

## SUPREME COURT PENDING CASES

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

STATE *v.* ROBERT LEE GRAHAM, SC 20153  
*Judicial District of Hartford*

**Criminal; Whether Statements Were Obtained in Violation of *Edwards v. Arizona* Ban against Further Interrogation of Suspect in Custody Who Invokes *Miranda* Right to Counsel; Whether Statements Were Obtained in Violation of *Miranda* Right to Remain Silent.** On August 12, 2015, the victim, Tashauna Jackson, was reported as missing to the Hartford police. On August 13, 2015, the defendant called the police after a confrontation with friends of the victim, with whom he had a relationship. He was asked to come to the police station to discuss the victim's disappearance. He agreed, drove to the station in his truck, and participated in an interview with two police officers. At 4:50 p.m., the defendant stated that he wanted to leave but stayed after a suggestion that he complete a formal statement. The defendant repeated that he wanted to leave at 5:19 p.m. but agreed upon request to wait five more minutes. At 5:20 p.m., after learning of a parking complaint regarding a van registered to the defendant, one of the officers asked the defendant if he owned another vehicle. The defendant lied, stating that he owned a van but that it was in New York. The interview ended at 7:02 p.m., when the defendant said, "I want my attorney right now." The van was towed to the station, and the defendant consented to a search of it, which yielded evidence of interior damage and blood stains. On August 18, 2015, the victim's body was discovered. The defendant called the police to inquire if the victim's body had been found. An officer told him that an unidentified body had been found and requested that he come to the station for another interview, to which he agreed. During the interview, the defendant was asked about matters such as the blood stains found in the van and why he had previously lied about the location of the van. He was later arrested and charged with the victim's murder. Before trial, the defendant sought to suppress, among other things, his August 13 statements after 4:50 p.m. as obtained in violation of his *Miranda* right to remain silent, which he argued was invoked with his requests to leave. He also sought to suppress his August 18 statements as obtained in violation of *Edwards v. Arizona*, 451 U.S. 477 (1981), which provides that a suspect in custody who invokes his *Miranda* right to counsel may not be subject to further interrogation, and *Maryland v. Shatzer*, 559 U.S. 98 (2010), which provides that *Edwards* does not apply when there has been a break in *Miranda*

custody of more than fourteen days between interrogations. The defendant argued that he invoked his right to counsel at the beginning of the August 18 interview for purposes of *Edwards* and that, in the alternative, his invocation of his right to counsel at the end of the August 13 interview extended to his August 18 interview under *Shatzer*. The trial court denied the defendant's suppression requests. It concluded that the August 13 interview was not custodial for purposes of *Miranda* until 5:24 p.m., when the promised five minute waiting period expired but the questioning nonetheless continued, because the defendant was free to leave at any point beforehand, including when he made his requests at 4:50 p.m. and 5:19 p.m. The trial court further concluded that *Edwards* and *Shatzer* only apply to custodial interrogations and that the August 18 interview was not custodial. After a jury trial, the defendant was found guilty and convicted of murder. He appeals, claiming that the trial court improperly denied his motions to suppress his statements from his August 13 interview after 4:50 p.m. and his statements from his August 18 interview.

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STATE *v.* JOSE R., SC 20184  
*Judicial District of Hartford*

**Criminal; Whether Defendant's Due Process Right to a Fair Trial and Fifth Amendment Right to Remain Silent Violated by Prosecutor's Remarks; Whether State Should Have Burden of Proving Harmlessness for All Claims of Prosecutorial Impropriety.** The defendant was convicted of, inter alia, four counts of sexual assault in the first degree in connection with the sexual assault of his minor child. At the time of the incidents in question, the defendant was not living with the victim, but he would go to her house about twice a week after school to get her off of the bus and to watch her. The defendant was alone with the victim until her mother came home from work. Approximately two years after the last incident of abuse, the victim told her mother about the sexual assaults. The mother reported the allegations, and the defendant gave statements to the police and to the Department of Children and Families (DCF). At trial, the victim testified about the abuse and that the defendant had used the mother's laptop to show her pornography on at least two occasions. The defendant did not testify, and, during closing argument and rebuttal, the state argued that there were various inconsistencies between the out-of-court statements the defendant made to DCF and the police, including that he initially denied being alone with the victim. After the jury returned a guilty verdict as to all charges, the defendant was given, for each conviction of first degree sexual assault, concurrent

