SUPREME COURT PENDING CASES

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

STATE *v.* JOSHUA KOMISARJEVSKY, SC 18973
Judicial District of New Haven

Criminal; Murder; Whether Defendant Denied Fair Trial as a Result of Prejudicial Pretrial Publicity; Whether Defendant Denied a Fair Trial by State's Alleged Failure to Disclose Exculpatory Evidence. The defendant was convicted of capital felony, murder, arson, sexual assault and other crimes in connection with a 2007 home invasion and triple homicide in Cheshire. He appeals, claiming that he was denied his right to a fair trial before an impartial jury when the trial court denied his requests that the trial be moved from the judicial district of New Haven to the judicial district of Stamford-Norwalk. He argues that the extensive pretrial publicity surrounding the case aroused the passions of the community and prejudiced potential jurors against him and that this is an extreme case where prejudice should be presumed because the crime was so infamous and the adverse publicity so inflammatory that it was impossible to select an impartial jury in New Haven. He further argues that, even if prejudice is not presumed, he is entitled to a new trial because he can show that actual prejudice affected the jury. In addition, the defendant claims that the state violated *Brady* v. *Maryland*, 373 U.S. 83 (1963), which requires that the prosecution disclose to the defense all evidence that might exonerate the defendant, by failing to disclose 132 pages of letters written by his codefendant, Steven Hayes, and six recordings of police communications from the date of the incident. He argues that the evidence would have supported his defense theories that he lacked the intent to kill the victims and that Cheshire police officers, due to their feelings of guilt and embarrassment regarding their inadequate response to the incident, were motivated to undermine the veracity of the exculpatory statements that the defendant made while in their custody. Among the defendant's other claims on appeal are that (1) the trial court abused its discretion in denying his challenges for cause of twelve jurors, (2) the trial court abused its discretion in denying his motions to open the evidence, for a continuance and for a mistrial in light of the state's untimely disclosure of Hayes' letters, and (3) he was denied his right to a fair trial when the state presented testimony and argument at trial that it knew or should have known was false or misleading.

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

STATE *v.* JEFFERY COVINGTON, SC 20198
Judicial District of New Haven

Criminal; Carrying a Pistol Without a Permit; Whether State Presented Sufficient Evidence that Defendant Possessed Firearm With a Barrel Less Than Twelve Inches in Length. The defendant was charged with murder, assault in the first degree, and carrying a pistol without a permit in connection with the shooting of brothers Travon and Taijhon Washington. Travon survived the shooting; Taijhon did not. While a jury was unable to reach a verdict with respect to the charges of murder and assault in the first degree, it found the defendant guilty of carrying a pistol without a permit in violation of General Statutes § 29-35. General Statutes § 29-27 defines "pistol," for purposes of § 29-35, as "any firearm having a barrel less than twelve inches in length." The defendant appealed to the Appellate Court, claiming that the evidence was insufficient to convict him of violating § 29-35 where the firearm used in the shooting was never recovered and where he claimed that the state failed to present sufficient evidence that the barrel of the firearm he allegedly used in the shooting was less than twelve inches in length. The Appellate Court (184 Conn. App. 332) rejected that claim and affirmed the defendant's conviction, finding that the circumstantial evidence presented at trial was sufficient to permit the jury to rationally infer that the barrel of the gun the defendant used in the shooting was less than twelve inches long. The court noted that a witness testified at trial that, following the shooting, the defendant was seen with what the witness described as a handgun and that the state's firearms examiner testified that the bullets recovered from Taijhon's body were consistent with bullets fired from a handgun or revolver, which is a type of handgun. The Appellate Court then looked to a dictionary definition of "handgun" as "any firearm that can be held and fired with one hand." The court then cited appellate precedent establishing that a finder of fact reasonably may infer that a handgun necessarily has a barrel of less than twelve inches in length. The Supreme Court granted the defendant's petition for certification to appeal, and it will decide whether the Appellate Court properly concluded that the state presented sufficient evidence for the jury to find the defendant guilty of carrying a pistol without a permit in violation of General Statutes § 29-35.

