3307 from two checking accounts jointly held by Matlis and the defendant at [the] Savings Bank of Manchester. Matlis died on November 18, 2002.

"On January 25, 2007, the state filed an amended information charging the defendant with five counts of larceny in the first degree in violation of General Statutes § 53a-122 (a) (2) and five counts of larceny in the second degree in violation of § 53a-123 (a) (2) and (5). A jury trial began on February 13, 2007, and on March 27, 2007, the defendant was found guilty of one count of larceny in the second degree in violation of § 53a-123 (a) (5). The court declared a mistrial as to the nine remaining counts. On May 30, 2007, the defendant was sentenced to five years imprisonment, execution suspended after six months, and five years probation. She also was required to pay $3307 restitution to the estate of Matlis as a condition of probation." Id., 193–94. The defendant's appeal to the Appellate Court followed.

In the Appellate Court, the defendant claimed, inter alia, that she could not be held criminally liable under § 53a-123 (a) (5) because she was a joint holder, along with Matlis, of the bank account from which she was accused of making illegal withdrawals. Id., 200. She argued specifically that the trial court improperly had instructed the jurors to the contrary, namely, that it was their duty to determine who owned the funds that were held jointly by the defendant and Matlis. Id. The Appellate Court rejected the defendant's claim, reasoning that General Statutes § 36a-290,[3] a provision of Connecticut's banking statutes that governs joint deposit and share accounts, was not dispositive of the question of ownership. Id., 203–204. Because the Appellate Court was unaware of any Connecticut case law governing legal rights to funds as between joint holders, it concluded that the trial court properly had instructed the jurors that the issue of ownership rights was a factual one for the jurors to resolve. Id., 204. This appeal followed.

The defendant claims that the Appellate Court improperly upheld the trial court's jury instructions because, as a joint holder of the accounts in question, she cannot, as a matter of law, be found criminally liable for withdrawing funds from those accounts. She contends that the trial court misinterpreted § 36a-290

when it concluded that the statute was not dispositive as to the ownership of funds in a jointly held account. According to the defendant, the "clear effect of [§ 36a-290] is to establish equal ownership rights in all the joint account holders during their lifetime and beyond." Consequently, the defendant claims, she wrongfully "has been convicted of a felony for taking her own money." The state contends, to the contrary, that the trial court properly instructed the jury that the ownership rights in the jointly held accounts presented issues of fact for the jury's determination. We agree with the state.[4]

Because the defendant did not preserve this issue in the trial court by raising an objection to the relevant jury instructions, she seeks to prevail pursuant to the doctrine of *State* v. *Golding*, 213 Conn. 233, 567 A.2d 823 (1989).[5] A defendant can prevail on an unpreserved constitutional claim under *Golding* "only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation clearly exists and clearly deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt." (Emphasis in original.) Id., 239–40. "The first two [prongs of *Golding*] involve a determination of whether the claim is reviewable; the second two . . . involve a determination of whether the defendant may prevail." *State* v. *George B.*, 258 Conn. 779, 784, 785 A.2d 573 (2001). We agree with the Appellate Court that the record is adequate to review the defendant's claim and that the claim, which alleges an improper instruction on an element of an offense, is of constitutional magnitude. See *State* v. *DeJesus*, 260 Conn. 466, 472–73, 797 A.2d 1101 (2002). We conclude, however, that the Appellate Court properly determined that the alleged constitutional violation did not clearly exist or deprive the defendant of a fair trial.

We review the defendant's claim of instructional impropriety pursuant to the following standard of review. "The pertinent test is whether the charge, read in its entirety, fairly presents the case to the jury in such a way that injustice is not done to either party under the established rules of law. . . . Thus, [t]he whole charge must be considered from the standpoint of its effect on the [jurors] in guiding them to the proper verdict . . . and not critically dissected in a microscopic search for possible error. . . . Accordingly, [i]n reviewing a constitutional challenge to the trial court's instruction, we must consider the jury charge as a whole to determine whether it is reasonably possible that the instruction misled the jury. . . . In other words, we must consider whether the instructions [in totality] are sufficiently correct in law, adapted to the issues and

ample for the guidance of the jury." (Internal quotation marks omitted.) *State* v. *Apodaca*, 303 Conn. 378, 390–91, 33 A.3d 224 (2012).

