

SUPREME COURT PENDING CASES

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

STATE *v.* DANTE ALEXANDER HUGHES, SC 20268
Judicial District of New London

Manslaughter; Self-Defense; Juror Misconduct; Whether There Was Sufficient Evidence to Disprove Defendant’s Claim of Self Defense. The defendant’s girlfriend picked him up from work just after midnight on December 11, 2016, and they decided to stop at a bar in Groton on their way home. While inside the bar, the two started to argue, and the defendant’s girlfriend struck him in the face with a beer bottle. She then left the bar with the keys to their car, and the defendant followed her into the parking lot. At the request of the bartender, several patrons, including the victim, followed the couple outside to check on her. In the parking lot, they found the defendant’s girlfriend seated in the driver’s seat of the couple’s vehicle with the driver’s side door open and the defendant punching her. One of the patrons pulled the defendant away, and the defendant began to argue with the victim. Those in the area reported suddenly hearing three gunshots and seeing the victim on the ground with gunshot wounds to the leg and the shoulder. The defendant fled after the shooting, and the victim was transported to the hospital, where he was pronounced dead. The defendant was charged with murder, and, at his jury trial, claimed that he had acted in self-defense under General Statutes § 53a-12, as the victim was threatening him and had reached into his waistband just prior to the shooting. The jury found the defendant guilty of the lesser included offense of manslaughter in the first degree with a firearm, and the defendant filed a motion for a new trial on the ground that, during deliberations, one of the jurors had looked up the definition of “manslaughter” in the dictionary. The trial court denied the motion for a new trial, concluding that the defendant had not been prejudiced by the misconduct. The court reasoned that only one juror had been exposed to the definition, as that juror did not relay the definition to the others, and that the court, in response to a jury note regarding the matter, later instructed them not to look up anything in the dictionary. Furthermore, the court relied on the fact that all of the jurors, including the one who used the dictionary, testified that they had remained impartial throughout the deliberations and had relied on the court’s instructions with respect to the manslaughter charge. After the court denied the defendant’s motion for a new trial, he appealed to the Supreme Court pursuant to General Statutes § 51-199 (b) (3). On appeal, the defendant

claims that the evidence presented at trial was insufficient to disprove, beyond a reasonable doubt, any of the elements of his self-defense claim under § 53a-12, and, as a result, he is entitled to a judgment of acquittal. He specifically argues that the state cannot defeat his self-defense claim by merely casting doubt on his testimony and account of the shooting but rather is required to present affirmative evidence that discredits his version of the events, which it did not do. The defendant also claims on appeal that the trial court erred in denying his motion for a new trial. He asserts that prejudice should be presumed when a juror improperly consults a dictionary during deliberations and, moreover, argues that the state cannot meet its burden of showing that there was no reasonable possibility that the verdict was affected by the juror misconduct.

STATE *v.* QUAVON TORRES, SC 20306
Judicial District of New Haven

Criminal; Whether Trial Court Improperly Excluded Evidence of Alleged Altercation Between Witness and Third Parties At Time of Defendant’s First Trial; Whether Alleged Prosecutorial Improprieties Deprived Defendant of Fair Trial; Whether Trial Court Erred in Excluding Evidence of Conduct Underlying Witness’ Misdemeanor Convictions. The defendant was charged with, *inter alia*, murder in connection with the shooting death of the victim outside a fast food restaurant in New Haven. Freddy Pickette, a friend of the defendant, was also present at the scene of the shooting. At trial, Tasia Milton, the defendant’s cousin, gave testimony implicating the defendant in the murder. The defendant was convicted, but the Appellate Court reversed the conviction and remanded for a new trial. At the second trial, the defendant asserted a third party culpability defense, claiming that Pickette was the actual killer. Milton provided testimony that implicated Pickette in the murder. In addition, the defendant sought to introduce evidence regarding two incidents involving Milton that took place prior to her testimony in the first trial. In the defendant’s offer of proof, Milton testified that she had an argument with Pickette in the courthouse hallway, during which Pickette called her a “snitch” and threatened to assault her. She also testified that, two days after the courthouse hallway incident, she was “jumped” by one man and two women, one of whom was Pickette’s sister Ashley. She further testified that the three individuals “said something about Fredd[y],” that Ashley told her to mind her own business, and that the man punched her in the eye. The defendant asserted that the evidence about the two incidents was relevant to (1) support his third party