LIME ROCK PARK, LLC *v.* PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY, SC 20237/20238/20239
Judicial District of Litchfield

Zoning; Whether General Statutes § 14-164a Preempts Zoning Regulation of Days and Hours of Motor Vehicle Racing; Whether Plaintiff Waived Challenge to Regulation Prohibiting Sunday Racing. The plaintiff, Lime Rock Park, LLC, owns property in the town of Salisbury on which motor vehicle racing has taken place since 1957. In 2015, the town's planning and zoning commission (commission) adopted amendments to the zoning regulations limiting the days and hours of operation of the race track. The plaintiff appealed to the Superior Court, challenging the regulations that prohibit racing on Sundays, prohibit the racing of mufflered vehicles on Saturdays and limit the racing of unmufflered vehicles to ten Saturdays per year, plus three specified holidays. The Lime Rock Citizens Council, LLC (council), a group of individuals and entities who own property near the race track, was permitted to intervene as a defendant to the action. The trial court sustained the appeal as to the plaintiff's claim that the regulation prohibiting Sunday racing violated General Statutes § 14-164a, holding that the statute preempted the zoning regulations' restriction on Sunday racing and that a zoning commission is not authorized to regulate motor vehicle racing more strictly than it is regulated by § 14-164a. The statute provides that races "may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday" and that the "[t]he legislative body of the [municipality] in which the race or exhibition will be held may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any [municipal] ordinances." The trial court denied the appeal as to the remainder of the plaintiff's claims. The plaintiff, the council and the commission have all filed appeals challenging the trial court's judgment. The plaintiff argues that the trial court improperly rejected its claims that (1) the regulations restricting Saturday racing are also preempted by § 14-164a; (2) the commission was required to obtain approval from the department of energy and environmental protection before adopting regulations that place different restrictions on the racing of unmufflered and mufflered motor vehicles; and (3) the commission exceeded its authority by including in the regulations a requirement that an application to amend the new regulations concerning motor vehicle racing times include special permit and site plan applications. The council and the commission argue that the trial court wrongly determined that § 14-164a preempts the regulation prohibiting Sunday racing and wrongly determined that the commission is not

authorized by General Statutes § 8-13 to regulate motor vehicle racing more strictly than § 14-164a. The council also argues that the trial court improperly found that the plaintiff had not, through its predecessors in interest, waived its right to challenge the ban on Sunday racing by stipulating, in 1966 and 1988, to judgments that reaffirmed the ban and by failing to appeal and challenge previous iterations of the Sunday ban. The council claims that the plaintiff is now estopped from challenging the ban because it acquiesced in it for almost fifty years and because neighboring property owners acted in reasonable reliance on the assumption that there would be no racing at the track on Sundays.

GEORGE R. DICKERSON *v.* CITY OF STAMFORD et al., SC 20244
Compensation Review Board

Heart and Hypertension Benefits Under General Statutes § 7-433c; Whether Plaintiff who was Previously Awarded § 7-433c Benefits for Hypertension was Required to File a New Claim for Benefits for Subsequently Developing Coronary Artery Disease. General Statutes § 7-433c provides that members of municipal police or fire departments are eligible for benefits for death or disability caused by hypertension or heart disease, without needing to prove that the injury arose out of their employment. In 2000, the plaintiff was diagnosed with hypertension while he was employed as a member of the defendant city of Stamford's police department, and his claim for benefits under § 7-433c was accepted. In 2014, after the plaintiff had retired from the police department, he suffered a heart attack as a result of coronary artery disease and he sought additional benefits under § 7-433c. The plaintiff claimed that his coronary artery disease was a new manifestation of, or "flowed from," his hypertension, for which he had already filed a timely notice of claim, and accordingly that he did not need to file another claim for benefits for the new injury. The Workers' Compensation Commissioner rejected the plaintiff's argument and dismissed his claim for § 7-433c benefits for coronary artery disease as untimely because the claim had not been filed within one year of his coronary artery disease diagnosis as required by General Statutes § 31-294c. In reaching that conclusion, the commissioner relied on the Supreme Court's decision in *Holston* v. *New Haven Police Dept.*, 323 Conn. 607 (2016), in which the court held that hypertension and heart disease are to be treated as two separate diseases for purposes of § 7-433c. The plaintiff appealed to the Compensation Review Board, which disagreed with the commissioner's application of *Holston*, holding that, if the plaintiff's coronary artery disease was deemed a sequela, or subsequent manifestation, of his hypertension,

