

SUPREME COURT PENDING CASES

STATE *v.* JUNY OSCAR ABRAHAM, SC 20314
Judicial District of Fairfield

Criminal; Whether Evidence Sufficient to Convict Defendant of Home Invasion, Attempted Assault, Reckless Endangerment, and Risk of Injury; Whether Jury Verdicts of Attempted Assault and Reckless Endangerment Were Legally Inconsistent; Whether Convictions of Home Invasion and Attempted Assault Violate Right Against Double Jeopardy. The victim and his neighbor were sitting outside of their two family home in Bridgeport when they observed a gray truck repeatedly driving around the block and stopping at the corner directly in front of the home. Later that afternoon, a man wearing a black mask and a black hooded sweatshirt approached the porch and pointed a gun at the victim and his neighbor, who both retreated into their respective residences. The man in dark clothing chased the victim into his residence, where the victim's minor children were located. The victim ran back outside, and the intruder followed and stood in the front doorway with his gun pointed at the victim. The victim was equipped with a legal firearm and warned the intruder to drop his weapon. When the intruder fired one shot, the victim fired three shots in return, one of which struck the intruder. The victim followed the intruder to the back of the house and saw a gray truck driving away. Approximately one mile from the scene, police officers located a gray truck containing the defendant, who had been shot and was wearing a white t-shirt and khaki pants. The resulting investigation determined that DNA samples from bloodlike stains found at the scene of the shooting were 100 billion times more likely to have come from the defendant than from an unknown individual. A jury found the defendant guilty of home invasion, attempted assault in the first degree, reckless endangerment in the first degree, and two counts of risk of injury to a child. On direct appeal to the Supreme Court pursuant to General Statutes § 51-199 (b) (3), the defendant claims that the evidence was insufficient to convict him of the charges because the jury would have had to rely on conjecture and speculation to conclude that he was the intruder. He relies in part on testimony from eyewitnesses that the intruder was wearing black clothing and notes that he was found in dissimilar clothes shortly after the shooting. The state argues that the verdict is adequately supported by the presence of the gray truck at the scene, the DNA evidence linking the defendant to the scene, and the victim's testimony that he shot the intruder. The defendant also claims that the jury returned legally inconsistent ver-

dicts with respect to his conviction of reckless endangerment and attempted assault in the first degree because those convictions require two different mental states. The state counters that there was a plausible theory under which the jury could have found, for purposes of the reckless endangerment conviction, that the defendant recklessly created a risk of serious physical injury to the victim by chasing him into his home with a handgun drawn and, for purposes of attempted assault in the first degree, that he intended to cause serious physical injury to the victim by firing shots at him from the front doorway. Finally, the defendant claims that his conviction of home invasion and attempted assault in the first degree violate the prohibition on double jeopardy because the former was predicated on an intent to commit the latter.

STATE *v.* JOVANNE BROWN, SC 20408

Judicial District of Fairfield

Felony Murder; Robbery in Third Degree; Whether Evidence Sufficient to Prove Defendant Committed Robbery in Third Degree for Purposes of Felony Murder Conviction; Whether Evidence Sufficient to Disprove Self-Defense Claim; Whether Self-Defense Claim Regarding Vacated Manslaughter Conviction Justifiable. An individual contacted the defendant and promised to pay him if he accompanied William Hargrove to a drug transaction to “make sure nothing happened.” On February 24, 2017, Hargrove picked up the defendant and drove with him to Bridgeport. He showed the defendant a gun on the floor in the backseat of the vehicle and told him that he was there to “make sure the deal went right,” advising the defendant to “wipe down the gun after.” When the pair arrived at the location of the transaction, Hargrove parked across the street from the victim’s car. The victim and Hargrove exited their respective vehicles and, while Hargrove retrieved the drugs from the victim’s car, the victim got into the front passenger seat of Hargrove’s vehicle. The defendant was seated immediately behind the victim. In an exchange of gunfire, the defendant was shot once and the victim was killed after being shot five times. Hargrove returned to the vehicle, pushed the victim out of the car, and drove the defendant to the hospital. The defendant was arrested and charged with murder, felony murder predicated on the commission of a robbery in the third degree, and carrying a pistol without a permit. At trial, the defendant testified that he did not intend to rob the victim but, instead, had acted in self-defense. The jury found the defendant guilty of the lesser included offense of