The defendant was convicted of one count of larceny in the second degree. Pursuant to statute, "[a] person commits larceny when, with intent to deprive another of property or to appropriate the same to himself or a third person, he wrongfully takes, obtains or withholds such property *from an owner*." (Emphasis added.) General Statutes § 53a-119; see also *State* v. *Calonico*, 256 Conn. 135, 153, 770 A.2d 454 (2001) ("[t]he elements of larceny include: [1] the wrongful taking or carrying away of the personal property of another; [2] the existence of a felonious intent in the taker to deprive the owner of [the property] permanently; and [3] the lack of consent of the owner" [internal quotation marks omitted]). The statutes governing larceny further define "owner" as "any person who has a right to possession superior to that of a taker, obtainer or withholder"; General Statutes § 53a-118 (a) (5); and provide that "[*a*] *joint* or common *owner* of property shall not be deemed to have a right of possession thereto superior to that of *any other joint* or common *owner* thereof." (Emphasis added.) General Statutes § 53a-118 (c).[6] The trial court correctly instructed the jury as to each of the foregoing principles. Accordingly, the jurors could not find the defendant guilty of larceny in the second degree if they first found that she, along with Matlis, was a "joint owner" of the bank accounts in question. In regard to joint ownership, the trial court instructed the jury as follows: "Under Connecticut law, money deposited into a joint bank account does not necessarily equate to joint ownership. The statute governing joint bank accounts [§ 36a-290] is one that was written to provide joint access to money in these accounts and to protect the banks from claims when one joint account owner withdraws funds from the joint account. It does not, in and of itself, determine ownership interests in the disputed funds."

Subsequently, the trial court informed the jurors that it had taken judicial notice of § 36a-290, and it read to them the full text of subsections (a) and (b) of the statute. See footnote 3 of this opinion for the relevant statutory text. The court then stated: "You are advised that under Connecticut law this statute serves only as a bank protection provision and does not determine ownership interests in disputed funds. The statute recognizes account holders' rights to money as a debt due by the bank. *It does not recognize account holders' rights to the mon*[*eys*] *as between holders. That is your responsibility as a jury*." (Emphasis added.)

Our review of long-standing jurisprudence concerning § 36a-290 or its predecessor provision and other cases in which the ownership of joint bank accounts was at issue convinces us that the trial court's instruc-

tion, contrary to the claim of the defendant, was a correct statement of the law. In *Grodzicki* v. *Grodzicki*, 154 Conn. 456, 226 A.2d 656 (1967), the plaintiff, who was the defendant's former husband, prevailed in an action alleging conversion against the defendant for her withdrawal of funds from a jointly held account that she had opened and to which she had been the sole contributor. This court reversed the judgment, in part because it disagreed with the plaintiff's argument that General Statutes (Rev. to 1962) § 36-3,[7] the predecessor to § 36a-290, "created a conclusive presumption that the defendant wife intended to vest an undivided one-half interest [in the account] in the plaintiff as of the time she put his name on the account and that his right to this interest continued even after the defendant withdrew the funds from the account." Id., 462. Reviewing the statutory language, the court considered it "obvious" that the provision was intended to protect banks by authorizing, in the case of a joint account, "payment by the bank to any of the codepositors during the lifetime of all of them or to the survivor or survivors after the death of one or more of them . . . ." Id., 462–63. The court explained further that, although the statute creates a presumption, upon the death of a joint account holder, that the intent of all parties was to vest ownership of the account in the survivor or survivors, that presumption "has no application to an action between the parties when all of them are alive." Id., 463. In short, the "statute does not determine the respective rights of the parties inter vivos." Id. Rather, for a determination of those rights, "we must look to our common law . . . ." Id.[8]

