

## SUPREME COURT PENDING CASES

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

STATE OF CONNECTICUT *v.* JAYVELL WASHINGTON, SC 20495  
*Judicial District of Fairfield*

**Criminal; Prosecutorial Impropriety; Jury Instructions. Whether Trial Court Erred in Admitting Jailhouse Phone Recordings as Adoptive Admissions; Whether Trial Court Erred in Denying Defendant’s Motion for New Trial Where Jury Deliberations Took Place during Early Stages of COVID-19 Pandemic.** The defendant was seated in the driver’s seat of a vehicle parked at a gas station in Bridgeport when the victim, Eugene Rogers, approached the vehicle. An exchange of gunfire broke out between the victim and an occupant of the vehicle, resulting in the victim’s death. The defendant was subsequently arrested after police identified him from the gas station’s surveillance video footage. While in custody, the defendant’s phone calls to his sister were recorded. In the recordings, the sister stated that she and two male acquaintances were watching the video footage of the shooting. While watching the footage, the sister said to the defendant, “That’s you in the car.” The defendant did not respond. As the sister and one of the men watched the footage and described it to the defendant, the defendant repeatedly said “yeah” and “right” in response. When one of the men observed that the victim tried to get away from the defendant’s car when “he saw you had it,” the defendant did not deny that characterization or otherwise respond. At trial, the defendant filed a motion in limine to exclude the recordings, which the court denied on the ground that the defendant’s failure to deny his involvement in the shooting during the phone conversations could constitute an adoptive admission of his criminal conduct. During its case-in-chief, the state elicited testimony from the defendant’s sister identifying the defendant as one of the people depicted in the surveillance video. In closing argument, the state, commenting on the defendant’s self-defense theory, suggested that either the defendant had been the initial aggressor or the altercation was the product of combat by agreement. The state also attempted to refute the defendant’s claim that someone else in his car had committed the shooting by questioning why the defendant did not mention this to his sister. Following closing arguments, the court instructed the jury regarding adoptive admissions and combat by agreement. In March, 2020, the jury found the defendant guilty of first-degree intentional manslaughter with a firearm and two firearm-related offenses. In July, 2020, the defendant

filed a motion for a new trial on the ground that the COVID-19 pandemic impacted the jury's deliberations. The court denied the motion as untimely and sentenced the defendant to a total effective term of imprisonment of forty years. The defendant this appeal, which is before the Supreme Court pursuant to General Statutes § 51-199 (b) (3). The defendant claims that the trial court violated his constitutional rights, as recognized in *Doyle v. Ohio*, 426 U.S. 610 (1976), in admitting the recordings of his phone conversations and subsequently instructing the jury regarding adoptive admissions; improperly instructed the jury regarding combat by agreement where, according to the defendant, the evidence did not support such an instruction; and erroneously denied his motion for a new trial. The defendant also claims that the state committed improprieties in eliciting identification testimony from the defendant's sister that embraced an ultimate issue of fact, in violation of *State v. Finan*, 275 Conn. 60 (2005), and making statements during closing argument that relied on facts not in evidence.

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STATE OF CONNECTICUT *v.* METESE HINDS, SC 20555  
*Judicial District of New London*

**Criminal; Prosecutorial Impropriety; Whether Defendant Was Deprived of Fair Trial by Prosecutor's Closing Argument that (1) Jury Should Infer that Trial Testimony of State's Witness Was Consistent with His Prior Statements to Police and (2) Jury Need Only Determine Whether Prosecution's Version of Events Was More Credible Than Defendant's Version.** The defendant was charged with murder and carrying a dangerous weapon in connection with the stabbing death of a man in a New London apartment building. At the time, the defendant had been staying in the second-floor apartment occupied by James Cody Lewis. On the day of the stabbing, the victim, Raheem General, was consuming alcohol with friends in the third-floor apartment. At some point, the defendant entered the third-floor apartment, and an argument ensued. The police were subsequently called to the building for a reported stabbing. When the police arrived, they found the victim on the second-floor fire escape landing suffering from fatal injuries to his torso. As police were tending to the victim, the defendant emerged from the adjacent second-floor apartment and attempted to kick the victim as he ran by, precipitating the defendant's arrest. The police found Lewis in the second-floor apartment that the defendant had exited. Lewis was cooperative and gave a statement to police. At the defendant's jury trial, Lewis testified that, after the defendant returned to the second-floor apartment on

the evening of the stabbing, he heard the defendant rummaging in the kitchen and then observed the defendant engage in a physical altercation with the victim on the fire escape landing outside the apartment. Lewis further testified that, when the defendant reentered the apartment, he saw that the defendant was holding one of Lewis' kitchen knives. In his closing argument, the prosecutor pointed out that defense counsel had not attempted to establish on cross-examination that Lewis' prior statement to police was inconsistent with his trial testimony. The prosecutor argued that the jurors could therefore "conclude from [their] common sense that [Lewis'] testimony during the trial [was], essentially, the same as the information he [had] provided to the police shortly after the incident." The prosecutor also argued that the state had presented a version of events that was simple and commonsensical whereas the defendant's version was a "sort of unreal complex story." The prosecutor then suggested that the jury could decide which version to believe by applying the principle known as Occam's razor—that the simplest of competing theories should be preferred over more complex ones. The defendant did not object to the state's closing argument, and he was subsequently convicted as charged. The defendant appeals from the judgment of conviction directly to the Supreme Court under General Statutes § 51-199 (b) (3), claiming that he was deprived of a fair trial as a result of the prosecutor's allegedly improper statements during closing argument. The defendant argues that the prosecutor's invitation to the jury to infer that Lewis' prior statements were consistent with his trial testimony was improper because (1) it amounted to impermissible vouching of Lewis' credibility and (2) such statements were never offered into evidence, and, if they had been, they would have been inadmissible hearsay. The defendant also argues that the prosecutor's suggestion that the jury need only determine which version of events was more credible constituted an impermissible dilution of the state's burden of proof.

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*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*

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