

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.* GONZALO DIAZ, SC 20720
Judicial District of Waterbury

Criminal; Whether Trial Court Committed Plain Error in Giving Jury Instruction Regarding Defendant’s Interest in Verdict in Violation of *State v. Medrano*, 308 Conn. 604 (2013); Whether Prosecutorial Improprieties Deprived Defendant of Fair Trial. The defendant was charged with manslaughter in the first degree, felony murder, burglary in the first degree, conspiracy to commit burglary in the first degree, attempted robbery in the first degree, and criminal possession of a firearm in connection with the shooting death of the victim at 150 Wall Street in Waterbury. At trial, Shavonnah Draper testified that she took Howard Jefferson, with whom she was romantically involved, to 150 Wall Street on the night of the shooting to buy drugs and picked up “E” to join them. Draper further testified that, once they arrived and she parked the car, Jefferson went across the street while she and “E” went to 150 Wall Street, where “E” “bum rushed” the victim while holding a gun. Draper then testified that she and Jefferson ran away, at which point she heard a gunshot; got into the car; and drove away, picking up “E” in the process. During their investigation of the incident, the police obtained cell phone evidence that the defendant, Draper, and Jefferson were in contact at and around the time of the incident. Draper and the defendant were arrested and charged thereafter. Draper entered into a cooperation agreement with the state under which she pleaded guilty to attempted robbery in the first degree as an accessory, and she subsequently testified at the defendant’s trial. While Draper was unable to identify the defendant as “E” at any point in the proceedings, the defendant indicated during the investigation and again at trial that he had been with Draper and Jefferson on the night of the incident. The trial court instructed the jury regarding their credibility assessment of the witnesses, including Draper and the defendant. With respect to the defendant, the trial court instructed the jury to assess his credibility in the same manner as that of other witnesses and provided, “[T]hat necessarily involves consideration of his interest in the verdict that you will render.” There were no objections to the jury instructions. The defendant was found guilty as charged and sentenced to a total effective term of forty-five years of incarceration. He appeals from his conviction directly to the Supreme Court under General Statutes § 51-

199 (b) (3). The defendant first claims that the trial court committed plain error by instructing the jury to consider his interest in the verdict in violation of *State v. Medrano*, 308 Conn. 604 (2013), where the Supreme Court exercised its supervisory authority to “direct . . . trial courts . . . to refrain from instructing jurors, when a defendant testifies, that they may specifically consider the defendant’s interest in the outcome of the case and the importance to him of the outcome of the trial.” The defendant acknowledges that his claim is unpreserved but seeks plain error review by arguing that the trial court made a clear and obvious mistake that resulted in manifest injustice because the challenged instruction was contrary to *Medrano*, watered down the accomplice liability jury instruction given with respect to Draper, and equated the credibility of the defendant with that of Draper, who had already pleaded guilty. The defendant also claims that the prosecutor committed improprieties by commenting on Draper’s credibility, referring to police interrogations that were not in evidence, and asking the jury during rebuttal to place themselves in the defendant’s shoes and that these improprieties deprived the defendant of a fair trial.

STATE *v.* BRANDON ROBERTS, SC 20762
Judicial District of Fairfield

Criminal; Whether Conviction for Carrying Pistol Without Permit Should Be Overturned Because State Statutory Requirements for Nonresidents to Obtain Firearms Permit Violate Federal Constitutional Rights Under Second Amendment, Privileges and Immunities Clause, and Equal Protection Clause. In November of 2018, the defendant, Brandon Roberts, lawfully purchased two handguns in Ohio where he resided. Pursuant to Ohio law, the defendant was required to show a photo identification and pass the National Instant Criminal Background Check, but he was not required to obtain a permit. Shortly thereafter, the defendant traveled to Connecticut to spend some time with family. While in Connecticut, the defendant used one of his handguns to shoot and kill a woman he met on a dating application. As a result, the defendant was convicted of murder, first degree robbery and carrying a pistol without a permit in violation of General Statutes § 29-35. The statute prohibits a person, except at home or in the person’s place of business, from carrying a pistol without a permit issued in accordance with General Statutes § 29-28. Section 29-28 provides for the issuance of a permit to a Connecticut resident if the applicant satisfies various requirements, including passing a criminal background check and successfully completing a gun