The common law referenced is equally clear in establishing that the ownership of a jointly held bank account, while the account holders are still living, is a question of fact to be determined by examining the intent of the account holders and the totality of the circumstances surrounding the creation and maintenance of the joint account.[9] Stated otherwise, in the case of a joint holder who has not herself contributed any of the funds to the joint account in which she claims an ownership interest, the factual question is whether the other joint holder and sole contributor of the funds, by creation of the joint account, intended to effect an immediate, inter vivos transfer or gift of the funds to the noncontributing joint holder. See *Tyers* v. *Coma*, 214 Conn. 8, 13, 570 A.2d 186 (1990) (whether wife made inter vivos gift of her workers' compensation settlement when she placed it in bank account jointly held with husband "is a factual matter to be determined by the trial court"); *Bergen* v. *Bergen*, 177 Conn. 53, 56, 411 A.2d 22 (1979) ("Although the creation of a joint account provides some evidence of an intent to make a gift, it is by no means conclusive. . . . [T]he issue of intent is a question of fact . . . ."); *Heffernan* v. *New Britain Bank & Trust Co.*, 175 Conn. 8, 12, 392

A.2d 481 (1978) ("[t]he question of [a joint holder's] intention [to transfer possession and enjoyment of a joint account to the other joint holder immediately, or rather, after death] is one of fact, to be determined by reference to the particular facts of each case"); *Flynn* v. *Hinsley*, 142 Conn. 257, 262, 113 A.2d 351 (1955) ("[t]he question whether in delivering a bankbook it was the intention of the claimed donor immediately to transfer title to the bank account [to one named as a joint holder] is one of fact for the determination of the trier"); *Bachmann* v. *Reardon*, 138 Conn. 665, 667, 88 A.2d 391 (1952) ("[a] question of intent [as to the making of a present gift by transferring an account into joint ownership] is a question of fact" [internal quotation marks omitted]).[10]

The defendant does not acknowledge or discuss the foregoing case law, but instead, claims that this court's decision in *Fleet Bank Connecticut, N.A.* v. *Carillo*, 240 Conn. 343, 691 A.2d 1068 (1997), which construed § 36a-290 in the debtor-creditor context, establishes that she is a joint owner of the funds in the accounts at issue by virtue of her status as a joint holder of those accounts.[11] In *Carillo*, after examining the language of § 36a-290 in relation to that of General Statutes § 52-367b, which governs executions on bank accounts by judgment creditors; see id., 347–50; this court concluded that the trial court correctly had held that "each coholder of a joint account may be considered an 'owner' of the entire account *for purposes of a third party creditor's right to execute against that account in satisfaction of one coholder's debt*." (Emphasis added.) Id., 346. In addition to analyzing the relevant statutory language and the interplay between the two statutory provisions, the court relied on *Masotti* v. *Bristol Savings Bank*, 43 Conn. Sup. 360, 364, 653 A.2d 836 (1994), aff'd, 232 Conn. 172, 653 A.2d 179 (1995) (adopting trial court's decision), which similarly had held that, "*for purposes of a creditor's setoff rights*, [t]he coholders of a joint account are considered owners of the entire account and either may withdraw." (Emphasis added; internal quotation marks omitted.) *Fleet Bank Connecticut, N.A.* v. *Carillo*, supra, 351.

As evidenced by the accompanying analyses and the language italicized in the preceding paragraph, the holdings of *Carillo* and *Masotti* were intended to be limited to their particular contexts. That limitation was made abundantly clear in *Carillo*, wherein the court explicitly discussed *Grodzicki* v. *Grodzicki*, supra, 154 Conn. 456, and made clear that *Grodzicki* still controlled in cases in which the issue was ownership of joint accounts as between joint holders, but was inapplicable in a dispute between a third party creditor and a joint holder debtor. *Fleet Bank Connecticut, N.A.* v. *Carillo*, supra, 240 Conn. 353–54. The court clarified that the holding of *Grodzicki* remained intact by restating: "In a conflict between coholders, therefore, § 36a-290 does not serve

to convert the deposits made by one coholder into an inter vivos gift to another coholder." Id., 353. Additionally, nothing in *Carillo* remotely suggests that this court intended to overrule decades of jurisprudence establishing that the ownership of a joint account, as between its coholders, is not controlled by statute, but, rather, is a question of fact dependent on the intent of the joint account holders and all of the circumstances surrounding the joint account's creation and maintenance.

