

SUPREME COURT PENDING CASES

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

LEON BELL *v.* COMMISSIONER OF CORRECTION, SC 20223
Judicial District of Tolland

Habeas; Whether Appellate Court Properly Determined That Failure to Give *Salamon* Kidnapping Instruction Was Not Harmless Error. The petitioner was found guilty after a jury trial in 2002 of first degree kidnapping, first degree robbery, third degree burglary, and third degree larceny in connection with two incidents. In both incidents, the petitioner approached an employee at the entrance of a Friendly's Restaurant, indicated that he had a gun, ordered the employee to go back inside and open the restaurant safe so that he could get the money contained therein, ordered the employee to enter the restaurant's walk-in refrigerator and remain there, and then left the premises. The petitioner brought this habeas action in 2012 to challenge his kidnapping conviction, claiming that the trial court failed to properly instruct the jury on the elements of kidnapping in accordance with *State v. Salamon*, 287 Conn. 509 (2008), which has been held to apply retroactively in collateral proceedings. In *Salamon*, the Supreme Court held that "to commit a kidnapping in conjunction with another crime, a defendant must intend to prevent the victim's liberation for a longer period of time or to a greater degree than that which is necessary to commit the other crime." The habeas court denied the habeas petition, and the petitioner appealed to the Appellate Court (184 Conn. App. 150), which reversed the habeas court's judgment. The Appellate Court referred to its decision in *Banks v. Commissioner of Correction*, 184 Conn. App. 101, cert. granted, 330 Conn. 950 (2018), in concluding that the habeas court improperly held that the trial court's omission of a *Salamon* kidnapping instruction did not constitute harmless error. The Appellate Court considered the brief duration of the incidents, where they occurred, the sequence of events, and whether the restraint of the employees was inherent in the nature of the robberies. Given these factors, it determined that the absence of a *Salamon* instruction could have contributed to the verdict in that, if the jury had been instructed under *Salamon*, it could have found that the defendant was not guilty of kidnapping in that he did not confine or move the employees in a way that had independent criminal significance from his other crimes. The respondent was granted certification to appeal from the Appellate Court's decision, and the Supreme Court will decide whether the Appellate Court properly concluded that

the absence of an instruction in accordance with *State v. Salamon*, 287 Conn. 509 (2008), at the petitioner's criminal trial did not constitute harmless error.

STATE *v.* MARK T., SC 20242
Judicial District of Tolland

Criminal; Risk of Injury; Whether Trial Court Properly Precluded Evidence Offered in Support of Defense of Parental Justification. The defendant was convicted of risk of injury to a child in connection with an incident in which he dragged the victim, his minor daughter, by one leg through the corridors of her school toward the exit when she resisted his attempts to persuade her to go with him to her counseling appointment at a local mental health facility. The victim was thirteen years old and enrolled in a special education program at school that provided intensive behavioral support for children who are prone to disruptive behavior. The defendant appealed, arguing that the trial court violated his constitutional rights to present a defense and to testify in his own defense when it excluded certain evidence relevant to his defense of parental justification. The parental justification defense arises out of General Statutes § 53a-18, which provides that “[a] parent . . . entrusted with the care and supervision of a minor . . . may use reasonable physical force upon such minor . . . when and to the extent that he reasonably believes such to be necessary to maintain discipline or to promote the welfare of such minor.” § The Appellate Court (186 Conn. App. 285) affirmed the defendant's conviction. It found that the trial court acted within its discretion when it precluded testimony from the victim's special education teacher about whether the victim had been violent with others at school because the evidence exceeded the scope of the state's redirect examination, which concerned only the teacher's capacity to accurately recall the subject incident that she witnessed involving the defendant. The Appellate Court further found that the trial court did not abuse its discretion in precluding the defendant's testimony as to certain details about the help that he had sought for the victim, including the name of the mental health institution where she receives treatment, finding that the evidence was not material to the parental justification defense. The Appellate Court noted that it was clear from the record that the trial court allowed the defendant to testify about his difficult relationship with the victim, her misbehavior at home, his belief that she needed urgent mental health treatment and the fact that he had obtained a more significant type of help for her than just

an after-school program. The defendant filed a petition for certification to appeal from the Appellate Court's judgment affirming his conviction. The Supreme Court granted the petition as to the issue of whether the Appellate Court properly rejected the defendant's claim that he is entitled to a new trial because the trial court violated his constitutional right to present the defense of parental justification by precluding his testimony and the testimony of the victim's special education teacher pertaining to that defense.

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.* BILLY RAY JONES, SC 20261
Judicial District of Fairfield

Criminal; Whether Jailhouse Informant Credibility Instruction Required When Witness who Received Favorable Treatment from the State Testifies That Defendant Confessed to Him While They Socialized Outside of Prison. The defendant was charged with murder in connection with the shooting death of Michael Williams. At trial, Larry Shannon testified that he had seen the defendant near the crime scene shortly before the shooting and that, while he and the defendant were watching television on the day after the shooting, the defendant had confessed to killing Williams. Shannon admitted that, at the time he initially decided to talk to the police, he was incarcerated on an unrelated felony charge, and that, in consideration for talking to the police and testifying, he was released from jail without having to make a bond payment and later received a favorable sentence on his felony charge. The defendant was convicted, and he appealed, claiming that the trial court erred in failing to provide the jury with a special credibility instruction regarding Shannon's testimony pursuant to *State v. Patterson*, 276 Conn. 452 (2005). While ordinarily a defendant is not entitled to an instruction singling out any of the state's witnesses and highlighting his possible motive for testifying falsely, in *Patterson* the Supreme Court recognized a jailhouse informant exception to that rule, holding that a defendant is entitled to a special credibility instruction where a prison inmate has been promised a benefit by the state in return for his testimony regarding incriminating statements made by a fellow inmate. The defendant argued that the jailhouse informant exception recognized in *Patterson* should apply here because, under the circumstances, Shannon's testimony was less suspect than that of an accomplice or jailhouse snitch. The Appel-

