

SUPREME COURT PENDING CASES

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

STATE *v.* DANIEL STREIT, SC 20336
Judicial District of New Haven

Criminal; Whether Trial Court Properly Excluded Evidence That Victim Had Conducted Internet Searches For Weapons Shortly Prior to His Killing on Ground That It Was Irrelevant to Defendant’s Claim of Self-Defense. The defendant and the victim were involved in two physical altercations, and there was evidence that the victim had threatened to kill the defendant during these altercations. A few days later, the defendant and the victim engaged in a third physical altercation, during which the defendant stabbed the victim to death. The defendant was subsequently charged with manslaughter in the first degree. At trial, the defendant asserted a claim of self-defense, and he filed a motion in limine to introduce evidence that the victim was conducting Internet searches for weapons on eBay shortly prior to the fatal altercation. The defendant claimed that the evidence was relevant to establish the victim’s “state of mind” on issues relating to the defendant’s claim of self-defense, including whether his fear of the victim was subjectively and objectively reasonable. The trial court denied the defendant’s motion in limine on the ground that the evidence was irrelevant under Connecticut Code of Evidence § 4-4, which permits the accused in a homicide case to introduce evidence of the victim’s violent character under certain circumstances. The court determined that the defendant had no knowledge of the victim’s Internet searches for weapons before the fatal altercation and that the searches therefore could not have impacted the defendant’s subjective belief that he needed to resort to deadly physical force during the fatal altercation two days later. In addition, the court concluded that, per *State v. Osimanti*, 299 Conn. 1 (2010), the victim’s Internet searches for weapons was irrelevant because such activity did not constitute a specific violent act or result in any convictions. The defendant was convicted at the conclusion of the trial. On appeal, the defendant claims that the trial court deprived him of a fair trial by denying his motion in limine. The defendant argues that the trial court improperly concluded that he was seeking admission of the evidence of the victim’s Internet searches for weapons as “character evidence” under § 4-4. He contends instead that the evidence was probative of both his and the victim’s states of mind and that it would have provided the jury with unique insight on the victim’s desire to kill the defendant and the likelihood that he would act upon it. Alternatively,

the defendant asserts that the evidence of the victim's Internet searches for weapons should have been admitted as "prior acts of misconduct" under Connecticut Code of Evidence § 4-5, given the temporal proximity between the searches and the victim's threats to kill the defendant and how the evidence corroborated trial evidence that was crucial and significant to his case.

LAURA GRABE *v.* JUSTIN HOKIN, SC 20432
Judicial District of Stamford/Norwalk

Dissolution of Marriage; Premarital Agreements; Whether Trial Court Properly Found that Premarital Agreement was Not Unconscionable Due to Occurrences During Marriage That Adversely Affected Defendant's Financial Status. The plaintiff brought this action seeking a dissolution of her marriage to the defendant and enforcement of the parties' premarital agreement. The defendant claimed, pursuant to General Statutes § 46b-36g, that enforcement of the agreement would be unconscionable because of certain circumstances that occurred during the course of the marriage that adversely impacted his financial status. Section 46b-36g provides that a premarital agreement is unenforceable where, among other things, a party proves that it is unconscionable when enforcement is sought. In determining if the parties' agreement is unconscionable, the trial court considered whether the circumstances that occurred during the marriage were so far beyond their contemplation when they signed the agreement that enforcement would work an injustice on the defendant. The trial court noted that the defendant suffered several unanticipated losses during the marriage. Specifically, the defendant's home was destroyed in a fire and a hurricane destroyed a resort business in the British Virgin Islands owned by the defendant's family from which he had earned income. The defendant also stopped receiving dividends, a director's fee and other income from his family's oil company due to a downturn in the oil market. The trial court also noted that the defendant learned at the time of the dissolution that his accountant had used an improper method of valuing his equity at just over \$13.2 million when the agreement was executed and that the actual value was significantly less at approximately \$4 million. The trial court further noted that, during the course of the marriage, the value of the defendant's estate decreased to approximately \$2.3 million and that he no longer has any meaningful income, while the plaintiff experienced a significant increase in her income and the value of her estate rose to over \$27 million. The trial court additionally found that the parties did not anticipate at the time

