

## SUPREME COURT PENDING CASES

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

STATE *v.* JEFFREY SMITH, SC 20187

*Judicial District of New London/Norwich*

**Criminal; Whether Rule Established in *State v. Polanco* Requiring Vacatur as Remedy for Cumulative Convictions in Violation of Double Jeopardy Protections Applies Retroactively.** The defendant was convicted of felony murder and manslaughter in the first degree resulting from the killing of a single victim. The trial court merged the convictions and sentenced the defendant to sixty years of imprisonment. The defendant filed a motion to correct illegal sentence, claiming that the trial court improperly merged the two convictions instead of vacating one of them as required by *State v. Polanco*, 308 Conn. 242 (2013), and *State v. Miranda*, 317 Conn. 741 (2015). In *Polanco*, the Supreme Court exercised its supervisory authority to establish that the proper remedy for a defendant convicted of greater and lesser included offenses in violation of double jeopardy protections is vacatur of one of the convictions and not merger of the convictions. In *Miranda*, the Supreme Court extended the rule of *Polanco* to cases involving cumulative homicide convictions arising from the killing of a single victim. The trial court denied the defendant's motion to correct illegal sentence, and the Appellate Court (180 Conn. App. 371) affirmed that judgment. The Appellate Court noted that the defendant's conviction had long been final at the time when the rules in *Polanco* and *Miranda* were established and that, on the basis of well-established principles of retroactivity, those rules did not apply retroactively to the defendant's sentence because both *Polanco* and *Miranda* involved the exercise of our Supreme Court's supervisory authority and announced rules that were based strictly on policy considerations that did not carry constitutional implications. The defendant was granted for certification to appeal, and the Supreme Court will consider whether the Appellate Court properly determined that the holding in *Polanco* requiring vacatur as a remedy for a cumulative conviction that violates double jeopardy protections does not apply retroactively.

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STATE *v.* CHRISTOPHER S., SC 20247  
*Judicial District of Hartford*

**Criminal; Whether Statement Taken in Violation of Electronic Recording Statute, § 54-1o, Admissible Under Exception for Voluntary and Reliable Statements; Whether Supreme Court Should Exercise Supervisory Authority to Require Jury Instruction that Noncompliance with § 54-1o may be Considered in Determining Weight to be Afforded Statement.** The defendant was convicted of strangulation in the second degree and assault in the third degree. He appealed, claiming that the trial court erred in granting the state's motion to admit into evidence a written statement he had given to the police during an unrecorded custodial interrogation at the police station. The defendant claimed that the admission of that evidence violated the electronic recording statute, General Statutes § 54-1o, which creates a presumption of inadmissibility of statements from persons under investigation for certain crimes that were made as a result of custodial interrogation at a place of detention unless an electronic recording is made of the custodial investigation. The Appellate Court (186 Conn. 197) rejected that claim and affirmed the defendant's conviction. First, the Appellate Court rejected the defendant's argument that the admission of the statement has constitutional implications, holding that the claim was instead purely evidentiary in nature. The Appellate Court then held that the trial court had properly determined that the defendant's statement was admissible pursuant to § 54-1o (h). Section 54-1o (h) provides that the presumption of inadmissibility "may be overcome by a preponderance of the evidence that the statement was voluntarily given and is reliable, based on the totality of the circumstances." In finding that the record supported the finding that the defendant's statement was voluntarily made, the Appellate Court noted, among other things, that (1) the defendant was thirty-eight years old and was not intoxicated or otherwise incapacitated during the interrogation; (2) there was no evidence of trickery, threats or coercion by the police; (3) the defendant was advised of his *Miranda* rights twice before the statement was taken, signed a notice of rights form and did not request an attorney or request to remain silent; and (4) the defendant read, made changes to, and signed the statement on each of its three pages, which specifically provided that it was voluntarily given and that the defendant was read, knew and understood his rights. The defendant was granted certification to appeal, and the Supreme Court will consider (1) whether the Appellate Court properly upheld the trial court's determination concerning the admissibility of the defendant's statement; and (2) whether the Supreme Court should exercise its supervisory authority over the

administration of justice to require that juries be instructed that they may consider noncompliance with the electronic recording statute in determining the weight to accord a statement that is the product of an unrecorded custodial interrogation.

