

SUPREME COURT PENDING CASES

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

STATE *v.* JAYEVON BLAINE, SC 20087
Judicial District of Fairfield

Criminal; Conspiracy; Plain Error; Whether Failure to Instruct Jury Regarding Requisite Intent for Conspiracy in Accordance with *State v. Pond* Constituted Plain Error. The defendant was convicted of conspiracy to commit robbery in the first degree. The conviction stemmed from the defendant's involvement in an alleged conspiracy with four coconspirators to rob a drug dealer, which resulted in the shooting death of the victim. At trial, the defendant's four coconspirators each testified that they, together with the defendant, had devised a plan to rob the victim with a weapon and that the weapon would be carried by the defendant. In its jury charge, the trial court instructed on the elements of the substantive crime of robbery in the first degree, including that one or more participants in the robbery be armed with a deadly weapon, and that to find the defendant guilty of conspiracy, the jury had to find that he specifically intended to commit the substantive crime. The defendant appealed, arguing that the trial court committed plain error in failing to instruct the jury that a guilty verdict on the conspiracy charge required a finding that he specifically intended that one or more participants in the robbery be armed with a deadly weapon. The defendant relied on *State v. Pond*, 315 Conn. 451 (2015), which held that, in order to be convicted of conspiracy, a defendant must have specifically intended that every element of the planned offense be accomplished, including elements of the underlying crime that do not require specific intent. The Appellate Court (179 Conn. App. 499) affirmed the defendant's conviction, concluding that the record did not support his claim of plain error. The Appellate Court found that because the trial court instructed the jury that a guilty verdict on the conspiracy charge required a finding that the defendant specifically intended to commit the crime of robbery in the first degree and because the armed with a deadly weapon requirement was included in the definition of the underlying crime, it was at least arguable that the instruction logically required the jury to find that the defendant had agreed that a participant in the robbery would be armed with a deadly weapon. The Appellate Court further found that the conspiracy instruction did not result in manifest injustice in light of ample evidence presented at trial that the defendant had agreed to the robbery and had agreed that one of the participants would use a weapon. The defendant appeals, and the Supreme Court

will determine whether the Appellate Court properly concluded that the trial court's failure to instruct the jury in accordance with *Pond* did not constitute plain error.

JENZACK PARTNERS, LLC *v.* STONERIDGE
ASSOCIATES, LLC, et al., SC 20188/20189
Judicial District of Middletown

Foreclosure; Hearsay; Whether Appellate Court Properly Ruled That Plaintiff had Standing to Foreclose Mortgage Given by Guarantor Where Plaintiff had not Been Assigned Guarantee; Whether Appellate Court Properly Ruled that Evidence as to Amount Due on Note was Wrongly Admitted Under Business Records Exception to Hearsay Rule. In 2006, Stoneridge Associates, LLC, obtained a \$1.65 million construction loan from Sovereign Bank. Stoneridge executed a promissory note in connection with the loan. When the loan was modified in 2008, the defendant Jennifer Tine executed a limited guarantee in favor of Sovereign Bank guaranteeing repayment of the sum due under the Stoneridge note as modified. As security for her guarantee, the defendant gave Sovereign Bank a mortgage (Tine mortgage) on her residential property in Cromwell. Sovereign Bank subsequently assigned the Tine mortgage and its interests in the Stoneridge note to the plaintiff. The plaintiff brought this action to foreclose on the Tine mortgage in 2012, alleging that Stoneridge had defaulted on its obligations under the note. The defendant argued that the trial court lacked subject matter jurisdiction over the foreclosure action because the plaintiff did not have standing to seek foreclosure. She argued that her guarantee was not specifically assigned to the plaintiff. The defendant also claimed that the plaintiff failed to establish the amount of the debt due on the note because evidence of the computation of the debt, which included a starting balance provided to the plaintiff by Sovereign Bank, was inadmissible hearsay. The trial court rendered a judgment of strict foreclosure, ruling that the plaintiff had standing to foreclose and that the plaintiff had properly established the amount of the debt due on the note. The defendant appealed, and the Appellate Court (183 Conn. App. 128) reversed the judgment of foreclosure and ordered a new trial. It rejected the defendant's claim that the plaintiff lacked standing to foreclose because Sovereign Bank did not specifically assign the defendant's guarantee to the plaintiff, ruling that an examination of the surrounding circumstances demonstrated that Sovereign Bank had intended to equitably assign the guarantee as part of its assignment of the note and reasoning that the note had no value to the plaintiff

without the guarantee. The Appellate Court concluded, however, that the trial court erred in holding that the plaintiff had established the debt due on the note, finding that the trial court had wrongly deemed an exhibit that detailed the amount due admissible under the business records exception to the hearsay rule. The Supreme Court granted both the defendant and the plaintiff certification to appeal. In the defendant's appeal, the Supreme Court will decide whether the Appellate Court properly concluded that the plaintiff had standing to seek foreclosure of the Tine mortgage even though Sovereign Bank did not assign the defendant's guarantee to the plaintiff. In the plaintiff's appeal, the Supreme Court will consider whether the Appellate Court properly reversed the judgment of foreclosure on concluding that the exhibit detailing the amount of the debt was not admissible under the business records exception to the hearsay rule.