that the agreement was executed that they would have three children. The trial court concluded that the agreement, with the exception of an attorney's fees provision, was not unconscionable because enforcement would not work an injustice on the defendant. The trial court found that the attorney's fees provision, which would have required the defendant to pay the plaintiff nearly \$1.6 million because of his unsuccessful attempt to invalidate the agreement, was unconscionable and should be stricken from the agreement where the defendant has no meaningful income and requiring him to pay that sum of money would nearly eliminate his remaining assets. The defendant filed this appeal in the Appellate Court, and it was thereafter transferred to the Supreme Court. He claims on appeal that the trial court improperly found that the agreement as a whole, with the exception of the attorney's fees provision, was not unconscionable. The defendant also claims that the trial court improperly excluded evidence of what the parties foresaw and contemplated at the time that they executed the agreement.

STATE *v.* DARRELL TINSLEY, SC 20479
Judicial District of Hartford

Criminal; Double Jeopardy; Whether the Appellate Court Correctly Determined that the Defendant's Conviction of Manslaughter in the First Degree and Risk of Injury to a Child Violated the Double Jeopardy Clause Because Those Crimes Stood in Relation of Greater and Lesser Included Offenses. The defendant was convicted of manslaughter in the first degree and risk of injury to a child in connection with the death of the fifteen month old victim. The autopsy revealed that the cause of death was blunt trauma to the victim's abdomen that lacerated his liver and that the victim suffered several injuries shortly before his death. The trial court sentenced the defendant to thirty years incarceration, and the defendant subsequently filed a motion to correct an illegal sentence. In that motion, he claimed that his conviction and sentence violated his federal and state constitutional rights to be free from double jeopardy because he received multiple punishments for the same offense. The trial court denied the motion to correct, and the defendant appealed, claiming that the trial court wrongly determined that his conviction and sentence did not violate double jeopardy. He argued that the crimes arose from the same act and that manslaughter and risk of injury constitute the same offense because risk of injury is a lesser included offense of manslaughter as charged in the information. The Appellate Court (197 Conn. App. 302) agreed with the defendant and reversed the judgment. The court first

determined that the manslaughter and risk of injury offenses arose from the same act, noting that the long form information alleged that both crimes occurred on the same date at the same time and that the medical evidence presented at the trial indicated that all of the victim's injuries occurred shortly before his death. The court next determined that, although each offense requires proof of an element that the other does not such that they are not the same offense under *Blockburger v. United States*, 284 U.S. 299 (1932), manslaughter and risk of injury constituted the same offense because, as alleged in the information, risk of injury was a lesser included offense of manslaughter. The court reasoned that it was not possible for the defendant to have committed manslaughter in the first degree by blunt trauma to the victim's abdomen without also impairing the health of the victim by inflicting trauma to his abdomen, as charged in the risk of injury count. Finally, the court noted that the state failed to provide any authority to show that the legislature authorized separate penalties for the two offenses. The state appeals, claiming that the Appellate Court misapplied the applicable law in concluding that manslaughter and risk of injury were the same offense for double jeopardy purposes. The state argues that the court wrongly focused on the specific factual allegations in the state's long form information in concluding that the two offenses were the same offense. The state contends that, under *Blockburger*, the relevant inquiry requires that the court examine the essential elements of the crimes charged and the specific statutory subsections cited in the charging documents.