culpability defense, (2) show that Milton had a motive not to implicate Pickette during the first trial, and (3) rehabilitate Milton's credibility. The trial court admitted the evidence of the courtroom hallway incident that directly involved Pickette. It, however, excluded the evidence of the assault incident because Pickette was not involved in that incident and it could only speculate as to the relevance of the warning "mind your own business." The jury found the defendant guilty of murder, and he appeals from his conviction. The defendant claims that the trial court violated his constitutional rights to confrontation and to present a defense in failing to admit the evidence of the assault incident. He argues, inter alia, that there was a direct connection between Pickette's threats to Milton during the courtroom hallway incident and Milton's assault two days later and that, contrary to the trial court's conclusion, the connection between Pickette and the assault was not speculative. The defendant also claims that he was deprived of his constitutional right to a fair trial by prosecutorial impropriety. He argues, inter alia, that during closing arguments, the prosecutor improperly (1) argued facts not in evidence by suggesting that the defendant was wearing the same color sweatpants as the alleged shooter and (2) mischaracterized the evidence by arguing that three key state's witnesses had given consistent accounts of the shooting. Finally, the defendant claims that the trial court erred in precluding him from questioning Teresa Jones, a witness to the shooting, about the facts underlying her seventeen-year-old misdemeanor larceny convictions on remoteness grounds, where he argues that the evidence was probative of Jones' lack of veracity.

STATE *v.* TIJUAN GIBSON, SC 20320
Judicial District of Waterbury

Criminal; Whether Trial Court Improperly Admitted Prior Consistent Statement; Whether Trial Court Violated Defendant's Due Process and Confrontation Clause Rights in Denying Cross-Examination Regarding Witness' Pending Charges; Whether Trial Court Erred in Failing to Give Falsus In Uno, Falsus in Omnibus Jury Instruction; Whether Evidence was Sufficient to Convict Defendant of Criminal Possession of Firearm. The defendant was convicted after a jury trial of felony murder, robbery in the first degree, and conspiracy to commit robbery in the first degree in connection with the robbery and shooting death of the victim, Savion Bostic Aponte. He was also convicted after a separate trial to the court of criminal possession of a firearm in connection with the same incident. The defendant appeals from his conviction directly to the Supreme Court pursuant to General Statutes § 51-199 (b) (3). The defendant first claims on appeal that the

trial court improperly admitted a prior consistent statement given by Shyaira Atkinson, a key state's witness. Atkinson testified that she had observed a conflict between two individuals on the night of the murder across the street from her home and that she had recognized one of them as the defendant by the sound of his voice. On cross-examination, the defendant elicited from Atkinson that she had not indicated her vocal recognition of the defendant in her written statement to the police. The state moved on redirect to admit Atkinson's written statement into evidence as a prior consistent statement, and the trial court ruled that the statement was admissible over the defendant's objection that the rule did not apply where Atkinson had not been impeached by a prior inconsistent statement, a suggestion of bias, or a suggestion of recent contrivance. The defendant argues in support of this claim that the admission of the statement lacked a legal basis, unfairly bolstered Atkinson's credibility, and chilled his constitutional right to confrontation. The defendant next claims on appeal that the trial court violated his constitutional rights to confrontation and due process because it prohibited him from asking Levar Roach, a state's witness who testified about encountering the defendant and the victim on the night of the murder, about his pending unrelated criminal charges in the same court. The defendant argues in support of this claim that the trial court committed harmful error where its ruling prevented him from challenging Roach's reliability and credibility by examining his possible motive and interest in testifying for the state. The defendant's third claim on appeal is that trial court erred in failing to give his requested *falsus in uno, falsus in omnibus* ("false in one thing, false in all") jury instruction as to his co-defendant, Tysean Snow, which provided in relevant part: "If you conclude that a witness has deliberately testified falsely in some respects you should carefully consider whether you should rely on any of that person's testimony." The defendant argues in support of this claim that the trial court's general credibility instruction did not give sufficient guidance to the jury on the issue of credibility as it pertained to Snow. The defendant's final claim on appeal is that the state did not present sufficient evidence to sustain his conviction of criminal possession of a firearm.