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STATE *v.* GREGORY L. WEATHERS, SC 20297  
*Judicial District of Fairfield*

**Criminal; Whether Trial Court Properly Rejected Insanity Defense Where the Only Expert Witnesses Testified That Defendant, as Result of Mental Disease, Lacked Substantial Capacity to Appreciate the Wrongfulness of his Conduct.** The defendant was charged with murder and weapons violations after he shot and killed a man at a construction site. He was tried before a three-judge panel. At trial, the defendant presented the testimony of two expert witnesses in support of his affirmative defense that he was not guilty by reason of mental disease or defect. Both experts testified that the defendant suffered from a psychotic disorder that rendered him unable to control his conduct within the requirements of the law at the time of the shooting. The trial court convicted the defendant, determining that he had failed to establish that, as a result of his psychosis, he lacked the substantial capacity to appreciate the wrongfulness of his conduct. The defendant appealed, and the Appellate Court (188 Conn. App. 600) affirmed his conviction, holding that the defendant's claim that the trial court arbitrarily rejected the opinions of his experts that he lacked substantial capacity to control his conduct was unavailing. The Appellate Court noted that the trial court did not merely find that the defendant had failed to prove that he lacked substantial capacity as a result of his psychosis but also that the defendant was acting under the influence of a multitude of stressful and emotional hurdles in his life that were not of a psychiatric nature and that the defendant shot the victim because he felt brushed aside after inquiring about employment opportunities, and not because he was laboring under any delusional beliefs. The Appellate Court found that the trial court, as the finder of fact, was entitled to adopt that non-psychiatric explanation for the defendant's conduct and reject the experts' opinions. The Appellate Court further found that, given the experts' reliance on the defendant's own account of his symptoms and the events surrounding the shooting, it was reasonable for the trial court to conclude that their opinions were undermined by its finding that the defendant intentionally had either embellished or fabricated psychiatric symptoms over time. Finally, the Appellate Court determined that the trial court's findings that the defendant shot the victim

out of frustration and anger and that the defendant either fabricated or embellished his symptoms were not clearly erroneous and were supported by evidence in the record. The defendant was granted certification to appeal, and the Supreme Court will consider whether the Appellate Court properly affirmed the trial court's rejection of the defendant's insanity defense when the only two expert witnesses testified at trial that the defendant, as the result of a mental disease, lacked the substantial ability to conform his conduct to the requirements of the law.

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777 RESIDENTIAL, LLC *v.* THE METROPOLITAN  
DISTRICT COMMISSION, SC 20339  
*Judicial District of Hartford*

**Municipalities; Sewerage; Whether § 7-249 Limits Supplemental Sewer Assessments to Methodology Used in Original Assessment; Whether Defendant has Authority to Impose Supplemental Assessment Following Interior Improvements to Existing Building.** The defendant provides water and sewer service for the city of Hartford. Under General Statutes § 7-249, the defendant may levy benefit assessments upon the owners of the lands and buildings in the municipality which, in its judgment, are especially benefitted by the sewerage system. When buildings or structures are constructed or expanded after the initial assessment, the defendant may levy a supplemental assessment as if such buildings had existed at the time of the initial assessment. The defendant may consider the area, frontage, grand list valuation, present use of benefitted properties and any other relevant factors in levying assessments. The plaintiff owns property located at 777 Main Street in Hartford. In 1849, when the property was first connected to the sewer system, the owner paid \$215 for the initial benefit assessment based on the property's frontage. In 2012, the building located on the property was converted into a common interest residential community with 265 units, and the defendant levied a supplemental assessment against the plaintiff in the amount of \$473,000, based on the number of residential units. The plaintiff paid the assessment under protest and appealed to the Superior Court pursuant to General Statutes § 7-250. The plaintiff claimed that the defendant lacked the authority to levy a supplemental assessment against it under § 7-249, because the plaintiff did not construct a new building or structure. The plaintiff also claimed that the defendant improperly calculated the supplemental assessment based on the number of residential units in the building rather than on the property's frontage, where the statute requires that the defendant assess the

property as if it existed at the time of the initial assessment. The trial court rejected the plaintiff's claim that the defendant lacked authority to levy a supplemental assessment, concluding that the residential units built within the existing building constituted new "structures" as contemplated by § 7-249, such that the defendant had authority to levy the supplemental assessment. The court, however, ruled that, because § 7-249 provides that the defendant may levy a supplemental assessment against a newly constructed building "as if such building had existed at the time of the initial assessment," the defendant was required to use the same methodology used to calculate the original assessment. The defendant appeals, challenging the trial court's holding that § 7-249 limits supplemental assessments to the methodology used in the original assessment. The plaintiff cross appeals, claiming that the trial court erred in concluding that the defendant had authority to impose a supplemental sewer assessment following interior improvements made to an existing building.