sentences of twenty-five years imprisonment, execution suspended after twenty years, followed by ten years of probation. The defendant appeals to the Supreme Court, claiming that his sentence is illegal because, at the time of the incidents giving rise to his convictions, General Statutes (Rev. to 2013) §§ 53a-29 and 53a-70 did not authorize the court to sentence an offender convicted of a class A felony to a period of probation. The state agrees, acknowledging that a subsequent 2015 amendment to § 53a-70 (b) (3) that allows for such a sentence does not apply retroactively. The defendant goes on to argue on appeal that there were fifteen instances of prosecutorial impropriety during closing and rebuttal argument that deprived him of his due process right to a fair trial and, by implicitly referring to his failure to testify, infringed on his fifth amendment right to remain silent. As part of that claim, the defendant urges the Supreme Court to revisit its decision in *State v. Payne*, 303 Conn. 358 (2012), in which the court clarified who has the burden of proof as to whether improper remarks by a prosecutor amounted to harmful error. The court in *Payne* held that a defendant has the burden of proving harmful error if he is alleging the deprivation of his right to a fair trial while the state has the burden of proving harmlessness beyond a reasonable doubt if a defendant is claiming the violation of a specifically enumerated constitutional right. The defendant points out that the distinction in *Payne* complicates the harmful error analysis here because the state has the burden of proof as to his fifth amendment claim while he has the burden as to his due process claim. The defendant asks the Supreme Court to do away with the distinction and require the state to have the burden of proving harmless error for all claims of prosecutorial impropriety.

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

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STATE *v.* ANTRON GORE, SC 20211  
*Judicial District of Hartford*

**Criminal; Whether Identification of Defendant in Surveillance Video Still Photograph Constituted Improper Opinion Evidence on Ultimate Issue in Case; Whether Trial Court Properly Denied Defendant's Motion For New Trial Based on Alleged Juror Misconduct.** The victim, Jason Reddick, was shot and killed in an incident that began in a gas station and ended in a nearby parking lot. Subsequently, Detective Jeffrey Placzek interviewed Caron Canty, a friend of the defendant, and showed him a still photograph of the

shooter taken from video recorded by surveillance cameras. Canty identified the person in the photograph as the defendant. The defendant was charged with the victim's murder. At trial, Canty denied identifying the defendant in the photograph. Thereafter, Detective Placzek testified that Canty had identified the person in the photograph as the defendant during a pretrial interview. The defendant objected, arguing that evidence of Canty's pretrial identification should not be admitted because it was an opinion on the ultimate issue in the case, namely, the identification of the shooter, prohibited by § 7-3 of the Connecticut Code of Evidence. In support, he relied on *State v. Finan*, 275 Conn. 60 (2005), where the Supreme Court held that testimony from several police officers that the person depicted in a surveillance video of a robbery was the defendant based on his mannerisms, his distinctive walk, and his profile constituted improper opinion testimony on the ultimate issue in the case. The trial court overruled the defendant's objection and concluded that *Finan* was not applicable because Canty's identification was not based on an opinion. It explained that, given Canty's long association with the defendant and how the photograph depicted the person's face, Canty's identification of the defendant in the photograph was a fact-based determination, and therefore, admissible under *State v. Felder*, 99 Conn. App. 18, 25 n.6, cert. denied, 281 Conn. 921 (2007). During jury deliberations, the court granted the jury's request for a magnifying glass but later denied its request for a second magnifying glass. The jury found the defendant guilty of murder. The defendant filed a motion for a new trial based on juror misconduct after it was discovered that two jurors brought in two magnifying glasses during deliberations that several jurors used to review the photographic evidence. The trial court denied the defendant's motion for a new trial. On appeal, the defendant claims that the trial court improperly admitted Canty's identification of the defendant through Placzek's testimony because it constituted improper opinion evidence on the ultimate issue in the case under *Finan*. In addition, the defendant claims that his motion for a new trial should have been granted because the jury's actions, including using the two unauthorized magnifying glasses and requesting information that was not admitted into evidence, disregarded the trial court's instructions prohibiting the jury from performing independent investigations and requiring the jury to consider only evidence admitted in court.