The defendant asserts that the foregoing construction of § 36a-290 sends the "disquieting message that our law protects banks, but leaves people vulnerable to attack." According to the defendant, Connecticut's courts "acknowledge a coholder's individual ownership interest in the entirety of a joint account when the purpose is to protect a bank or when the purpose is to protect a third party creditor, but somehow that ownership interest disappears when the protection is for the person who coholds the joint account and the danger is the possibility of criminal prosecution." We reject these assertions categorically. The short answer is that the defendant's argument, that the protection afforded by § 36a-290 should be broadened to immunize joint account holders from any consequences for improper withdrawals, is better directed at the legislature.[12] The longer answer is that the fundamental purpose of the criminal law is not to protect wrongdoers from prosecution. Rather, it is to protect the public, in particular its most vulnerable citizens, from harm by punishing those who have inflicted it. See *State* v. *Lytell*, 206 Conn. 657, 666, 539 A.2d 133 (1988); 1 W. LaFave, Substantive Criminal Law (2d Ed. 2003) § 1.2 (e), p. 18.

In sum, we agree with the Appellate Court that the trial court properly instructed the jury that the issue of the ownership of the funds in joint accounts from which the defendant was accused of embezzling was a factual one for the jury's determination. Because the trial court's jury instruction was legally correct, the Appellate Court properly concluded that the defendant had failed to establish that a constitutional violation clearly existed and deprived her of a fair trial.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

[1] We granted the defendant's petition for certification to appeal from the judgment of the Appellate Court, limited to the following question: "Did the Appellate Court properly conclude that the trial court's instructions as to General Statutes § 53a-123 (a) (5) were not improper when the defendant was the joint owner of the subject bank account?" *State* v. *Lavigne*, 298 Conn. 909, 4 A.3d 835 (2010). We agree with the state that the certified question is inaptly worded in that it presumes to resolve in the defendant's favor the very issue raised by this appeal. Accordingly, we reword slightly the certified question to replace "joint owner" with "joint holder." See *DiPietro* v. *Farmington Sports Arena, LLC*, 306 Conn. 107, 111 n.2, 49 A.3d 951 (2012) ("this court may modify certified questions to render them more accurate in framing issues presented" [internal quotation marks omitted]).

[2] General Statutes § 53a-123 (a) provides in relevant part: "A person is guilty of larceny in the second degree when he commits larceny, as defined in section 53a-119, and . . . (5) the property, regardless of its nature or

value, is obtained by embezzlement, false pretenses or false promise and the victim of such larceny is sixty years of age or older or is blind or physically disabled . . . ."

General Statutes § 53a-119 provides in relevant part: "A person commits larceny when, with intent to deprive another of property or to appropriate the same to himself or a third person, he wrongfully takes, obtains or withholds such property from an owner. Larceny includes, but is not limited to:

"(1) Embezzlement. A person commits embezzlement when he wrongfully appropriates to himself or to another property of another in his care or custody. . . ."

[3] General Statutes § 36a-290 provides in relevant part: "(a) When a deposit account has been established at any bank, or a share account has been established at any Connecticut credit union or federal credit union, in the names of two or more natural persons and under such terms as to be paid to any one of them, or to the survivor or survivors of them, such account is deemed a joint account, and any part or all of the balance of such account, including any and all subsequent deposits or additions made thereto, may be paid to any of such persons during the lifetime of all of them or to the survivor or any of the survivors of such persons after the death of one or more of them. Any such payment constitutes a valid and sufficient release and discharge of such bank, Connecticut credit union or federal credit union, or its successor, as to all payments so made.