safety class, and to a non-resident who has a permit issued by another state. Just prior to sentencing, the defendant filed a motion to dismiss the carrying a pistol without a permit conviction based on a decision that had been issued by the United States Supreme Court the previous day in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022), which held that a New York statute that required a permit to carry a handgun in public violated the second amendment right under the federal constitution to bear arms in public for self-defense. The trial court denied the motion, finding that the present case was distinguishable because *Bruen* turned on the fact that the New York law gave government officials the discretion to deny a citizen a firearm in the absence of a showing of a special need for self-protection distinguishable from the general population. The trial court then sentenced the defendant to sixty-five years of incarceration, which included a five year sentence on the carrying a pistol without a permit conviction. The defendant appealed from the conviction directly to the Supreme Court pursuant to General Statutes § 51-199. On appeal, the defendant claims that his conviction violated his second amendment right to bear arms because Connecticut law places an unconstitutional burden on him to obtain a permit in Ohio, where permits are not required, before he could obtain a nonresident permit in Connecticut. The defendant also challenges his conviction on the ground that the disparate treatment of nonresidents in Connecticut's firearms permitting laws violates both the privileges and immunities clause and the equal protection clause of the federal constitution.

STATE OF CONNECTICUT *v.* GREGORY E. MCLAURIN, SC 20785
Judicial District of Ansonia-Milford

Criminal: Identification; Whether Showup Identification of Defendant Was Unnecessarily Suggestive. On one evening at approximately 8:30 p.m., the defendant and Royshon Ferguson entered a restaurant in Milford. Jada Brinkley and another restaurant employee were working in the front of the restaurant at the time. At gunpoint, the defendant corralled the employees and customers into a back room while Ferguson set about removing cash from the restaurant's safe and cash registers. At a certain point, one of the customers drew a concealed firearm from his person and chased the defendant and Ferguson out of the restaurant. The police were called at approximately 8:40 p.m. Within minutes, Officer Matthew Joy arrived at the scene, where witnesses described the suspects as two black males wearing ski masks, jeans, and hooded sweatshirts. As additional officers traveled

to the scene, a passing motorist flagged them down and reported seeing two black males running into a wooded area behind a car dealership located approximately 800 feet across the street from the restaurant. An officer and his canine partner were deployed to the wooded area. Ferguson was the first to be apprehended, whereupon he was found to have a large knife and hundreds of dollars in cash in his pockets. Ferguson was then moved to the parking lot of the car dealership, where officers had set up a staging area. At approximately 8:50 p.m., Officer Joy brought Brinkley to the car dealership to conduct an eyewitness showup, whereupon she quickly and without hesitation identified Ferguson as one of the robbers. Officers meanwhile continued to search for the second suspect, who was eventually apprehended in the same wooded area. Thereafter, at approximately 9:40 p.m., Officer Joy was instructed to bring Brinkley back to the car dealership to conduct a second showup identification. Brinkley identified, without hesitation, the defendant as the other robber. The defendant was subsequently arrested and charged in connection with the robbery. Prior to trial, the defendant filed a motion to suppress Brinkley's identification. The trial court denied the motion following an evidentiary hearing, finding that the identification, given all the facts and circumstances, was not unduly suggestive. The defendant was later found guilty of first-degree robbery and related offenses. The defendant then appealed to the Appellate Court, challenging the denial of his motion to suppress. The Appellate Court affirmed (216 Conn. App. 449), concluding that the showup identification procedure used by Officer Joy was not unnecessarily suggestive because it was justified by exigent circumstances. In so concluding, the Appellate Court determined that the identification was conducted in close temporal and geographic proximity to the scene of the robbery and that it was justified because there was reason to believe that the suspects were armed and dangerous, and, after Ferguson's apprehension, police needed to quickly confirm whether the defendant, who matched the description of one of the suspects, was the second perpetrator. The court further determined that the police had taken significant steps to minimize the inherent suggestiveness of the identification procedure and emphasized the importance of the police having conducted the identification while Brinkley's recollection was still fresh. The defendant now appeals upon the grant of his petition for certification to our Supreme Court, which will decide whether the Appellate Court properly upheld the trial court's denial of the defendant's motion to suppress the one-on-one showup identification of the defendant.