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STATE *v.* JOSEPH A. STEPHENSON, SC 20272  
*Judicial District of Stamford/Norwalk*

**Criminal; Whether Appellate Court Improperly Raised, Sua Sponte, Issue of Sufficiency of Evidence of Intent Element; Whether Evidence of Intent was Sufficient.** The defendant was scheduled to begin jury selection in a trial for two felony charges that were pending against him at the Norwalk Superior Courthouse. Two days before the start of jury selection, a silent alarm was triggered at the courthouse at approximately 11:00 p.m. Upon arrival, the state police discovered a broken window in an interior office shared by two assistant state's attorneys. On the floor were a duffel bag with six unopened canisters of industrial strength kerosene and several case files lying in a disorganized pile. The defendant was charged with and convicted of burglary in the third degree, attempted tampering with physical evidence and attempted arson in the second degree in connection with the break-in at the courthouse. He appealed, and the Appellate Court (187 Conn. App. 20) reversed the judgment of conviction. The Appellate Court held that there was insufficient evidence to prove an essential element common to all three crimes of which the defendant was convicted, that is, that the defendant entered the courthouse with the intent to tamper with physical evidence in order to impair the availability of his case files for use against him in the prosecution of the pending felony charges. The Appellate Court found that there was no evidence that the defendant was in the office where the files were located, that he had removed the files that were found on the floor or that his file was among those on the floor. The Appellate Court noted that the state argued that the defendant's intent to tamper with physical evidence could be inferred from his handling of the files but found that the evidence presented did not prove that the defendant had touched, altered, destroyed, concealed or removed any of the files or address any reason why the defendant might have wanted to tamper with his case files. Rather, the Appellate Court found, the evidence showed only that the defendant entered the courthouse through the broken window, walked through the office and dropped the duffel bag on the floor. The Appellate Court concluded that, in the absence of any evidence that the defendant ever touched the files and did so with the intent to tamper with the files or their contents, the jury reasonably could not have inferred that the defendant had the intent required to prove him guilty of the three crimes of which he was convicted. The state has been granted certification to appeal, and the Supreme Court will decide whether (1) the Appellate Court improperly raised, sua sponte, the issue of sufficiency of the evidence with respect to the

element of intent and (2) the Appellate Court correctly concluded that the evidence was insufficient on the element of the defendant's intent to commit the crime of tampering with physical evidence.

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STATE *v.* ERNEST FRANCIS, SC 20353

*Judicial District of Hartford*

**Criminal; Whether Appellate Court Correctly Concluded That Sentencing Judge Did Not Substantially Rely on Materially Inaccurate Information About Defendant.** The defendant was convicted of murder and sentenced in 1992 to fifty years of incarceration. In 2016, he filed a motion to correct an illegal sentence pursuant to Practice Book § 43-22 and claimed that his sentence was imposed in an illegal manner because the sentencing court substantially relied on materially inaccurate information regarding his criminal history and how he committed the murder. The trial court denied the motion to correct. The defendant appealed, and the Appellate Court (191 Conn. App. 101) affirmed the trial court's judgment. The Appellate Court rejected the defendant's claim that the trial court erroneously denied the motion to correct where he argued that the sentencing court substantially relied on materially inaccurate information in the presentence investigation report because that information influenced how the sentencing court characterized him during the sentencing. That information provided that the defendant previously had been convicted of conspiracy to sell cocaine, where he had instead been convicted of conspiracy to possess cocaine, and that he previously had been convicted of assault in the second degree of an elderly person, where he had instead been convicted of assault in the third degree. The Appellate Court determined that the trial court did not abuse its discretion in denying the motion to correct where the sentencing court had not substantially relied on the inaccurate information from the presentence investigation report because it invoked other factors regarding the defendant's past criminal history in determining his sentence, such as that he had three felony convictions before the age of nineteen, that he was involved in drugs, and that he was on probation when he committed the murder. The Appellate Court also rejected the defendant's claim that the trial court erroneously denied his motion to correct where he argued that the sentencing court substantially relied on materially inaccurate information regarding how he committed the murder because that information affected how the sentencing court viewed the deliberateness and violence of the murder. The defendant took the position that the sentencing court incorrectly stated

that the victim had suffered a “graze” wound before he was fatally stabbed because the trial evidence indicated that the victim had only sustained one stab wound. The Appellate Court determined that the information was not materially inaccurate, where there was evidence that the defendant had made multiple stabbing motions towards the victim before fatally stabbing him, and that the sentencing court did not substantially rely on the information, where the sentence was “clearly predicated” on the fatal stab wound and not the graze wound. The defendant has been granted certification to appeal, and the Supreme Court will decide whether the Appellate Court correctly concluded that the sentencing judge did not substantially rely on materially inaccurate information about the defendant.