manslaughter in the first degree, felony murder, and carrying a pistol without a permit. After the trial court vacated the defendant's manslaughter conviction on the ground of double jeopardy, the defendant appealed directly to the Supreme Court pursuant to General Statutes § 51-199 (b) (3). He claims that the evidence was insufficient to convict him of felony murder because the state failed to prove beyond a reasonable doubt the predicate felony of robbery in the third degree pursuant to General Statutes §§ 53a-133 and 53a-136. He specifically claims that the state failed to adduce sufficient evidence to prove that he intended to wrongfully take the victim's drugs, that he actually took the drugs, and that he used force or threatened the use of force to effectuate the taking. The state argues that, regardless of whether the defendant personally took the drugs, he is liable under § 53a-119 (a) by using force to appropriate the drugs to Hargrove. The defendant also claims on appeal that, for purposes of his vacated manslaughter conviction, the state failed to disprove his claim of self-defense beyond a reasonable doubt. The state argues in response that the Supreme Court does not have jurisdiction over the defendant's self-defense claim because his manslaughter conviction was vacated and, therefore, the claim is not justiciable. Finally, the defendant claims that he was deprived of a fair trial because, during closing argument, the prosecutor engaged in improprieties by arguing facts not in evidence, misstating the evidence, and making inferences that evidence did not support.

STATE *v.* SHOTA MEKOSHVILI, SC 20442

Judicial District of Stamford/Norwalk at Stamford

Criminal; Jury Instructions; Whether Jury Should Have Been Instructed That It Could Not Reach Guilty Verdict on Murder Charge Unless It Unanimously Agreed on Element of Self-Defense Claim That State Disproved. The defendant was charged with the murder of a taxi cab driver in Stamford. At trial, there was evidence that the defendant, after hailing the victim's taxi cab, stabbed the victim 127 times, stole money from the glove compartment and took the victim's credit card. The defendant testified that he stabbed the victim in self-defense. The defendant's account of the events was that the victim made an unwanted sexual advance on him and that he punched the victim in response. The defendant further claimed that the victim grabbed a knife and began stabbing him, that he managed to wrestle the knife away from the victim and that he then stabbed the victim repeatedly. The trial court instructed the jury on the four elements of self-defense: (1) the defendant actually believed that the

victim was using or about to use physical force against him; (2) the defendant's belief was reasonable; (3) the defendant actually believed that the degree of force he used was necessary to repel the attack; and (4) the defendant's belief was reasonable. The trial court also instructed the jury that the state can defeat a claim of self-defense by disproving any one of the four elements beyond a reasonable doubt. The jury found the defendant guilty of murder, and the defendant appealed from the conviction. On appeal, the defendant claimed that the trial court violated his state constitutional right to be convicted by the unanimous verdict of the jury when it failed to instruct the jury that it could not reach a guilty verdict unless it unanimously agreed on the element of the self-defense claim that the state disproved. The Appellate Court (195 Conn. App. 154) affirmed the conviction, holding that the trial court properly instructed the jury with a general unanimity charge and did not err in failing to give a specific unanimity charge as to the defendant's self-defense claim. The Appellate Court noted that the jury instructions, viewed in their totality, were correct in law and fairly presented the case to the jury, as each of the four elements of a claim of self-defense were explained in detail and in accordance with the model jury charge. The Appellate Court also noted that the factual scenario in the present case was not especially complex and that the defendant's course of conduct did not comprise separate incidents. The Appellate Court further found that, because the trial court did not sanction a nonunanimous verdict, a unanimity instruction on the claim of self-defense was not required. The defendant filed a petition for certification to appeal, which the Supreme Court granted as to the question of whether the Appellate Court correctly concluded that the trial court had properly denied the defendant's request for a jury instruction that would require the jury to reach a verdict of not guilty unless it was unanimous in its conclusion that the state disproved each element of the defendant's self-defense claim beyond a reasonable doubt.