then he was not obligated to file a timely new claim in order to recover § 7-433c benefits for the coronary artery disease. The Compensation Review Board held that it was within the trial commissioner's discretion to decide whether the plaintiff's hypertension and his coronary artery disease constituted separate and distinct heart diseases, and it remanded the matter to the commissioner for a factual determination as to whether the plaintiff's coronary artery disease was compensable as a sequela of his hypertension or whether it constituted a distinct heart disease for which the plaintiff was obligated to file a timely new claim for § 7-433c benefits. The defendant city appeals, claiming that the board erred in finding that the plaintiff will be entitled to benefits for his coronary artery disease if it is determined that his coronary artery disease is a sequela of his hypertension. The defendant argues that *Holston* established that hypertension and heart disease are separate disease processes for purposes of § 7-433c and that other appellate precedent establishes that a plaintiff is not entitled to recover § 7-433c benefits for a condition or disability that arose after the plaintiff's retirement. The defendant also urges that, should the Compensation Review Board's ruling that the plaintiff is entitled to benefits for coronary artery disease if it is determined that that disease "flowed from" his hypertension be upheld, the Supreme Court should hold that the plaintiff can recover only if he shows that his hypertension was the "sole contributing factor" leading to his coronary artery disease.

ERICA LAFFERTY et al. *v.* ALEX EMRIC JONES et al., SC 20327
Judicial District of Waterbury

Torts; Free Speech; Sanctions; Whether Trial Court Erred in Ruling that Defendants Could not Pursue § 52-196a Motion to Dismiss that Claimed that Plaintiffs' Suit Targeted Defendants for Exercising Their Right to Free Speech. On December 14, 2012, Adam Lanza entered Sandy Hook Elementary School in Newtown and used an assault rifle to kill twenty first grade students and six adults. The defendants, Alex Jones and his companies, broadcast a nationally syndicated show. On the show, Jones and his guests represented that the Sandy Hook shooting was a hoax perpetuated by the United States government and that the plaintiffs, the Sandy Hook victims' immediate family members and a first responder on the day of the shooting, were paid "crisis actors" working at the government's direction. Jones and his guests further asserted that no one had died during the incident and that the plaintiffs had fabricated the deaths of their children. The plaintiffs brought this action against Jones and his companies sounding in, among other things, invasion of privacy,

defamation, and intentional infliction of emotional distress, alleging that Jones, although knowing that the shooting was real, advanced the theory that it was a hoax in order to promote his show and sell various products to his audience. The plaintiffs also claim that the defendants' defamatory statements have injured their reputations and exposed them to harassment from members of the public. The defendants filed a "special motion to dismiss" pursuant to General Statutes § 52-196a. Section 52-196a is an "anti-SLAPP" statute that provides defendants with an expedited means of seeking dismissal of a lawsuit that targets them for exercising their rights to free speech. The trial court allowed limited discovery relevant to the defendants' special motion to dismiss. After various discovery requests, the plaintiffs claimed that they were being stonewalled by the defendants in the discovery process and they moved for a sanction precluding the defendants from pursuing the special motion to dismiss. An additional issue concerning the defendants' conduct arose when Jones, on his show, seemed to threaten the plaintiffs' attorney and accused him of planting illegal material in the discovery that the defendants had turned over. The trial court granted the plaintiffs' motion for sanctions, finding that the defendants had engaged in obfuscation and delay in the discovery process and that Jones, on his show, had engaged in what the court characterized as a twenty minute tirade of harassment and intimidation directed against one of the plaintiffs' attorneys and his law firm. The court found that Jones' conduct was unacceptable and sanctionable, and it ordered that the defendants were precluded from pursuing the special motion to dismiss and that the plaintiffs were entitled to an award of attorney's fees in connection with Jones' tirade. The Chief Justice subsequently granted the defendants certification to appeal the sanction order pursuant to General Statutes § 52-265a. The defendants claim that the trial court wrongly denied them their right to pursue their § 52-196a special motion to dismiss without providing them a meaningful opportunity to he heard and that Jones' comments concerning the plaintiffs' attorney constituted constitutionally protected free speech and did not constitute true threats or incitements of imminent lawless action against the attorney.

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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