"(b) The establishment of a deposit account or share account which is a joint account under subsection (a) of this section is, in the absence of fraud or undue influence, or other clear and convincing evidence to the contrary, prima facie evidence of the intention of all of the named owners thereof to vest title to such account, including all subsequent deposits and additions made thereto, in such survivor or survivors, in any action or proceeding between any two or more of the depositors, respecting the ownership of such account or its proceeds. . . ."

[4] The state also contends, as an alternate ground to affirm the Appellate Court's judgment, that the defendant waived any right to challenge the trial court's jury instructions pursuant to the rule announced by this court in *State* v. *Kitchens*, 299 Conn. 447, 10 A.3d 942 (2011), which was decided and released subsequent to the Appellate Court's opinion in the present matter. In *Kitchens*, we held that, "when the trial court provides counsel with a copy of the proposed jury instructions, allows a meaningful opportunity for their review, solicits comments from counsel regarding changes or modifications and counsel affirmatively accepts the instructions proposed or given, the defendant may be deemed to have knowledge of any potential flaws therein and to have waived implicitly the constitutional right to challenge the instructions on direct appeal. Such a determination by the reviewing court must be based on a close examination of the record and the particular facts and circumstances of each case." Id., 482–83.

We agree that the defendant did not raise this claim at trial, but we conclude, after closely examining the record and the particular facts and circumstances of the case, that the claim was not waived under the rule of *Kitchens*. Although the trial court gave counsel a copy of its proposed jury instructions and solicited comments at a charging conference, counsel reviewed the court's proposed instructions only for the approximately ninety minutes that elapsed between the conclusion of testimony and the commencement of the charging conference. The trial court characterized the fifty-two pages of instructions as particularly lengthy, referring to them variously as a "novel" and the "judicial equivalent of Tolstoy's War and Peace." Closing arguments for the trial, which had lasted approximately six weeks, was postponed from that same afternoon to the following morning, because defense counsel required additional time in which to prepare her remarks. Under the particular facts and circumstances of this case, we decline to infer that defense counsel had knowledge of the potential issue raised herein such that she may be deemed to have waived it. See *State* v. *Kitchens*, supra, 299 Conn. 495 n.28 ("The significance of a meaningful opportunity for review and comment cannot be underestimated. Holding an on-the-record charge conference, and even providing counsel with an advance copy of the instructions, will not necessarily be sufficient in all cases to constitute waiver of *Golding* review if defense counsel has not been afforded adequate time, under the circumstances, to examine the instructions and to identify any potential flaws.").

[5] The defendant also requests that we review her claims under our inherent supervisory authority and the plain error doctrine. We decline to do so because our supervisory powers and the plain error doctrine are reserved for extraordinary circumstances that are not implicated by the present case. See *Smith* v. *Andrews*, 289 Conn. 61, 79, 959 A.2d 597 (2008).

[6] "The common law view of larceny is that one co-owner (e.g., a partner, tenant in common, joint tenant) cannot steal from the other co-owner." 3 W. LaFave, Substantive Criminal Law (2d Ed. 2003) § 19.4 (c), p. 85. Section 53a-118 (c) is consistent with this principle. The "modern trend," however, as reflected in the Model Penal Code and most modern state criminal codes, "is to provide by statute that it is no defense to larceny that the thief has an interest in the property taken, so long as the other has an interest therein to which the thief is not entitled." Id.; see also id., p. 85 n.42 (listing statutes). In light of this trend, we question the defendant's assertion in her appellate brief, unaccompanied by any citation or analysis, that "other jurisdictions" disallow prosecutions for larceny of funds wrongfully taken from joint accounts.