LEE WINAKOR *v.* VINCENT SAVALLE, SC 20516

Judicial District of New London

Home Improvement Act; Whether Appellate Court Correctly Concluded That Home Improvement Act Did Not Apply to Defendant Contractor's Work for Plaintiff. The plaintiff entered into a contract with Golden Hammer Builders, LLC (GHB), to construct a new home on his property. That contract permitted the plaintiff to hire another contractor to perform the site work, and the plaintiff

entered into a separate contract with the defendant to perform that work. Subsequently, the plaintiff brought this action against the defendant, alleging breach of contract, violation of the Home Improvement Act (HIA), General Statutes § 20-418 et seq., and violation of the Connecticut Unfair Trade Practices Act (CUTPA). After a trial, the trial court determined that the defendant had breached the contract by using improper techniques and methods to perform the contract. It further determined that the defendant violated the HIA by failing to comply with several statutory requirements for a home improvement contract. Finally, it concluded that, on the basis of the HIA violations, the defendant committed a per se CUTPA violation. The court rendered judgment in part in favor of the plaintiff, awarding him \$100,173.32 in compensatory damages and \$126,126.91 in attorney's fees under CUTPA. The defendant appealed, claiming that the trial court improperly rendered judgment in favor of the plaintiff on the CUTPA claim based on its finding that he failed to comply with the contract requirements prescribed by the HIA. He contended that the HIA was not applicable because the work he performed did not constitute a "home improvement" for the purposes of the HIA but rather involved "[t]he construction of a new home," which is expressly exempt from the provisions of the HIA. In *Rizzo Pool Co. v. Del Grosso*, 232 Conn. 666 (1995), the Supreme Court held that determining whether work constitutes "new home" construction is dependent on whether the particular work and the construction of the home "were so interrelated, temporally or otherwise, that the [work] constituted an integral part of the construction of a new home." Here, the Appellate Court (198 Conn. App. 792) concluded that the work performed by the defendant constituted "new home" construction under *Rizzo* and, therefore, the HIA was not applicable. In support of its conclusion, the court noted that (1) the parties' contract was linked directly to the new home construction contract between the plaintiff and GHB and (2) the work the defendant contracted to perform directly contributed to the habitability of the home. The court also rejected the plaintiff's contention that the definition of "home improvement" includes work performed on land regardless of whether there is an existing building, stating that such an interpretation would render the "new home" construction exception meaningless. Accordingly, it reversed the judgment in favor of the plaintiff on the HIA claim and also on the CUTPA claim and the related award of attorney's fees because the sole basis for the defendant's CUTPA liability was his alleged HIA violations. The plaintiff was granted certification to appeal, and the Supreme Court will decide whether the Appellate Court correctly concluded that the HIA did not apply to the defendant's work for the plaintiff.

MALISA COSTANZO, ADMINISTRATRIX (ESTATE OF ISABELLA R. COSTANZO), et al. v. TOWN OF PLAINFIELD et al., SC 20537
Judicial District of Windham

