

SUPREME COURT PENDING CASES

The following appeals are fully briefed and eligible for assignment by the Supreme Court in the near future.

STATE *v.* HORVIL F. LEBRICK, SC 20083

Judicial District of Hartford

Criminal; Whether Trial Court Properly Admitted Probable Cause Hearing Testimony of Unavailable Witness; Whether Trial Court Properly Admitted Testimony of Firearm and Tool Mark Expert. The defendant and his cousins attempted to rob the East Hartford apartment of Omari Bennett. During the attempted robbery, Shawna Lee Hudson, Bennett's girlfriend, was shot and killed. The defendant was charged with and convicted after a jury trial of felony murder and other crimes. He appealed, and the Appellate Court (179 Conn. App. 221) affirmed the judgment of conviction. The Appellate Court rejected the defendant's claim that the trial court improperly admitted the probable cause hearing testimony of Keisha Parks, a material witness who was unavailable for trial, in violation of Practice Book § 8-6 (1), the hearsay exception for unavailable declarants, and his confrontation clause rights under the sixth amendment of the federal constitution. The Appellate Court noted that, in order for Parks' testimony to be admissible under § 8-6 (1), the state was required to demonstrate that she was unavailable despite its good faith efforts to procure her attendance. The Appellate Court observed that the state had attempted to track down Parks using her last known address and phone number as well as additional addresses and phone numbers associated with her that were discovered through computer database searches. It concluded that, while the state's efforts were "not exhaustive," they had nonetheless been undertaken in good faith for purposes of § 8-6 (1). The Appellate Court also concluded that the defendant's confrontation clause rights were not implicated by the admission of Parks' testimony because, although she was not subject to cross-examination at trial, she had been subject to cross-examination at the probable cause hearing. Finally, the Appellate Court rejected the defendant's claim that the trial court improperly admitted the testimony of James Stephenson, a firearm and tool mark expert, in violation of the defendant's confrontation clause rights. Stephenson testified about his review of a ballistic evidence report and photographs prepared by a forensic analyst who passed away before trial. The defendant argued that the admission of the Stephenson's testimony violated the principle set forth in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009), and *Bullcoming v. New Mexico*, 564 U.S. 647 (2011), that a defendant's

confrontation clause rights are implicated by the admission of a forensic report without accompanying testimony by the analyst who prepared it. The Appellate Court disagreed, noting that the report and photographs themselves were not introduced into evidence, that Stephenson had testified only as to his opinion after his review of the report and photographs, and that the defendant had been able to cross-examine Stephenson at trial. The defendant has been granted certification to appeal the Appellate Court's decision. The Supreme Court will decide whether the Appellate Court properly concluded that the trial court properly admitted Parks' probable cause testimony and Stephenson's testimony concerning ballistic evidence collected at the crime scene.

MICHAEL A. FIANO *v.* OLD SAYBROOK FIRE COMPANY NO. 1, INC.,
et al., SC 20135

Judicial District of Middlesex

Negligence; Agency; Respondeat Superior; Whether Appellate Court Properly Affirmed Summary Judgment for Defendants on Vicarious Liability Claims on Concluding that Volunteer Firefighter was not Acting in Course of Employment at Time of Motor Vehicle Accident. The plaintiff brought this negligence action to recover damages for injuries he sustained when the motorcycle he was operating collided with a vehicle being driven by James Smith, a junior volunteer firefighter employed by Old Saybrook Fire Company No. 1, Inc. (fire company), which provides emergency services for the town of Old Saybrook (town). The collision occurred as Smith, who was driving his personal vehicle, exited the firehouse's driveway. Smith had been at the firehouse that morning monitoring the radio, but at the time of the collision, he was leaving the firehouse to go home to attend to some personal affairs. The plaintiff alleged that the fire company and the town (defendants) were vicariously liable for Smith's negligence pursuant to General Statutes §§ 7-308 and/or 52-557n, which provide that a municipality is liable for the negligent acts or omissions of its agent or employee only if that agent or employee was acting in the course of his employment. The defendants moved for summary judgment, claiming that there was no genuine issue of material fact that Smith was not acting in the course of his employment or within the scope of his official duties at the time of the accident. The trial court agreed and rendered judgment for the defendants. The plaintiff appealed, claiming that summary judgment should not have been granted because there was a genuine issue of material fact as to

whether Smith was acting to the benefit of his employer and in furtherance of his employer's interests when he collided with the plaintiff in front of the firehouse. The plaintiff emphasized that Smith was monitoring the radio at the firehouse prior to his departure, that Smith's personal vehicle was an authorized emergency vehicle that was subject to the fire company's policies and control, and that the collision occurred while Smith was still on the fire company's property. The Appellate Court (180 Conn. App. 717) affirmed the judgment for the defendants. The court concluded that Smith's purpose for leaving the firehouse was dispositive of the defendants' liability, and held that the defendants could not be held vicariously liable for Smith's negligence because Smith was not acting in the course of his employment at the time of the accident. The plaintiff appeals, and the Supreme Court will decide whether the Appellate Court properly affirmed the judgment for the defendants on the finding that there was no issue of material fact as to whether Smith was acting for the benefit of the defendants at the time of the accident.

The summaries appearing here are not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. These summaries are prepared by the Staff Attorneys' Office for the convenience of the bar. They in no way indicate the Supreme Court's view of the factual or legal aspects of the appeal.

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