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ERNEST FRANCIS *v.* BOARD OF PARDONS  
AND PAROLES *et al.*, SC 20377  
*Judicial District of Stamford/Norwalk*

**Trial Court Jurisdiction; Whether Plaintiff’s Declaratory Judgment Action Concerning Parole Eligibility is Ripe for Adjudication.** The plaintiff was convicted of murder and sentenced to fifty years of incarceration on April 15, 1992. The plaintiff filed this action seeking a declaratory judgment that he is eligible for parole under General Statutes § 54-125g and ordering the defendants to factor his eligibility for early release under the statute into his time sheet. The plaintiff claimed that, without a parole eligibility date, he is not able to participate in certain rehabilitation programs. The defendants argued that the plaintiff’s action is not ripe for adjudication because it asks the court to decide a question about a statute that will likely never apply to him. Specifically, the defendants argued that, because the plaintiff earns good time credits that continually reduce his sentence, he will be released from custody long before he can satisfy the parole eligibility requirements of § 54-125g. A person such as the defendant who is convicted of murder is eligible for parole under § 54-125g when there are “six months or less to the expiration of the maximum term or terms for which such person was sentenced,” provided the person has “served ninety-five percent of the definite sentence imposed.” The trial court noted that an action is not ripe for adjudication when it presents a hypothetical injury that is contingent on an event that has not transpired and may never transpire. The trial court then found that, although the parties’ views as to when the plaintiff will be eligible for parole differed greatly, the earliest possible date is not until 2024. The trial court concluded, therefore, the action

is not yet ripe for adjudication and must be dismissed. The plaintiff appealed, and the Appellate Court (189 Conn. 906) affirmed the judgment dismissing the action. The plaintiff has been granted certification to appeal, and the Supreme Court will decide whether the Appellate Court properly upheld the trial court's dismissal of the plaintiff's declaratory judgment action as not ripe.

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STATE *v.* JAVIER VALENTIN PORFIL, SC 20379  
*Judicial District of Waterbury*

**Criminal; Whether Evidence of Constructive Possession Was Sufficient to Sustain Defendant's Conviction of Possession of Narcotics with Intent to Sell, Where Narcotics at Issue Were Found in Common Area Over Which Defendant Did Not Have Exclusive Possession.** The police received an anonymous call from an individual who stated that the defendant had outstanding warrants and was selling narcotics from the front porch of a three-story multi-family house. Upon arriving at the house, an officer observed the defendant, who was sitting alone on the front porch, engage in two hand-to-hand transactions with individuals who approached him from the street. During each incident, the defendant had a brief conversation with the individual, entered the house through the open front door, and returned moments later to conduct an item-for-item exchange with the individual on the street, who then immediately left the area. When the police attempted to arrest him, the defendant ran through the open front door, up the staircase and into the second floor apartment. The police searched the house and, although they were unable to find the defendant, they found a brown paper bag containing a digital scale, rubber bands, and 171 bags of heroin in plain view on the second floor landing. Approximately six months later, the police arrested the defendant, and the state charged him with possession of narcotics with intent to sell by a person who is not drug-dependent. The relevant law provides that where, as here, the defendant is not in exclusive possession of the place where the contraband is found, it may not be inferred that the defendant knew of the presence of the narcotics and had control of them unless there are other incriminating statements or circumstances tending to support such an inference. A jury found the defendant guilty as charged, and the defendant appealed, claiming that the state failed to produce sufficient evidence to prove that he had constructive possession of the narcotics. The defendant argued that the state failed to introduce evidence of any incriminating statements or circumstances linking him to the narcotics and that the



evidence of the hand-to-hand exchanges did not establish his connection to the narcotics because there was no evidence that the items exchanged were either money or narcotics. The Appellate Court (191 Conn. App. 494) rejected his claim, concluding that, in addition to the defendant's temporal and physical proximity to the narcotics, the state presented sufficient evidence of incriminating circumstances to support the inference that the defendant had been selling the narcotics from the porch of the house and had exercised dominion and control of the narcotics. The court reasoned that the inference was supported by evidence such as the street value of the heroin recovered, the particular location in which it was found, and the absence of other individuals observed in that location. The court also noted that the defendant ran away from the police when they approached the house, which indicated his consciousness of guilt. The defendant appeals, and the Supreme Court will decide whether the Appellate Court correctly concluded that the evidence of constructive possession was sufficient to sustain the defendant's conviction.