STATE *v.* JOSE A.B., SC 20332
Judicial District of Waterbury

Criminal; *Batson* Challenge; Double Jeopardy; Whether Distrust in Criminal Justice System is Facially Discriminatory Reason for Peremptory Challenge under State Constitution; Whether Reason Proffered for Peremptory Challenge was Pretext for Dis-

crimination; Whether Conviction of Sexual Assault and Risk of Injury, as Charged, Violated Double Jeopardy Prohibition. The defendant was convicted of sexual assault in the first degree, attempted sexual assault in the first degree, sexual assault in the fourth degree and two counts of risk of injury to a minor. The defendant appeals, claiming that the trial court improperly overruled his objection, pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986), to the state's use of peremptory challenges to strike two prospective jurors for what he argued were not race-neutral reasons. The reasons proffered by the state for exercising a peremptory challenge to exclude venireperson N.L. were that she made statements indicating that (1) she would be unable to convict based on the testimony of one witness and absent 100 percent certainty of guilt; (2) she believed that her husband's friend who pleaded guilty to sexual assault did not commit the crime, even though she had no personal knowledge of the case; and (3) she was reluctant to talk about her own prior conviction for which she received a pardon. The reasons proffered by the state for using a peremptory challenge to excuse venireperson C.J. were that he omitted from his juror questionnaire the fact that he had convictions for assault of a police officer and multiple probation violations and because he stated that he believed that he was wrongly accused of the assault charge. The defendant argues on appeal that the state exercised peremptory challenges to exclude potential jurors because of their distrust in the criminal justice system and that such reason should be deemed facially discriminatory in violation of the state constitution because minorities disproportionately hold that view and, thus, are disparately impacted. While recognizing that distrust of the criminal justice system has been deemed a race-neutral explanation for peremptorily challenging a potential juror under the federal constitution, the defendant argues that the state constitution affords broader protection with respect to rights concerning exclusionary jury selection. The defendant also argues that the state's peremptory challenges violate both the state and federal constitution because he met his burden of proving that the state's proffered reasons were a pretext for discrimination. The defendant also claims on appeal that his conviction of the sexual assault and risk of injury charges violates his right to be free from double jeopardy. The defendant acknowledges that there is precedent holding that the statutes prohibiting various degrees of sexual assault and risk of injury do not, on their face, violate double jeopardy. The defendant argues, however, that his conviction of these crimes violates double jeopardy because, as charged in his particular information, the risk of injury offenses are lesser included offenses of the assault charges.

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

STATE *v.* ELIZABETH TURNER, SC 20360
Judicial District of Waterbury at G.A. 4

Criminal; Whether Appellate Court Properly Upheld Defendant's Conviction of Robbery and Felony Murder Based on Legally Invalid but Factually Supported Theory for Conviction. The defendant and her husband were homeless when Donna Bouffard invited them to live with her. Although the defendant and her husband were initially close with Bouffard, their relationship eventually deteriorated. On June 28, 2012, the defendant directed her husband to lie to Bouffard by telling her that the defendant was in jail and that he needed \$50 for bail. Bouffard gave the money to the defendant's husband, and he and the defendant left Bouffard's house to buy drugs. The defendant directed her husband to return to Bouffard's house and repeat the ruse, with the defendant's husband telling Bouffard that he needed an additional \$50 because the bail amount was actually \$100. Bouffard gave the additional money to the defendant's husband. The defendant's husband left, and when he and the defendant returned to Bouffard's house several hours later, he stabbed Bouffard and her son, Michael Perkins, to death. In the following days, the defendant and her husband took and sold property owned by the victims and spent the proceeds. The defendant was subsequently arrested and charged with, inter alia, felony murder and multiple larceny crimes, including robbery in the first degree. She was found guilty after a jury trial and sentenced to sixty years of incarceration. The defendant appealed and claimed that the trial court improperly allowed the jury to base its guilty verdict on a legally invalid but factually supported theory by instructing it in a manner that allowed it to conclude that a completed larceny by false pretenses, i.e., the bail scheme, could be the predicate felony for robbery and felony murder. The defendant argued that the larceny by false pretenses accomplished by the bail scheme could not have provided the basis for the robbery or felony murder charges because it ended prior to the murders and had not been accompanied by force, which is an element of robbery. The Appellate Court (190 Conn. App. 693) observed that the trial court's charge included, as an example of larceny, three references to larceny by false pretenses, as well as a definition of false pretenses. It concurred with the state that the defendant's claim went to whether the jury instructions were factually unsupported, not whether they were legally invalid, and noted in support thereof that force theoretically could be used in a larceny by false pretenses in order to retain the property immediately after the taking. The Appellate Court then agreed with the defendant that the larceny by false pretenses accomplished by the bail scheme was complete before the murders and thus should not have been referenced in the