STATE *v.* RAASHON JACKSON, SC 20193
Judicial District of Fairfield

Criminal; Whether Trial Court Properly Admitted Expert Testimony on Cell Phone Location Data; Whether *Porter* Hearing Required Prior to Admission of Cell Phone Location Evidence; Whether Trial Court Properly Admitted Consciousness of Guilt Evidence. The defendant was charged with murder, conspiracy to commit murder, and assault in the first degree in connection with a shooting death in Bridgeport. During jury selection seven days before the trial, the state disclosed to the defense a PowerPoint presentation created by an expert for the state. The expert had been retained to analyze global positioning system and cell phone data to determine the locations of the defendant and others at the time of the shooting. The defendant was convicted, and he appealed. The Appellate Court (183 Conn. App. 623) affirmed the conviction, rejecting the defendant's claims that the trial court improperly denied his motion to preclude the testimony of the state's expert witness concerning cell phone location data and improperly denied his request in the alternative for a six week continuance to consult with his own expert. The Appellate Court determined that the trial court properly concluded that the state's belated disclosure did not warrant the exclusion of the expert witness' testimony as a sanction. The Appellate Court further determined that the trial court did not abuse its discretion in denying the defendant's request for a continuance where the defendant was able to effectively cross-examine the expert witness and where a six week continuance would have disrupted the trial. The Appellate Court posited that, even if the trial court abused its discretion, the error was

harmless in light of the relative strength of the state's case. The Appellate Court declined to review the defendant's claim that the trial court abused its discretion in admitting the testimony of the state's expert witness without first holding a hearing under *State v. Porter*, 241 Conn. 57 (1997), to assess the scientific reliability and relevancy of the testimony. The defendant relied on the then newly released decision in *State v. Edwards*, 325 Conn. 97 (2017), which held that a trial court must hold a *Porter* hearing before admitting the testimony of an expert witness cell phone location data. In refusing to review the *Edwards* claim, the Appellate Court noted that the defendant had failed to preserve the claim by requesting a *Porter* hearing at trial. Finally, the Appellate Court held that the trial court properly admitted evidence of the defendant's failure to appear in court on an unrelated matter as evidence of consciousness of guilt and properly precluded the defendant's investigator from providing testimony to rebut that of the state's cell phone expert. The Supreme Court granted the defendant certification to appeal, and it will decide whether the Appellate Court properly upheld the trial court's rulings denying the defendant's motion to preclude the testimony of the state's expert witness and his request for a six week continuance. It will also decide whether the Appellate Court properly affirmed the admission of the consciousness of guilt evidence and the exclusion of Smith's testimony. Finally, the Supreme Court will decide whether the Appellate Court properly concluded that the defendant failed to preserve his *Edwards* claim.

IN RE TEAGAN K.-O., SC 20245

Juvenile Matters at Waterford

Child Protection; Neglect; Whether Trial Court Properly Denied Father's Motion to Dismiss Petition Alleging Predictive Neglect as to Child Born in Florida. Cassandra D. and Gary O. (the mother and father) have three children together. Their first two children were ordered committed to the care and custody of the Connecticut Department of Children and Families (department). When the mother was pregnant with a third child, the couple moved to Florida, and Teagan was born in a Gainesville hospital. Days after her birth, the department filed a petition in the Superior Court for Juvenile Matters at Waterford alleging that Teagan was being neglected. The petition also alleged that the mother and father's parental rights in their first child had been terminated and that a termination petition was pending as to their second child. Florida authorities then sought that jurisdiction over Teagan be transferred to the Connecticut court. A Florida court ordered the transfer, affirming a magistrate's finding

that Connecticut was a more convenient forum state because, given the parents' long and ongoing history with the department, the witnesses and evidence pertaining to the case were located in Connecticut. The department was then granted temporary custody of Teagan, and she was transported to Connecticut and placed in a foster home with one of her siblings. The father filed a motion to dismiss the neglect petition, claiming that the Connecticut court lacked subject matter jurisdiction over the matter. The trial court denied the father's motion to dismiss, finding that it had subject matter jurisdiction over the neglect petition under the dictates of the Uniform Child Custody Jurisdiction and Enforcement Act. The court noted that a Florida trial court had declined to exercise jurisdiction on the ground that Connecticut was the more appropriate forum, that a Florida appellate court had affirmed that decision, and that a Connecticut court had accepted the conclusion of the Florida trial court. The father appeals from the order denying his motion to dismiss the neglect petition. He acknowledges that an order that denies a motion to dismiss is not ordinarily deemed a final judgment, but he argues that the ruling here is immediately appealable because it threatens irreparable harm to the parent-child relationship. The father claims, as to the merits, that the trial court wrongly determined that it had jurisdiction over a Connecticut neglect petition that alleges predictive neglect as to a child who was born in Florida to parents who left Connecticut with no intention of returning, and he urges that a petition alleging predictive neglect must allege that the neglect will likely occur in the state that is exercising jurisdiction. Finally, the father contends that the trial court confused the doctrine of forum non conveniens with the requirement that a court must have subject matter jurisdiction, and he claims that the trial court failed to properly apply the law of subject matter jurisdiction when it denied his motion to dismiss.

The Practice Book Section 70-9 (a) presumption in favor of coverage by cameras and electronic media does not apply to the case above.

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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