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STATE *v.* YASHIRA ESPINO, SC 20428

*Judicial District of Hartford*

**Criminal; Search and Seizure; Whether Police Authorized to Detain Passenger of Car Parked in an Apartment Building's Parking Lot as Police Were Executing a Search Warrant for an Apartment in the Building.** After conducting an investigation into suspected drug trafficking by Richard Rivera, the police obtained a warrant to search Rivera's apartment at 12-14 South Street in Hartford and a warrant for his arrest. The police planned to execute the warrants on January 31, 2017, and throughout that day they engaged in street camera surveillance of the building's parking lot. During the surveillance, the police observed Rivera drive into the lot, get out of his car and speak with Richard Rolon, who had exited the apartment building and approached Rivera's car. After a brief exchange, both men got into their cars, and Rolon was joined by the defendant, his girlfriend. Both men drove out of the lot. Later that day, Rivera was arrested on Franklin Avenue and, on learning of his arrest, a team of police convened near 12-14 South Street and prepared to execute the search warrant for Rivera's apartment. Just before the police arrived at 12-14 South Street, Rolon returned to the lot and parked his car. Before Rolon or the defendant could exit the car, the police drove their vehicles into the driveway of 12-14 South Street, and four or five police officers exited their vehicles and approached Rolon's car. The police detected the smell of marijuana as they reached the car, and they observed a marijuana cigarette and what appeared to be bags of heroin

in plain view in the vehicle. The defendant and Rolon were taken into custody, and the police learned that the defendant was the tenant of an apartment in 12-14 South Street and that Rolon often resided with her there. The police obtained a warrant to search the defendant's apartment, and the search yielded evidence of illegal drug activity. The defendant and Rolon were arrested and charged with multiple drug crimes. The defendant filed a motion to suppress the drug evidence, claiming that her initial detention by the police violated her fourth amendment rights because the police did not have a reasonable and articulable suspicion that she was engaged in criminal activity under *Terry v. Ohio*, 392 U.S. 1 (1968). The trial court denied the motion to suppress, concluding that, while the police did not have a reasonable and articulable suspicion that the defendant was engaged in criminal activity, her initial detention was nonetheless constitutional under *Michigan v. Summers*, 452 U.S. 692 (1981), which held that "a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted." The trial court determined (1) that the parking lot was in the "immediate vicinity" of the premises to be searched; (2) that the defendant was a "person in the immediate vicinity of [the] search whom the police ha[d] an articulable basis to connect to the premises to be searched, or to the residents of those premises"; and (3) that the defendant's initial detention had been "limited, in both time and manner, to the minimum intrusion necessary for officers to reasonably ensure their safety." The defendant appeals after entering a conditional plea of *nolo contendere*. The Supreme Court will decide whether the trial court properly denied the defendant's motion to suppress on the ground that her detention was legal under *Michigan v. Summers* where she argues that she was neither in the "immediate vicinity" of the premises to be searched nor an "occupant" of the premises as contemplated by *Summers*.

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STATE *v.* BOBBY GRIFFIN, SC 20439  
*Judicial District of New Haven*

**Criminal; Search and Seizure; Whether Coercive Interrogation Rendered Defendant's Confession Involuntary; Whether Trial Court Properly Deemed Warrantless Search Justified Under Exigent Circumstances Doctrine.** In 2013, Nathaniel Bradley was shot and killed during an attempted robbery in New Haven. An informant told the police that the defendant was involved in the murder and that he was trying to sell the rifle used to kill the victim. The informant went to the defendant's home at the direction of the police

and confirmed that the rifle was there. While awaiting a search warrant, the police decided to conduct a search of the defendant's home, and the police found the rifle used in Bradley's murder in the attic of the home. A search warrant issued two hours later, and the defendant was then arrested and brought to the police station in the early morning hours, where he confessed to the murder during a recorded interview. Prior to trial, the defendant moved to suppress his confession as involuntary and unreliable, claiming that the police used coercive tactics during the interview, including interviewing him while he was sleep deprived, lying about evidence, promising him leniency, and threatening his family. He also moved to suppress the rifle, claiming that it was illegally obtained in a warrantless search. The trial court denied both motions. It rejected the defendant's claim that his confession was involuntary, concluding that the police did not employ coercive tactics to induce his confession. The court also noted that the recording indicated that the defendant was calm and collected during the interview and that he was not impaired due to his lack of sleep. As to the rifle, the court found that exigent circumstances justified the warrantless entry into the defendant's home because the police reasonably believed that immediate action was necessary to prevent the defendant's flight and the destruction of evidence and to ensure the safety of the police and members of the public. The court further determined that the evidence was admissible under the inevitable discovery and independent source doctrines, finding that the search warrant that issued was supported by probable cause. After a jury trial, the defendant was convicted of murder and robbery. The defendant appeals, claiming that his due process rights under the state and federal constitutions were violated by the admission of the rifle and his confession. In particular, he claims that his confession was obtained under highly coercive conditions, and he urges the Supreme Court to limit or overrule its decision in *State v. LaPointe*, 237 Conn. 694, 732 (1996), where it determined that the use of false evidence ploys by police did not render the defendant's confession involuntary. The defendant also contends that the exigent circumstances exception to the warrant requirement should not apply here because, he claims, the actions taken by the police prior to the search created the very exigency that the trial court deemed as justifying the warrantless search.

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*The summary appearing here is not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. This summary is prepared by the Staff Attorneys' Office for the convenience of the bar. It in no way indicates the Supreme Court's view of the factual or legal aspects of the appeal.*

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