trial court's charge. Nonetheless, it concluded that the trial court's error was harmless where there was a factually supported basis for the felony murder and robbery convictions, specifically, evidence pertaining to the larcenies committed after the murders and supporting the theory that the defendant and her husband had planned the murders to take and sell the victims' property. The Appellate Court accordingly affirmed the judgment of conviction. The defendant has been granted certification to appeal, and the Supreme Court will decide whether the Appellate Court properly upheld the defendant's conviction of robbery and felony murder based on a legally invalid but factually supported theory for the conviction.

MICHAEL ABEL et al. v. CELESTE M. JOHNSON, SC 20436

Judicial District of Stamford-Norwalk at Stamford

Property; Restrictive Covenants; Whether “Subject to” Language in Deeds Only Provides Notice of Prior Restrictions or Effectively Creates New Obligations on Grantees and Their Successors; Whether Plaintiffs Lacked Standing to Enforce Restrictive Covenant in Original Deed That Limited Use of Defendant’s Property for Residential Purposes Only. The plaintiff subdivision property owners brought this action seeking, inter alia, to enjoin the defendant abutting property owner from violating a restrictive covenant that limited the use of her property to residential purposes only. The restrictive covenant was contained in a 1956 deed that conveyed the land from the original grantors to a housing developer, Empire Estates, Inc. (Empire). Empire later subdivided the property and conveyed two of the lots to the parties’ predecessors in title. The deeds conveying those lots provided that the lots were “subject to” to the restrictive covenants contained in the 1956 deed. At trial, the defendant admitted to operating a landscaping business from her property. The trial court found that the plaintiffs had standing to enforce the residential-use restrictive covenant because the parties’ properties were part of a “common scheme of development” and both parties’ deeds contained the restrictive covenant. The trial court rendered judgment in favor of the plaintiffs and awarded them injunctive relief. On appeal, the defendant claimed that the trial court improperly determined that the plaintiffs had standing to enforce the residential-use restrictive covenant in the 1956 deed, and the Appellate Court (194 Conn. App. 120) agreed. The court observed that the restrictive covenants contained in the 1956 deed were expressly intended to inure to the benefit of the remaining land of the original grantors, and there was no language in the deed that suggested that the restrictive covenants were intended

to benefit the original or subsequent grantees of the 1956 deed, such as the plaintiffs. Thus, the court ruled that the plaintiffs lacked standing to enforce the residential-use restrictive covenant in the deed because there was no allegation or evidence that the plaintiffs were the original grantors of the 1956 deed or their successors in interest. In addition, the court rejected the plaintiffs' argument that Empire intended to create a common scheme of development maintaining the restriction that only residential uses were allowed because Empire conveyed the lots in the subdivision "subject to" the restrictive covenants contained in the 1956 deed from the original grantors to Empire. The court stated that, regardless of Empire's intent, it was undisputed that (1) the residential-use restrictive covenant expressly inured to the benefit of the original grantors and (2) Empire failed to include the residential-use restrictive covenant in the declaration of restrictions that was incorporated by reference in the parties' deeds. Accordingly, the court reversed the judgment to the extent that the trial court enforced the residential-use restrictive covenant contained in the 1956 deed and vacated that court's orders of injunctive relief related to that covenant. The plaintiffs were granted certification to appeal, and the Supreme Court will decide (1) whether the "subject to" language in the deeds only provides notice of prior restrictions or has the substantive effect of creating new obligations on the grantees and their successors and (2) whether the Appellate Court correctly determined that the plaintiffs lacked standing to enforce the restrictive covenant in the original deed that limited the use of the defendant's property for residential purposes only.