Appellate Jurisdiction; Final Judgment; Municipalities; Apportionment; Whether Dismissal of Apportionment Complaint Was Final Judgment Permitting Appellate Review; Whether Defendants Can Seek Apportionment of Liability in Action Brought Under Municipal Liability Statute, General Statutes § 52-557n. The plaintiff administratrix brought this action seeking to recover damages in connection with the drowning death of her daughter, the decedent, in an aboveground pool on residential property that she rented in Plainfield. The plaintiff alleged that the defendants, the town of Plainfield and two town employees, issued a building permit for the pool without inspecting it to ensure that mandated safety measures, such as an alarm or a self-closing or self-latching gate, had been installed. The defendants filed an apportionment complaint pursuant to General Statutes § 52-102b against the owners of the property for their failure to ensure that the pool met all safety requirements and the former tenants of the property who had the pool constructed. The plaintiff objected and argued that her complaint set forth a cause of action pursuant to the municipal liability statute, General Statutes § 52-557n (b) (8), alleging recklessness and that the apportionment statute applies only to negligence actions. Section 52-557n (b) (8) provides that municipalities are immune from liability for damages “resulting from the failure to make an inspection or making an inadequate inspection of any property to determine whether the property complies with or violates any law or contains a hazard to health and safety, unless the political subdivision had notice of such a violation of law or such a hazard or unless such failure to inspect or such inadequate or negligent inspection constitutes a reckless disregard for health or safety.” The trial court sustained the plaintiff’s objection, and the defendants appealed from the ruling. The Appellate Court (200 Conn. App. 755) reversed, holding that the trial court erred in sustaining the plaintiff’s objection to the defendants’ filing of an apportionment complaint. The Appellate Court found that the plaintiff’s complaint implicated both exceptions to the municipal immunity contained in § 52-557n (b) (8) and that the actual notice exception employs a negligence, not a recklessness, standard. The Appellate Court further found that, because the plaintiff alleged in part a claim of negligence, the defendants may seek apportionment of liability from the property owners and the former tenants. In this certified appeal by the plaintiff, the Supreme Court will decide (1) whether the trial court’s order

dismissing the defendants' apportionment complaint constituted a final judgment permitting interlocutory appellate review and, if so, (2) whether the Appellate Court correctly concluded that the trial court erred in sustaining the plaintiff's objection to the defendants' filing of an apportionment complaint.

RONALD CAVERLY, ADMINISTRATOR (ESTATE OF JAMES
CAVERLY) *v.* STATE OF CONNECTICUT D/B/A
UCONN HEALTH CENTER/JOHN DEMPSEY
HOSPITAL, SC 20577
Judicial District of Hartford

Sovereign Immunity; Whether Third Party Payment Took Plaintiff's Claim Against State Outside Scope of Claims Commissioner's Waiver of Sovereign Immunity. The plaintiff administrator brought this malpractice action against the state alleging that health care providers employed by the UCONN John Dempsey Hospital negligently prescribed and monitored the use of the anticoagulant medication Warfarin, resulting in the death of the decedent. The Claims Commissioner waived the state's sovereign immunity and authorized the plaintiff to bring the action on April 5, 2019. On March 15, 2019, the plaintiff had commenced a separate action against CVS Health Corporation and associated entities (collectively referred to hereinafter as CVS) alleging negligence in the filling of the decedent's prescription for Warfarin in an excessive dose. The CVS action settled for \$2,000,000 in December of 2019. The state then filed a motion to dismiss the present action, claiming that, because of the compensation for the claim that the plaintiff received from CVS, this action no longer fell within the scope of the Claims Commissioner's waiver of sovereign immunity. The state relied for its argument on General Statutes § 4-160b, which provides that the Claims Commissioner "shall not accept or pay any subrogated claim or any claim directly or indirectly paid by or assigned to a third party." The trial court denied the motion to dismiss. The trial court found that the state's interpretation of § 4-160b would require it to rewrite the statute to add the disjunctive phrase "or payable" because, absent that addition, the statute does not address the present circumstances where a third party paid a claim after the claim was accepted by the Claims Commissioner. The trial court found that the proper interpretation of § 4-106b is that the legislature meant simply to limit its waiver of sovereign immunity by excluding subrogees and assignees of claims from its application. The state appeals, claiming that the trial court improperly denied its motion to dismiss because

the payment received by the plaintiff from CVS placed the plaintiff's claim against the state outside the scope of the Claims Commissioner's waiver of sovereign immunity. The state argues that the trial court improperly failed to apply the rule of construction applicable to statutory waivers of sovereign immunity pursuant to which a waiver may be found only if that is the only possible interpretation of the language of the statute and reliance on extratextual evidence is prohibited. The state also argues that the trial court, in holding that the statute applied only to subrogated and assigned claims, rendered statutory language surplusage because the plain language of the statute applies to "any claim directly or indirectly paid by . . . a third party." The state further argues that the trial court erred in relying on the timing of when payment is made, as that would mean that even assigned and subrogated claims can be brought if they arise after the Claims Commissioner waives sovereign immunity and grants permission to sue.

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*
