

## SUPREME COURT PENDING CASES

*The following appeal is assigned for argument in the Supreme Court on October 15, 2019*

STATE *v.* LINDA KOSUDA-BIGAZZI, SC 20341  
*Judicial District of New Britain*

**Criminal; Murder; Whether Prosecutor’s Examination of Documents Protected by Attorney-Client Privilege Constituted a Per Se Violation of the Defendant’s Right to Counsel Such that Dismissal of Charges Warranted.** The defendant was charged with murder after her husband was found dead in the basement of the couple’s Burlington home. The police had executed a search warrant for the house and seized several items, including two files that were located in a locked file cabinet. The first file was labeled “Criminal Defense Attorney Oct 2017” (defense file), and the second file was labeled “Incident 2017” (incident file). The defense file and the incident file both contained handwritten documents in which the defendant described her husband’s killing and claimed that she killed him in self-defense. After reviewing the seized materials, the state notified the defendant that it had obtained documents that were potentially protected by attorney-client privilege. The defendant then moved to dismiss the charges against her pursuant to *State v. Lenarz*, 301 Conn. 417 (2011). In *Lenarz*, the Supreme Court held that prejudice may be presumed when the state invades the attorney-client privilege by reading privileged materials that contain specific details regarding trial strategy. The Supreme Court determined in *Lenarz* that, after the prosecutor had reviewed privileged communications that contained a detailed “road map” of the defendant’s trial strategy and then continued to prosecute the case, dismissal of the criminal charge of which the defendant had been convicted was the only adequate remedy for the violation. Here, the defendant argued that the state had invaded her attorney-client privilege by seizing and examining the files containing privileged information related to trial strategy and accordingly that dismissal was the only adequate remedy. The state opposed the motion, contending that any prejudice to the defendant could be cured by a remedy short of dismissal. During the hearing on the motion, the parties agreed that that the defense file and its contents were protected by attorney-client privilege, but they disagreed as to whether the other files were privileged. After a multi-day hearing, the trial court denied the motion to dismiss. It concluded that only the criminal defense file and its contents were protected by attorney-client privilege. The court found that the two documents detailing the homicide were not identical

and that, while the version contained in the defense file was protected by attorney-client privilege, the version contained in the incident file was not privileged. The court also found that the actions taken by the state after it had reviewed the potentially privileged materials served to mitigate any prejudice to the defendant. Finally, the court determined that dismissal was not required because any prejudice to the defendant could be remedied by issuing orders designed to result in an investigation and prosecution conducted by individuals with no knowledge of the privileged communications. The defendant appeals upon the granting of certification by the Chief Justice pursuant to General Statutes § 52-265a. She claims that the trial court improperly found that the document detailing the homicide that was in the incident file was not privileged and that it improperly determined that any prejudice could be cured by a remedy short of dismissal.

*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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