KARL KLASS *v.* LIBERTY MUTUAL INSURANCE
COMPANY, SC 20451
Judicial District of Ansonia-Milford

Insurance; Loss Appraisal Clause; Whether Trial Court Erred in Granting Insured's Application to Compel Appraisal Where Insurer Argued that Coverage and Statutory Interpretation Issues Require Judicial Resolution Prior to Commencement of Loss Appraisal Proceedings. The plaintiff submitted a claim to the defendant insurer under his homeowner's insurance policy for wind damage to the roof of his home. An inspection by the defendant's representative revealed that the rear slopes of the roof had been damaged, and the defendant issued a report estimating the cost for repairing the roof to be \$5,152.89. The plaintiff, however, provided the defendant an estimate of \$8,061.93 from his contractor for replacing the front and rear slopes of the roof, claiming that the replacement of both slopes of the roof was necessary. The defendant denied coverage for

the front slopes of the roof and also rejected the plaintiff's appraisal demand on the ground that the issue of whether the entire roof had to be replaced was an issue of coverage and not a dispute over the amount of loss, citing General Statutes § 38a-316e (a). That statute is commonly referred to as the "matching statute" and provides in relevant part: "When a covered loss for real property requires the replacement of an item or items and the replacement item or items do not match adjacent items in quality, color or size, the insurer shall replace all such items with material of like kind and quality so as to conform to a reasonably uniform appearance." The plaintiff thereafter filed an application to compel appraisal under the policy's loss appraisal clause, which provides that, in the event of a dispute over the amount of loss, each party will choose a competent appraiser, and if the appraisers are unable to agree on the amount of loss, the appraisers will submit their differences to a mutually chosen umpire. The trial court initially denied the application, and the plaintiff filed a motion to reargue. In that motion, the plaintiff noted that, in *Giulietti v. Connecticut Ins. Placement Facility*, 205 Conn. 424, 431-432 (1987), the Supreme Court rejected an insurer's contention that the denial of coverage provides a valid basis for refusing to comply with an insured's demand for appraisal under the policy's loss appraisal clause. After reargument, the trial court granted the plaintiff's application, stating that "[d]isputes regarding coverage do not preclude appraisal even where there is a total denial of coverage." The defendant appeals, claiming that the trial court erred in granting the plaintiff's application to compel appraisal before the issues of coverage and/or statutory interpretation concerning the claimed loss were judicially resolved. In support thereof, the defendant contends that judicial interpretation of § 38a-316e (a) prior to the commencement of the appraisal process is imperative for the fair resolution of the coverage issues under the policy and that the interpretation and construction of statutory and insurance policy provisions are purely legal issues that can only be decided by the courts and cannot be determined by an appraiser. The defendant also claims that the trial court erred in granting the plaintiff's motion to reargue and that the Supreme Court should adopt the rationale of certain trial court decisions in interpreting and applying § 38a-316e (a) to the facts of the present case.

STATE *v.* DOUGLAS C., SC 20456
Judicial District of New London

Criminal; Jury Instructions; Whether Appellate Court Properly Upheld Trial Court's Denial of Defendant's Request for Special Unanimity Instruction on Ground That Instruction is