[7] General Statutes (Rev. to 1962) § 36-3 provides in relevant part: "(1) When a deposit has been made in this state in any state bank and trust company, national banking association, savings bank, industrial bank or private bank, or an account has been issued in this state by any building or savings and loan association or federal savings and loan association or credit union, in the names of two or more persons and in form to be paid to any one or the survivor, or survivors, of them, such deposit or account and any additions thereto made by any of such persons after the making or issuance thereof, together with all dividends or interest or increases credited thereon, shall be held for the exclusive use of such persons and may be paid to any of them during the lifetime of all of them or to the survivor or survivors after the death of one or more of them, and such payment and the receipt or acquittance of the person or persons to whom such payment is made shall be a valid and sufficient release and discharge for all payments so made. The making of a deposit or issuance of an account in such form shall, in the absence of fraud or undue influence, be conclusive evidence, in any action or proceeding respecting the ownership of, or the enforcement of the obligation created or represented by, such deposit or account, of the intention of all of the named owners thereof to vest title to such deposit or account, including all additions and increments thereto, in such survivor or survivors. . . ."

Although § 36-3 (1) has undergone changes since our decision in *Grodzicki* v. *Grodzicki*, supra, 154 Conn. 456, the defendant does not argue that the differences render inapplicable the holding in *Grodzicki*, and our close comparison of the earlier revision of the statute with the present one convinces us that the holding has not been undermined. As a result of the redesignation of subsections and the reorganization of the banking statutes between 1992 and 1995, "[t]he first clause in General Statutes (Rev. to 1962) § 36-3 (1) ultimately became General Statutes § 36a-290 (a), and the second clause of § 36-3 (1) ultimately became § 36a-290 (b)." *Durso* v. *Vessichio*, 79 Conn. App. 112, 118 n.10, 828 A.2d 1280 (2003). The other amendments to § 36-3 were largely technical in nature, except for No. 417 of the 1971 Public Acts, which substituted "prima facie" for "conclusive" in the second clause, and added "or other clear and convincing evidence to the contrary" to fraud and undue influence as a means of rebutting the presumption of survivorship rights established by that clause. See footnote 3 of this opinion.

[8] The holdings of *Grodzicki* have been reiterated on a number of occasions. See *Bergen* v. *Bergen*, 177 Conn. 53, 57 n.4, 411 A.2d 22 (1979) (statute does not establish ownership interests in conversion action between living joint account holders); *Durso* v. *Vessichio*, 79 Conn. App. 112, 119, 828 A.2d 1280 (2003) (§ 36a-290 [a] not applicable to establish ownership in conversion action between living joint account holders; statute "serves only as a bank protection provision and does not determine ownership interests in the disputed funds"); *Monachelli* v. *Mechanics & Farmers Savings Bank*, 13 Conn. App. 662, 665, 538 A.2d 1089 (1988) (statute insulates bank from liability in action brought by one joint holder alleging that bank improperly permitted other joint holder to withdraw funds); see also *Durso* v. *Vessichio*, supra, 122 (§ 36a-290 [b] establishes rebuttable presumption "that the creation of a joint account is evidence of the intent of all the named owners to have the proceeds, *on the death of one of them*, go to the other joint account holder or holders" [emphasis added]); *Bunting* v. *Bunting*, 60 Conn. App. 665, 679, 760 A.2d 989 (2000) (holding, in probate appeal, that § 36a-290 [b] creates rebuttable presumption "that the creation of a joint account is evidence of the intent of the person creating the account to have the proceeds go, *upon his or her death*, to the other joint account holder" [emphasis added]); *Cooper* v. *Cavallaro*, 2 Conn. App. 622, 626, 481 A.2d 101 (1984) (holding, in dispute over decedent's assets, that "[t]he intent of the legislature in enacting . . . [§ 36a-290] was to make the existence of a joint bank account prima facie evidence of ownership *by the survivor* which can only be rebutted by clear and convincing evidence to the contrary"

[emphasis added]).