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

BRYAN JORDAN *v.* COMMISSIONER OF CORRECTION, SC 20485
Judicial District of Tolland at Rockville

Habeas; Ineffective Assistance of Counsel; Whether the Appellate Court Properly Reversed the Habeas Court's Finding that the Petitioner's Criminal Trial Attorney Provided Ineffective Legal Assistance. In 2007, the petitioner was convicted of manslaughter as a lesser included offense of murder, and the trial court sentenced him to forty-five years incarceration. He brought the underlying habeas petition in 2015, claiming that his trial attorney, Diane Polan, provided ineffective assistance of counsel by failing to investigate properly or to present available evidence in support of his claim of self-defense and by failing properly to investigate, raise, or present

evidence in support of a third-party culpability defense. Polan died before the habeas trial and, therefore, was unavailable to testify regarding her investigative efforts or trial strategy. At the habeas trial, the court heard testimony from the petitioner and eight additional witnesses. The habeas court found the witnesses credible and granted the petition. The court determined that Polan was ineffective in advancing the petitioner's self-defense claim and in failing to raise a third-party culpability defense and concluded that the petitioner was prejudiced as a result. It accordingly vacated the petitioner's conviction and remanded the matter for a new trial. The respondent Commissioner of Correction appealed, and the Appellate Court (197 Conn. App. 822) reversed, concluding that the habeas court improperly found that Polan was deficient because the petitioner failed to present any evidence regarding Polan's investigation or trial strategy to overcome the strong presumption that her decisions not to present certain witnesses and to forgo a third party culpability defense were sound trial strategy. The court explained that the habeas court erred in failing to entertain any plausible reasons for Polan's decisions not to call certain witnesses and not to pursue a third party culpability defense. The court noted that, while Polan's death likely made the petitioner's case more difficult to prove, that fact did not lessen his burden of proving his ineffective assistance claim. In this certified appeal, the petitioner claims that the Appellate Court improperly required that he prove a negative by eliminating any possibility that Polan's trial strategy was reasonable and that the Appellate Court engaged in impermissible post hoc rationalization for Polan's decisions. The respondent contends in turn that the Appellate Court properly reversed the judgment of the habeas court and that the judgment of the Appellate Court may be affirmed on the alternative ground that the petitioner failed to establish that he was prejudiced as a result of Polan's deficient performance.

HELEN Z. BENJAMIN et al. v. RALPH P. CORASANITI et al., SC 20491
Judicial District of Waterbury, Complex Litigation Docket

Wills; Charitable Trusts; Whether Testator's Exercise of His Testamentary Powers of Appointment in Favor of Unfunded Charitable Trust Was Valid. Peter M. Ziegler (Peter) and each of his five siblings is a beneficiary of two trusts established by their father in 2002 and 2005 and an additional trust established in 2011. The trusts hold most of the shares of the Hay Island Holding Corporation (HIHC), a closely held company that controls the Ziegler family's business interests. The trust agreements provided that if a Ziegler sibling failed

to effectively exercise his or her testamentary power of appointment, the HIHC shares held in his or her trusts would be distributable in equal amounts to the trusts of the surviving Ziegler siblings. In addition, the HIHC Shareholders Agreement provided that if a Ziegler sibling exercises his or her testamentary power of appointment with respect to the HIHC shares held in his or her trusts, those shares shall be sold in equal amount to the surviving Ziegler siblings' trusts. In 2016, after an accident rendered him a quadriplegic, Peter established "Peter's Yellow Submarine Trust" ("PYS Trust"), the stated purpose of which was to fund quadriplegia related charitable initiatives. Peter thereafter executed a will in which he stated that he was exercising his testamentary powers of appointment pursuant to the trust agreements and directed that the proceeds from the sales of his HIHC shares be distributed to PYS Trust. Peter died in 2017, and his will was admitted to probate. The Probate Court subsequently directed the "trustee [to] fund [PYS] Trust with the net sales proceeds of the HIHC" shares. The plaintiff, Helen Benjamin, one of Peter's sisters, filed this probate appeal, claiming that Peter's exercise of his powers of appointment was invalid under Connecticut law, which governs the 2005 trust, and Illinois law, which governs the 2002 and 2011 trusts. She claimed that, under the common law of both states, PYT Trust was legally nonexistent at the time of Peter's death because it had not been funded prior thereto and that his exercise of his powers of appointment was therefore invalid. The trial court affirmed the Probate Court's judgment. It concluded that PYS Trust was a permissible appointee under the versions of the Uniform Testamentary Additions to Trusts Act adopted by Connecticut (CTATA) and Illinois (ITATA). The court observed that both CTATA and ITATA expressly authorize pour-over devices and bequests regardless of the existence or size of the trust corpus and accordingly concluded that the trust receiving the devise or bequest need not be funded prior to the testator's death. The court also found that a refusal to honor Peter's gift to PYS Trust based on the plaintiff's arguments would yield an absurd result in light of two cardinal rules of will and trust interpretation, namely, that courts must effectuate the intent of the testator and that charitable trusts should be construed as liberally as possible. The plaintiff thereafter filed this appeal in the Appellate Court, and it was subsequently transferred to the Supreme Court. On appeal, the plaintiff claims that a trust without a res cannot legally exist under the common law and that, contrary to the trial court's determination, Peter's intent alone cannot overcome this legal nullity and make his appointment in favor of PYS Trust permissible. She further claims that the trial court erred in concluding