Required Only When Defendant Has Been Charged with Violating Multiple Subsections or Multiple Elements of Statute. The defendant was convicted after a jury trial of five counts of the crime of risk of injury to a child under the same statutory subdivision—subdivision (2) of subsection (a) of General Statutes § 53-21. The defendant’s conviction stemmed from his alleged sexual abuse of five victims on various dates while they were under the age of sixteen. The minor victims were often in the presence of the defendant in his home, where the defendant had contact with their intimate parts on multiple occasions. The defendant appealed from his conviction, claiming that he was deprived of his constitutional right to a unanimous jury verdict because the trial court improperly denied his request for a specific unanimity instruction as to four of the five counts. The unanimity requirement theorizes that a jury cannot be deemed to be unanimous if it applies inconsistent factual conclusions to alternative theories of criminal liability and therefore mandates that the jury agree on the factual basis of the offense. Here, the defendant contended that, in the absence of a specific unanimity instruction, the jury may not have been unanimous as to the occasion on which the defendant had contact with the intimate parts of each victim because the state had presented evidence at trial that the defendant had contact with each victim’s intimate parts on multiple occasions. Relying on *State v. Mancinone*, 15 Conn. App. 251, cert. denied, 209 Conn. 818 (1988), cert. denied, 489 U.S. 1017 (1989), the Appellate Court (195 Conn. App. 728) rejected the defendant’s jury unanimity claim. The court noted that a specific unanimity instruction may be required in cases where multiple factual allegations contained in a particular count amount to the defendant having violated multiple statutory subsections, subdivisions or elements of the charged offense. The court, however, explained that such an instruction is not required in cases, such as the present case, where the state charges the defendant with having violated a single statutory subdivision one time and proffers evidence at trial that amounts to the defendant having violated that single statutory subdivision on multiple occasions. Further, contrary to the defendant’s position, the court concluded that there was no requirement for the jury to be unanimous as to the specific occasion on which the prohibited conduct occurred. Accordingly, the Appellate Court affirmed the trial court’s judgment. The defendant was granted certification to appeal, and the Supreme Court will decide whether the Appellate Court properly upheld the trial court’s denial of the defendant’s request for a specific unanimity charge and correctly concluded that, under *State v. Mancinone*, a specific unanimity charge is required only when the defendant has been charged with violating multiple subsections or multiple “statutory elements” of a statute.

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

DEAN HOLLIDAY *v.* COMMISSIONER OF CORRECTION, SC 20460
Judicial District of Tolland

Habeas; Whether Appellate Court Properly Affirmed Habeas Court’s Sua Sponte Dismissal of Habeas Petition under Practice Book § 23-29 Without Providing Notice and an Opportunity to be Heard. The petitioner was convicted of multiple robbery crimes in 2002. In 2011, newly enacted legislation provided in relevant part that prisoners convicted of violent crimes, such as the petitioner, could advance their parole eligibility dates by earning risk reduction credits for good behavior. This provision was subsequently eliminated by statutory amendment in 2013. In 2014, the petitioner filed a petition for a writ of habeas corpus, alleging that the 2013 legislative change violated the ex post facto, equal protection, and due process provisions of the federal constitution by revoking risk reduction credits he had earned pursuant to the 2011 legislative enactment. The habeas court dismissed the petition on its own motion under Practice Book § 23-29 (1), which provides in relevant part: “The judicial authority may, at any time, upon its own motion . . . dismiss the petition . . . if it determines that . . . the court lacks jurisdiction.” In its order, the habeas court cited to case law involving nearly identical factual and legal issues in which the Appellate Court concluded that the petitioner had failed to state a colorable ex post facto claim and had no liberty interest in parole eligibility, such that the habeas court lacked jurisdiction over his petition. The petitioner here thereafter appealed, and the Appellate Court (184 Conn. App. 228) affirmed the habeas court’s judgment of dismissal. The Appellate Court disagreed with the petitioner that the habeas court had erred in dismissing his petition for lack of jurisdiction, noting the binding authority that governed his claims. The Appellate Court also rejected the petitioner’s claim that the habeas court erred in dismissing his petition on its own motion under § 23-29 without notice and an opportunity to be heard. The Appellate Court observed that § 23-29 expressly allows a habeas court to dismiss a habeas petition on its own motion, in contrast to Practice Book § 23-40 and its provision in relevant part that a petitioner “shall have the right to be present at any evidentiary hearing and at any hearing . . . on a question of law which may be dispositive of the case.” The Appellate Court also noted past precedent indicating that dismissal under § 23-29 without holding a hearing is appropriate when the habeas court can deter-

mine from its review of the petition that the petitioner has failed to allege sufficient facts to establish jurisdiction. Applying the plain language of the rule and the aforementioned precedent here, the Appellate Court concluded in relevant part: “In light of binding precedent establishing the habeas court’s lack of subject matter jurisdiction . . . the habeas court was not obligated to grant the petitioner a hearing before dismissing the petition.” The Appellate Court accordingly affirmed the habeas court’s judgment of dismissal. The petitioner has been granted certification to appeal, and the Supreme Court will decide whether the Appellate Court properly affirmed the habeas court’s sua sponte dismissal of the habeas petition under Practice Book § 23-29 prior to the appointment of counsel for the self-represented petitioner and without providing the petitioner with notice and an opportunity to be heard.