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STATE *v.* KERLYN T., SC 20380  
*Judicial District of Danbury*

**Criminal; Jury Trial Waiver; Whether Trial Court Properly Found That Defendant's Waiver of Right to Jury Trial Was Constitutionally Valid.** The defendant was charged with aggravated sexual assault in the first degree, home invasion, risk of injury to a minor, assault in the second degree with a firearm, assault in the third degree, unlawful restraint in the first degree, and threatening in the first degree after violent incidents involving the defendant's minor child and the mother of the minor child. The defendant requested and was granted a formal competency evaluation, after which it was determined that he was not competent to stand trial. The defendant was admitted to Whiting Forensic Division for treatment and rehabilitation and later found restored to competency. During subsequent pretrial proceedings, the defendant requested that the trial court provide him with more time to decide whether to elect a jury trial or a court trial. The trial court denied the request. The defendant's attorney was unable to ascertain whether the defendant wanted to elect a jury trial or a court trial and requested a formal competency evaluation on the ground that the defendant was unable to assist with his own defense. The trial court engaged in a lengthy colloquy with the defendant before denying the request. The trial court then addressed the issue of whether the defendant would elect a jury trial or a court trial and, given the

defendant's request for more time to make the decision, provided the defendant with an opportunity to discuss the issue with his attorney. After a recess, the trial court canvassed the defendant, and the defendant waived his right to a jury trial and elected a court trial. The trial court found the defendant guilty and sentenced him. The defendant appealed, and the Appellate Court (191 Conn. App. 476) affirmed his conviction. The Appellate Court denied the defendant's claim that the trial court erred in finding that his jury trial waiver was knowing, intelligent, and voluntary. It rejected the defendant's argument that his waiver was not constitutionally valid because he had been suffering from an unspecified mental illness at the time and noted that he had been found competent to stand trial before the waiver, that he had been able to consult with his attorney regarding the waiver and had stated his satisfaction with his attorney's advice, and that he had demonstrated his understanding of the waiver with clear and unequivocal responses to the trial court's explanations and questions during the canvass. The Appellate Court also rejected the defendant's argument that the canvass was constitutionally inadequate because he was an immigrant without a high school diploma and therefore should have received a more detailed explanation regarding the specifics of a jury trial, observing that the defendant had lived in the United States for all of his adult life and was familiar with the court system due to his past criminal history. The defendant has been granted certification to appeal, and the Supreme Court will decide whether the Appellate Court correctly held that the trial court properly found that the defendant's waiver of his right to a jury trial was constitutionally valid.

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

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A BETTER WAY WHOLESALE AUTOS, INC. *v.*  
JAMES SAINT PAUL et al., SC 20386  
*Judicial District of Waterbury*

**Arbitration; Whether Parties Can Agree, by Choice of Law Provision in Arbitration Agreement, to Apply Federal Arbitration Act Three Month Limitation Period for Filing Application to Vacate Arbitration Award so as to Supplant or Override General Statutes § 52-420 (b) Thirty Day Limitation Period for Filing Application.** The defendants purchased a motor vehicle from the plaintiff, a motor vehicle dealership, and the parties entered into a financing agreement. The agreement contained an arbitration provi-

sion, which provided in relevant part that any arbitration would be governed by the Federal Arbitration Act (FAA), 9 U.S.C. § 1 et seq. (2012), and not by any state law concerning arbitration. Subsequently, the defendants filed a demand for arbitration, claiming that the plaintiff had violated the federal Truth in Lending Act when it required them to purchase certain contracts as a condition of the financing agreement. After the arbitrator awarded damages and attorney's fees to the defendants, the plaintiff filed an application to vacate the award in the trial court that was within the three month limitation period set forth in 9 U.S.C. § 12 but beyond the thirty day limitation period permitted under General Statutes § 52-420 (b). The defendants sought to dismiss the plaintiff's application to vacate for lack of subject matter jurisdiction on the ground that it was not timely filed pursuant to § 52-420 (b). The trial court dismissed the plaintiff's application to vacate as untimely and granted the defendants' application to confirm the award. The plaintiff appealed, claiming that the trial court erroneously applied the thirty day limitation period for filing an application to vacate set forth in § 52-420 (b), rather than the three month limitation period set forth in 9 U.S.C. § 12 and incorporated into the arbitration provision of the financing agreement. The Appellate Court (192 Conn. App. 245) affirmed the trial court's judgment, ruling that the parties could not, as a matter of law, agree to have the three month limitation period in 9 U.S.C. § 12 apply to a vacatur proceeding in Connecticut state court so as to supplant or override the thirty day limitation period in § 52-420 (b), which is subject matter jurisdictional in nature and applicable to any application to vacate an arbitration award brought in Connecticut state court. In so ruling, the court determined that because § 52-420 (b) sets forth a procedural rule that does not conflict with the FAA's objective of ensuring the enforceability of arbitration agreements in private contracts, § 52-420 (b) was not preempted by the FAA. In addition, the court overruled *Doctor's Associates, Inc. v. Searl*, 179 Conn. App. 577 (2018), to the extent it stood for the proposition that the parties can agree, by way of a choice of law provision, to apply the three month limitation period in 9 U.S.C. § 12 to a vacatur proceeding brought in Connecticut state court. The plaintiff was granted certification to appeal, and the Supreme Court will decide whether the Appellate Court correctly concluded that the parties did not avoid the thirty day statutory deadline for filing an application to vacate an arbitration award set forth in § 52-420 (b) by including in their arbitration agreement a choice of law provision stating that any arbitration shall be governed by the FAA, which contains a three month deadline for filing an application to vacate.