[9] The issue of ownership upon the death of a joint account holder similarly is a factual one. *Driscoll* v. *Norwich Savings Society*, 139 Conn. 346, 349, 93 A.2d 925 (1952); *Clayman* v. *Prochaska*, 2 Conn. App. 430, 435, 479 A.2d 1214 (1984). It is subject, however, to the rebuttable presumption of ownership in the survivor(s) created by operation of § 36a-290 (b). See, e.g., *Garrigus* v. *Viarengo*, 112 Conn. App. 655, 668–71, 963 A.2d 1065 (2009) (statutory presumption rebutted by clear and convincing evidence that defendant joint holder fraudulently induced decedent to create joint accounts by falsely representing that funds would be distributed to other survivors according to decedent's wishes); *Clayman* v. *Prochaska*, supra, 435 (statutory presumption not rebutted when evidence showed that decedent intended that defendant joint holder, decedent's former wife, would receive funds in joint account upon death of decedent).

[10] The defendant contends that ownership concepts from our civil case law should have no bearing in a matter that concerns criminal liability. The defendant's contention is curious, in that she herself relies heavily on civil case law in support of her claim on appeal. In any event, we are not persuaded that this approach is improper. See, e.g., *State* v. *Courchesne*, 296 Conn. 622, 677, 998 A.2d 1 (2010) (citing, inter alia, trial courts' application of "born alive rule" in civil negligence cases as evidence that rule is part of Connecticut's criminal common law). Moreover, several of the cases cited in this opinion were actions alleging the tort of conversion. The tort of conversion and the crime of larceny are very similar in that each requires proof that a defendant wrongfully took property owned by another person, although larceny includes an additional element of intent to deprive. See *Mystic Color Lab*, *Inc.* v. *Auctions Worldwide*, *LLC*, 284 Conn. 408, 418–19, 934 A.2d 227 (2007); *Deming* v. *Nationwide Mutual Ins. Co.*, 279 Conn. 745, 771, 905 A.2d 623 (2006); *State* v. *Calonico*, supra, 256 Conn. 153. The defendant offers no compelling reason why the same element—ownership, or lack thereof—should be proven differently in the criminal, versus the civil, context.

[11] Additionally, the defendant cites selectively to dicta, in cases that do not address directly the question of ownership of joint accounts, which suggests, inaccurately, that joint holding and joint ownership are one and the same. See *United States* v. *First Bank*, 737 F.2d 269, 270 n.2 (2d Cir. 1984) (observing, in dispute over defendant bank's compliance with tax audit summons, that "[u]nder Connecticut law, co-holders of a joint account are each considered owners of the entire account, with access to the entire amount therein"); *In re Probate Appeal of Mikoshi*, 124 Conn. App. 536, 540, 5 A.3d 569 (2010) (declining to reach joint ownership claim after concluding that funds validly were withdrawn and gifted); *Ardito* v. *Olinger*, 65 Conn. App. 295, 298, 782 A.2d 698 (holding that plaintiff lacked standing to contest defendant's withdrawals, pursuant to power of attorney, from joint bank accounts established by decedent father), cert. denied, 258 Conn. 942, 786 A.2d 429 (2001); *Grass* v. *Grass*, 47 Conn. App. 657, 660–61, 706 A.2d 1369 (1998) (holding that joint account never validly created). For obvious reasons, the decisions discussed in the body of this opinion, each of which addressed joint ownership as an essential holding of the case, are controlling.

[12] Given that judicial constructions of the statute as being merely a "bank protection" provision have existed for at least forty-five years, it would appear that the legislature is in agreement with those constructions. See *Hummel* v. *Martin Transport*, *Ltd.*, 282 Conn. 477, 494, 923 A.2d 657 (2007) ("[t]ime and again, we have characterized the failure of the legislature to take corrective action [in response to this court's construction of a statute] as manifesting the legislature's acquiescence in [that] construction"). Affording statutory protection to banks and creditors, but not to joint account holders, may well reflect the reality that banks and creditors are in no position to know the circumstances surrounding the opening and funding of an account jointly held by others, whereas joint account holders are uniquely privy to their own intentions, contributions and communications vis-á-vis their jointly held accounts.