STATE *v.* JERMAIN RICHARDS, SC 20490
Judicial District of Fairfield

Criminal; Murder; Sufficiency of Evidence; Whether Appellate Court Correctly Concluded that Evidence Adduced at Defendant’s Trial Was Sufficient to Support His Conviction of Murder. The defendant was involved in a relationship with the victim, who was a student at Eastern Connecticut State University. The victim was last seen on April 20, 2013, with the defendant at 2:15 p.m., and her cell phone stopped making and receiving any form of communication after 4 p.m. In the following days, after the victim failed to attend her classes and respond to various communications, ECSU commenced a missing persons investigation with state police assistance. The defendant became a person of interest after the police learned that he was the last person to have been seen with the victim. The police became increasingly suspicious of the defendant’s involvement in the victim’s disappearance as they learned more about the nature of the defendant and victim’s relationship. Specifically, the police learned that the defendant was controlling towards the victim, that he stalked her and tracked her whereabouts, and that, shortly before her disappearance, he became increasingly violent towards her, including an incident in which he choked her and she represented to her sister thereafter that she no longer wished to be in a relationship with him. Additional information obtained during the investigation led to the defendant’s arrest. Such information included the discovery of human remains containing the victim’s DNA approximately 1.5 miles from the defendant’s Bridgeport residence; the defendant’s status as a licensed nurse and the determination by medical examiners that the remains were removed postmortem with a sharp instrument; cellular site location information indicating

that the victim's cell phone last connected to a tower near the defendant's Bridgeport residence; a search and seizure of the defendant's car, which revealed that it had been recently detailed; and searches of the defendant's Ansonia and Bridgeport residences, which revealed that parts of the bathroom at the Ansonia residence had been removed and that some of the victim's personal effects had been found in a trash bag at the Bridgeport residence. The defendant was charged with murder and pleaded not guilty. His first two trials resulted in hung juries and therefore mistrials. He was found guilty, however, after his third jury trial. The defendant appealed from his conviction and claimed that the state failed to prove (1) the manner, means, place, cause, and time of death and (2) that he committed any criminal acts or intended to commit such acts. The Appellate Court (196 Conn. App 387) disagreed. It noted that, under General Statutes § 53a-54a, "a person is guilty of murder when, with intent to cause the death of another person, he causes the death of such person." It then determined that there was sufficient circumstantial evidence, given its nature and scope, for the jury to reasonably infer that the defendant intended to cause the victim's death and that he caused her death, despite the defendant's assertions that the state had failed to prove the specific cause and manner of death. The Appellate Court accordingly affirmed the defendant's conviction. The defendant has been granted certification to appeal, and the Supreme Court will decide whether the Appellate Court correctly concluded that the evidence adduced at the defendant's trial was sufficient to support his conviction of murder.

KELLY SERVICES, INC. *v.* THE SENIOR NETWORK,
INC., SC 20548

Judicial District of Stamford-Norwalk at Stamford

Breach of Contract; Offer of Compromise Interest; Whether Trial Court Properly Awarded Postjudgment Offer of Compromise Interest. The plaintiff is a staffing agency that provides employees for temporary work. The plaintiff entered into an agreement with the defendant to provide employees for purposes of handing out Medicare brochures. After all of the work was completed, the plaintiff submitted an invoice to the defendant and, following an e-mail exchange between the parties, they agreed on May 19, 2015, that the plaintiff's invoice for \$113,955.56 reflected the final amount due under the contract. The defendant, however, failed to pay that final invoice, and the plaintiff commenced this action to collect the outstanding amount. On March 15, 2018, pursuant to General Statutes § 52-192a, the plaintiff filed an offer of compromise to settle this action for \$113,955.56, which