WILTON CAMPUS 1691, LLC *v.* TOWN OF WILTON  
WILTON RIVER PARK 1688, LLC *v.* TOWN OF WILTON  
WILTON RIVER PARK NORTH, LLC *v.* TOWN OF WILTON, SC 20388  
*Judicial District of New Britain, Tax Session*

**Taxation; Late Filing Penalty Pursuant to General Statutes § 12-63c (d); Whether Appellate Court Incorrectly Concluded That General Statutes § 12-55 (b) Precluded Tax Assessor From Imposing Late Filing Penalties After Taking and Subscribing to Oath On Grand List.** The plaintiff property owners were required, by June 1, 2014, to submit income and expense information to the tax assessor for the defendant town of Wilton regarding their rental properties. The assessor received the required information two days late, and, as a result, the plaintiffs were subject to a 10 percent tax penalty for each property pursuant to General Statutes § 12-63c (d). The assessor had not added the late filing penalties to the plaintiffs' properties when he took the oath and signed the 2014 grant list, but, instead, added them about three months later, as had been his practice for the last twenty years. The certificates of change sent to the plaintiffs stated that the late filing penalties were added pursuant General Statutes § 12-60, which authorizes an assessor to correct "[a]ny clerical omission or mistake in the assessment." The plaintiffs filed separate tax appeals for each property in the Superior Court, which were consolidated. Because the assessor's delay in imposing the penalty was intentional, the trial court rejected the defendant's claim that the assessor had the authority to impose the penalty as a mistake or clerical error under § 12-60. The court went on to find that the assessor improperly imposed the late filing penalties because the penalties were mandatory and General Statutes § 12-55 (b) requires the assessor to "make any assessment omitted by mistake or required by law" before taking the oath and signing the grand list. The court found, however, that the plaintiffs could not avoid paying the late filing penalties because there was no statutory provision allowing for their removal. As a result, the trial court concluded that the effect of the assessor's error was to postpone the plaintiffs' right to appeal the assessor's actions until the next grand list, and it rendered judgments for the defendant. The plaintiffs appealed to the Appellate Court (191 Conn. App. 712), which agreed with the trial court that § 12-60 did not authorize the assessor to add the late filing penalties. The defendant argued on appeal that the assessor properly imposed the late filing penalties after signing the grand list because § 12-55 (a) requires certain penalties, but not the late filing penalty, to be included in the grand list. The Appellate Court disagreed, finding that the defendant's construction of the statute

led to the absurd or unworkable result that a late filing penalty could be imposed at any time. The court held that, because the late filing penalties constituted an assessment required by law, under § 12-55 (b) the assessor was required to impose them before taking and subscribing to the oath on the 2014 grand list. The Appellate Court found that the late filing penalties were therefore invalid and reversed the judgments of the trial court. Following the granting of certification, the defendant appeals to the Supreme Court, which will decide whether the Appellate Court incorrectly concluded that § 12-55 (b) precluded the tax assessor from imposing the late filing penalties under § 12-63c (d) after taking and subscribing to the oath on the 2014 grand list.

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STATE *v.* REGGIE BATTLE, SC 20396  
*Judicial District of Hartford*