late Court (187 Conn. App. 752) rejected that claim and affirmed the defendant's conviction, concluding that the defendant was not entitled to a special credibility instruction because Shannon was not a "jailhouse informant" under *Patterson* because, although Shannon was incarcerated when he initiated contact with the police, he was not a fellow inmate of the defendant and he testified about events that he had witnessed and a confession that took place while he and the defendant were socializing outside of the prison environment. The Appellate Court also noted that the jury was aware of Shannon's expectation that he would receive consideration in exchange for talking to the police and accordingly that the general credibility instruction given by the trial court was sufficient. The defendant was granted certification to appeal, and the Supreme Court will decide whether the Appellate Court correctly determined that *Patterson's* special jailhouse informant credibility instruction was not applicable to an incarcerated informant who offered his testimony that the defendant confessed to him when they socialized outside of prison in exchange for favorable treatment of the informant by the state.

DANNY DOUGAN et al. v. SIKORSKY AIRCRAFT
CORPORATION et al., SC 20271
Complex Litigation Docket at Hartford

Torts; Whether Plaintiffs Exposed to Asbestos can Maintain Action in Tort Absent any Symptoms of Asbestos-Related Disease; Whether Connecticut Law Should Recognize Cause of Action for Medical Monitoring. The plaintiffs brought this action against Sikorsky Aircraft Corporation and its general contractor after the plaintiffs were exposed to asbestos in 2010 while working on a construction project at a Sikorsky facility. While the plaintiffs had no symptoms of illness as a result of the exposure, they claimed that they had suffered "subclinical injury" and that they were at increased risk of further injury in the future. The plaintiffs urged under various tort theories that the defendants were liable for the cost of their periodic medical monitoring aimed at promptly detecting the symptoms of asbestos-related disease. The trial court rendered summary judgment in favor of the defendants, finding that the plaintiffs could not demonstrate any legally cognizable claim under existing Connecticut tort law. The court further concluded that, because the plaintiffs had not demonstrated that they had suffered any actual or present injury, public policy considerations militated against the court expanding Connecticut law to provide them the medical monitoring remedy they

sought. The plaintiffs appeal, urging that the Supreme Court hold that medical monitoring is warranted even in the absence of clinical symptoms of disease where there has been a significant exposure to a toxic or dangerous substance and where the exposure created a substantial risk of future disease or illness. The defendants argue in response that the trial court properly declined to create a medical monitoring remedy based on exposure to asbestos and that, even if Connecticut law were to recognize such a remedy, the plaintiffs' claims would still fail as a matter of law because the plaintiffs did not provide any expert evidence establishing their need for medical monitoring.

STATE *v.* LUIS M. RODRIGUEZ, SC 20372
Judicial District of New Britain

Criminal; Whether Defendant's Right to Confrontation Violated by Admission of Testimony from DNA Analyst Comparing DNA Profiles Generated by Another DNA Analyst; Whether Defendant's Due Process Rights Violated by Admission of DNA Identification Evidence Concerning Random Match Probability.

The defendant was convicted of sexual assault in the first degree and criminal attempt to commit sexual assault in the first degree in connection with an incident that occurred in 2006, where the victim was pulled into a van and sexually assaulted by two men whom she could not identify. A sexual assault evidence kit was administered on the victim at the hospital and then submitted to the state forensic laboratory for analysis, and the resulting DNA profiles were entered into the national Combined DNA Index System (CODIS), but no match was reported. Ten years later, however, CODIS matched DNA found on the victim and a DNA sample from the defendant that had been placed in the system sometime after the crime was committed. Police then interviewed the defendant and he consented to a buccal swab, which was submitted to the state forensic laboratory for analysis. Dr. Angela Przech, a forensic science examiner, testified at trial that she compared the defendant's DNA profile with the DNA profiles extracted from the victim and determined that the defendant was a potential contributor to the DNA mixture obtained from the victim. She further testified that the statistical probability of obtaining a similar match with the DNA profile of a random person in the relevant Hispanic population is 1 in 230,000. The defendant appeals from the judgment of conviction, claiming that the trial court violated his right to confrontation, as articulated in *Crawford v. Washington*, 541 U.S. 36 (2004), by allowing Przech to testify about the results of her comparison of

the defendant's DNA profile with the DNA profiles recovered from the victim without requiring testimony from the lab analyst who generated the DNA profiles from the mixed sample recovered from the victim. The defendant also claims that the trial court violated his due process right to a fair trial by allowing the introduction of DNA identification evidence that was unreliable under *Manson v. Braithwaite*, 432 U.S. 98 (1977), due to the likelihood that the jury would mistakenly assume that the random match probability of 1 in 230,000 to which Przech testified was the probability that the defendant is not the source of the DNA recovered from the victim. The defendant asks that the Supreme Court exercise its supervisory authority to require that trial courts instruct the jury on the proper meaning of random match probability. The defendant further claims that a random match probability of 1 in 230,000, by itself, is insufficient as a matter of law to prove that the defendant is guilty beyond a reasonable doubt.

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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