the defendant did not accept. Following trial, the court awarded the plaintiff \$113,955.56 in damages on December 2, 2019, after finding that there had been an accord and satisfaction under the parties' agreement. For the wrongful detention of those funds, the court awarded 8 percent interest on that amount to run from May 19, 2015, until the judgment is satisfied. The trial court also found that the plaintiff's offer of compromise was equal to the amount recovered and, therefore, under § 52-192a it awarded the plaintiff \$350 in attorney's fees and offer of compromise interest at a rate of 8 percent. The court ordered that the offer of compromise interest would accrue from the date of the offer, March 15, 2018, until the judgment is satisfied. The court acknowledged that, in light of the overlapping interest awards, interest would be accruing at 16 percent at times, including postjudgment, but that it was exercising its discretion to award interest at that rate. It reasoned that the period of 16 percent interest was equitable in light of the parties' accord and satisfaction and because the defendant had drafted the parties' agreement, which provided that only the defendant was entitled to attorney's fees if it prevailed. The defendant moved for reargument on the ground that, under § 52-192a, offer of compromise interest runs only until the time of judgment. The defendant also sought reargument on the ground that the parties' contract, including the attorney's fees provision, was not drafted by the defendant but, rather, was based on a template drafted by the plaintiff. The trial court denied the motion to reargue, the defendant appealed to the Appellate Court, and the Supreme Court transferred the appeal to itself. On appeal, the defendant claims that the trial court misinterpreted § 52-192a and, consequently, improperly ordered that the offer of compromise interest continue to accrue until the judgment is satisfied. According to the defendant, the statute directs that offer of compromise interest shall accrue from the date of the offer until the date that the court renders judgment and, at that time, the court should calculate the amount of the offer of compromise interest and add that amount to the judgment. As a result, the defendant claims that the trial court here erred by ordering that the offer of compromise interest continue to accrue post-judgment.

JOHN TILLMAN et al. v. PLANNING AND ZONING COMMISSION
OF THE CITY OF SHELTON et al., SC 20549
Judicial District of Hartford

Zoning; Planned Development Districts; Whether General Statutes § 8-2 Authorized Portion of Shelton Zoning Regulations Permitting Adoption of Planned Development Districts; Whether

Planned Development District Violates Uniformity Requirement under § 8-2; Whether Planned Development District Unlawfully Established Subdivision of Land. The defendant Shelter Ridge Associates LLC (Shelter Ridge) filed an application pursuant to § 34 of the Shelton zoning regulations for approval of initial concept development plans and a planned development district zone change for approximately 121 acres of vacant land in Shelton. Shelter Ridge sought a zone change to accommodate a mixed-use development that would be divided into five separate development areas consisting of retail stores, commercial offices, food services and residential apartments. The defendant planning and zoning commission of the city of Shelton (commission) approved the application, amending the zoning regulations and map to designate the property as a planned development district. The plaintiffs, who own abutting property, appealed the commission's decision to the Superior Court, claiming that General Statutes § 8-2, which confers authority on municipalities to regulate land usage through zoning, does not authorize the adoption of planned development districts and that, even if authorized by statute, the planned development district here violates the uniformity requirement under § 8-2 because it does not establish uniform standards for permitted uses and structures within the same zoning district. The plaintiffs also claimed that the commission, by approving the planned development district consisting of five separate development areas, unlawfully established a subdivision. The trial court rejected the plaintiffs' claims and dismissed the appeal, relying on *Campion v. Board of Aldermen*, 278 Conn. 500 (2006), wherein the Supreme Court held that the enabling authority for the city of New Haven to adopt and administer zoning regulations authorized the adoption of planned development districts. Although New Haven's zoning authority is derived from a 1925 special act that is only applicable to New Haven, the trial court applied the *Campion* court's analysis to the language of § 8-2 and determined that the statute, like the special act, authorizes zoning authorities to adopt planned development districts. In addition, the court found that the planned development district satisfied the uniformity requirement under § 8-2 because it incorporates characteristics that are consistent with the new regulations such that it is uniform within itself. Finally, the court concluded that the inclusion of separate development areas within the planned development district did not create an unauthorized subdivision. The plaintiffs appealed to the Appellate Court, and the Supreme Court thereafter transferred the appeal to itself. The plaintiffs claim that the trial court erred in (1) relying on *Campion* in determining that the commission had the statutory authority to approve planned development districts because *Campion* did not involve § 8-2, (2) finding

that the planned development district satisfied the uniformity requirement of § 8-2, and (3) failing to find that commission's decision effected an unlawful subdivision in violation of the Shelton zoning and subdivision regulations.

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*