**Criminal; Whether Appellate Court Correctly Determined That, Under General Statutes § 53a-32, Trial Court, Following a Probation Revocation, May Impose a Sentence That Includes a Period of Special Parole.** In November, 2005, the defendant was sentenced to twenty years of incarceration, execution suspended after nine years, and five years of probation, after pleading guilty to conspiracy to commit assault in the first degree. In January, 2014, the defendant admitted to a violation of probation and pleaded guilty to two gun offenses. The trial court revoked the defendant's probation, accepted his guilty pleas, and sentenced him to five years of incarceration and six years of special parole for the violation of probation and concurrent five year sentences on the two gun offenses. Thereafter the defendant filed a motion to correct an illegal sentence under Practice Book § 43-22, claiming that the court's imposition of special parole as a component of his 2014 sentence for violation of his probation rendered his sentence illegal because special parole is not one of the available sentencing options following a violation of probation under General Statutes § 53a-32 (d). General Statutes § 53a-32 (d) provides in relevant part: "If [a violation of probation] is established, the court may . . . revoke the sentence of probation . . . . If such sentence is revoked, the court shall require the defendant to serve the sentence imposed or impose any lesser sentence. Any such lesser sentence may include a term of imprisonment . . . followed by a period of probation . . . ." The trial court dismissed the defendant's motion to correct an illegal sentence for lack of jurisdiction. Although it concluded that the defendant's claim did not fall within the ambit of Practice Book " 43-22, it proceeded to consider and reject the merits of the defendant's motion. The defendant appealed, claiming that the trial court improperly con-

cluded that it lacked jurisdiction to consider his motion to correct an illegal sentence and that he should have prevailed on the merits of his sentencing claim. The Appellate Court (192 Conn. App. 128) concluded that the trial court had jurisdiction to consider the defendant's motion to correct an illegal sentence but rejected his sentencing claim. The Appellate Court noted that the trial court in 2014 had the option after concluding that the defendant had violated his probation of sentencing him to serve the remaining unserved portion of his 2005 sentence—eleven years—but instead chose to impose a lesser sentence of five years of incarceration and six years of special parole. The court therefore ruled that the 2014 sentence, including the use of special parole, was not illegal because it fell within the “any lesser sentence” language of § 53a-32 (d). Rejecting the defendant's claim but concluding that the form of the judgment was improper, the court reversed the judgment dismissing the motion to correct an illegal sentence and remanded the case with direction to render judgment denying the motion. The defendant was granted certification to appeal, and the Supreme Court will determine whether the Appellate Court correctly concluded that, under § 53a-32, a trial court, following a probation violation and revocation, may impose a sentence that includes a period of special parole.

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NOT ANOTHER POWER PLANT *v.* CONNECTICUT  
SITING COUNCIL *et al.*, SC 20464  
*Judicial District of New Britain*

**Administrative Appeal; Application for Certificate of Environmental Compatibility and Public Need; Whether Connecticut Siting Council Properly Excluded Consideration of Upgraded Pipeline When Balancing Public Benefit and Environmental Impact of Proposed Electric Generating Facility.** The plaintiff is a nonprofit association organized for the purpose of conserving the environment and ensuring the thoughtful development of the town of Killingly. The defendant NTE Connecticut, LLC (NTE), is seeking to build an electric generating facility in Killingly. The proposed facility will run on natural gas with diesel used only as a backup fuel. NTE contracted with Eversource to supply natural gas, but the existing pipeline delivers the gas at a pressure insufficient for the proposed facility to function. As a result, the facility cannot operate unless Eversource upgrades about three miles of the existing natural gas pipeline that runs through or abuts several environmentally delicate areas. NTE submitted an application to the defendant Connecticut Siting Council (council) for a certificate of environmental compatibility and public

need with respect to the facility. The application did not detail, and the council did not consider, the environmental impact of upgrading the natural gas pipeline. The council stated that it will consider the upgraded pipeline separately when Eversource submits its own application for a certificate before installing the upgraded pipeline. The council issued the certificate to NTE after concluding that there is a public need for the facility and that the facility's environmental impact could be sufficiently mitigated such that it does not overcome the public benefit. The plaintiff appealed that decision to the Superior Court, claiming that the council's failure to consider the upgraded pipeline was arbitrary and capricious because it improperly "segmented" the project and thereby avoided a proper review of its overall environmental impact by dividing it into smaller components that have no independent utility when viewed in isolation. The trial court found that, although the facility and upgraded pipeline were "inextricably intertwined," the council had not improperly segmented the project because the facility and the pipeline are different "facilities" under the General Statutes, they are owned by two different parties, and the environmental impact of the upgraded pipeline will be considered when Eversource applies for a certificate. The court concluded that the council's procedural decision to consider the facility and the upgraded pipeline separately was therefore reasonable and dismissed the plaintiff's administrative appeal. The plaintiff appeals and claims that the trial court erred in concluding that the council properly balanced the public benefit and environmental impact of the facility. It argues that the council took into account the upgraded pipeline when considering the facility's public benefit but improperly failed to do so when considering the facility's environmental impact. Furthermore, the plaintiff contends that the trial court erred by relying on the fact that Eversource will apply for a certificate with respect to the pipeline, as Eversource can allegedly avoid that process by petitioning the council to declare, without a hearing, that the upgraded pipeline will not have a substantial adverse environmental impact.