that CTATA and ITATA permit the exercise of testamentary powers of appointment to unfunded trusts, such as PYS Trust.

COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES *v.*
EDGE FITNESS, LLC, et al., SC 20538
Judicial District of New Britain

Sex Discrimination; Whether Women Only Workout Area in Gym Amounted to Sex Discrimination Prohibited by General Statutes § 46a-64; Whether Trial Court Properly Found Activity Exempt. The defendants, Edge Fitness, LLC, and Club Camel, Inc., Bloomfield, doing business as Club Fitness, operate two Connecticut gyms that designate certain space as women only workout areas. Men are prohibited from exercising in these areas. Two men who individually used the defendant gyms filed separate complaints with the plaintiff, the Commission on Human Rights and Opportunities, alleging that the women only workout areas violate General Statutes § 46a-64 (a) and its prohibition against sex discrimination in the provision of public accommodations. The matters were consolidated, and the plaintiff's hearing officer concluded that the defendants' practice of having separate women only workout areas does not violate § 46a-64 (a). The hearing officer found that the defendants offer the areas to encourage more women to come to the gyms and, also, that the areas are frequented by women of the Muslim and Jewish faiths who are forbidden from exercising with men. A psychologist testified that women uniquely feel sexually objectified when exercising alongside the opposite sex; that, per a survey, the women who used the areas did so out of concerns related to privacy, safety, and judgment by others; and that eliminating the areas would be harmful to women's health because the majority of the women who took the survey indicated that eliminating the areas would cause them to consider canceling their gym memberships. The hearing officer found that the women only workout areas were created to address the same gender privacy concerns that give rise to the statutory exemptions that permit discrimination on the basis of sex with respect to bathrooms, sleeping areas, and locker rooms. The women only workout areas were therefore deemed to serve a legitimate remedial purpose, and, as a result, the hearing officer concluded that they did not violate § 46a-64 (a). The plaintiff appealed to the Superior Court, which dismissed the appeal after agreeing that the defendants did not violate state law. The court similarly found that the gender privacy interests at issue with the women only workout areas are equivalent to those interests that led the legislature to create the

bathroom and locker room exemptions to the prohibition on sex discrimination. Moreover, the trial court concluded that eliminating the women only workout areas would disparately impact and unduly burden Muslim and Jewish members' freedom of religion. The plaintiff appealed to the Appellate Court, and the Supreme Court granted the plaintiff's motion to transfer the case to itself. The plaintiff claims on appeal that the defendants violated § 46a-64 (a) by discriminating on the basis of sex and that, contrary to the trial court's conclusion, there is no "customer gender privacy" exception to the statute here. Furthermore, the plaintiff claims that the hearing officer improperly applied this customer gender privacy exception to both cases, although it had only been pleaded in one, and erred in considering the customers' right to the free exercise of religion when neither defendant raised that issue.

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
Chief Staff Attorney*