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*The following appeals are pending on the Supreme Court's docket and are in the process of being briefed.*

STATE *v.* PATRICIA DANIELS; SC 20376  
*Judicial District of Fairfield*

**Criminal; Double Jeopardy; Whether, Following Its Reversal of Surviving Cumulative Conviction, Appellate Court Should Have Ordered Reinstatement of Conviction that had been**

**Vacated Pursuant to *State v. Polanco*.** The defendant was convicted following a jury trial of the crimes of intentional manslaughter in the first degree, reckless manslaughter in the first degree, and misconduct with a motor vehicle, which involves the criminally negligent operation of a motor vehicle. The charges stemmed from an incident in which the defendant's vehicle hit the victim's vehicle, causing it to hit a tree and resulting in the victim's death. At the sentencing hearing, the state moved that the trial court vacate the defendant's intentional manslaughter conviction pursuant to *State v. Polanco*, 308 Conn. 242 (2013). In *Polanco*, the Supreme Court held that, when cumulative convictions of greater and lesser offenses violate double jeopardy, the appropriate remedy is that one of the convictions be vacated. The trial court vacated the defendant's intentional manslaughter conviction and sentenced the defendant on the remaining convictions. The defendant appealed, claiming that the jury's verdicts were legally inconsistent in that each of the three charged crimes required a mutually exclusive mental state. The Appellate Court (191 Conn. App. 33) reversed in part, ordering that the convictions of reckless manslaughter and criminally negligent operation be vacated and remanding for a new trial on those charges and on the charge of intentional manslaughter. The Appellate Court rejected the state's contention that the case should be remanded with direction to reinstate the intentional manslaughter conviction that had been vacated pursuant to *Polanco*. The state was granted certification to appeal, and the Supreme Court will consider whether the Appellate Court improperly ordered a new trial on all three charges rather than ordering that the defendant's intentional manslaughter conviction, which had been vacated for sentencing purposes under *State v. Polanco*, be reinstated.

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STATE *v.* JEFFREY K. WARD, SC 20427

*Judicial District of Hartford*

**Criminal; Whether Trial Court Lacked Jurisdiction over Motion to Correct Illegal Sentence Because Defendant Failed to set Forth Colorable Claim that he was Incompetent at Time of Sentencing.** The defendant pleaded guilty to manslaughter in the first degree and assault in the first degree and was sentenced to twenty-five years of incarceration. The defendant filed a motion to correct, claiming that his sentence was imposed in an illegal manner in that (1) he was incompetent at the time of sentencing; and (2) the sentencing court failed to order, *sua sponte*, that a competency evaluation and hearing be conducted before sentencing on the basis of information



known to it. The trial court dismissed the motion to correct, finding that it lacked subject matter jurisdiction over it. The defendant appealed, and the Appellate Court (193 Conn. App. 794) affirmed the judgment. The Appellate Court held that the trial court did not err in dismissing the motion to correct for lack of subject matter jurisdiction, as the defendant failed to set forth a colorable claim that his sentence was imposed in an illegal manner. The Appellate Court found that the defendant's motion failed to establish any possibility that he was incompetent at the time of sentencing or that there was sufficient information before the sentencing court requiring a competency examination and hearing prior to sentencing. Specifically, the Appellate Court found that, while the transcripts of several pretrial proceedings and the sentencing hearing that the defendant submitted in support of his motion to correct showed that the parties and the sentencing court were aware that the defendant had a history of mental health issues, nothing indicated that he had been incompetent when he was sentenced or that a competency evaluation and hearing prior to sentencing were required. The Appellate Court further found that the police report, psychiatric report and psychiatric records on which the defendant had also relied in support of his claim could not be viewed reasonably to support a conclusion that he was incompetent at the time of sentencing, as those records suggested that the defendant had a history of mental health issues and was at risk of experiencing symptoms in the future but failed to demonstrate that there was any likelihood that he was incompetent when sentenced. The defendant was granted certification to appeal, and the Supreme Court will consider whether the Appellate Court properly determined that the trial court did not have jurisdiction over the defendant's motion to correct an illegal sentence on the ground that the motion, on its face, did not raise a colorable claim that the defendant was incompetent at the time of his sentencing.

*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.*

*Jessie Opinion  
Deputy Chief Staff Attorney*

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