UNITED ILLUMINATING CO. *v.* PUBLIC UTILITIES REGULATORY
AUTHORITY, SC 20795

Judicial District of New Britain

Administrative Appeal; Utilities; Whether PURA Erred in Ordering Reduction to Electric Utility’s Return on Equity for Purported Deficiencies in Utility’s Storm Response; Whether PURA Improperly Fined Utility for Violations of Storm Performance Standards; Whether PURA Erred in Fining Utility for Two Reporting Violations. In the aftermath of Tropical Storm Irene, legislation was enacted directing the defendant, the Public Utilities Regulatory Authority (PURA), to establish standards of acceptable performance for electric distribution companies responding to certain emergencies and to investigate the companies’ responses following such emergencies. It also empowered PURA to impose civil penalties for noncompliance with these standards in a separately docketed contested case. Following Tropical Storm Isaias in August of 2020, PURA initiated a proceeding to investigate United Illuminating Company’s (UI) preparation for and response to Isaias. PURA ultimately issued a final decision in that proceeding finding that UI’s response generally had met the performance standards, but it faulted UI for deficiencies with respect to certain specific standards. It also found that UI had failed to report certain “minor accidents” to PURA, as required by General Statutes § 16-16. As a result, PURA decided to impose, at the next regular ratemaking proceeding, a fifteen basis-point reduction of UI’s return on equity, which, according to PURA, was not a penalty but, rather, was meant as an “incentive” to “encourage [UI] to cure” management and operational deficiencies. PURA thereafter initiated a second proceeding to consider appropriate civil penalties for the deficiencies identified in the investigation proceeding. Following a hearing, PURA issued a final decision imposing approximately \$1.19 million in penalties for UI’s noncompliance with performance standards, as well as penalties for UI’s failure to report two minor accidents. The decision treated each of the reporting violations as a continuing violation under General Statutes § 16-41, resulting in UI being assessed a \$500 penalty for each day that each report was late, amounting to a total of \$61,000 in fines. UI appealed both decisions to the Superior Court, which upheld PURA’s determinations and dismissed the appeals. UI thereafter appealed to the Appellate Court, and this appeal was then transferred to our Supreme Court. On appeal, UI claims that the trial court erred in upholding PURA’s reduction of UI’s return on equity, where, according to UI, such reduction is not authorized by the statutory scheme and was procedurally improper, inconsistent

with PURA's findings in the subsequent penalty proceeding, and not supported by PURA's factual findings. UI also claims that the trial court erred in upholding PURA's imposition of penalties for violating performance standards, where, according to UI, there was no evidence of UI having violated any established storm performance standard. Finally, UI claims that the trial court improperly upheld PURA's imposition of penalties related to the untimely reporting of two minor accidents, where, according to UI, PURA had misinterpreted the relevant statutes in categorizing UI's reporting violations as "continuous."

PAUL LAIUPPA *v.* MARY MORITZ, SC 20798
Judicial District of Hartford

Accidental Failure of Suit Statute (§ 52-592); Whether Appellate Court Correctly Concluded Plaintiff's Failed Action Did Not Come Within § 52-592 Because It Was Not "Commenced" Within Meaning of That Statute. In June, 2018, the plaintiff sought to commence a negligence action against the defendant arising from a motor vehicle accident prior to the expiration of the two-year statute of limitations under General Statutes § 52-584. After a state marshal attempted abode service at the defendant's last known address, the plaintiff sent a copy of the summons and complaint to the defendant's insurance company. The defendant's attorney, who had been appointed by the insurance company, thereafter filed an appearance. The defendant subsequently filed a motion to dismiss accompanied by an affidavit from Patricia Vinci, her attorney-in-fact, who averred that the defendant's property had been sold and the defendant had relocated to Rhode Island prior to the time the marshal attempted abode service. The trial court dismissed the action for lack of personal jurisdiction due to insufficient service of process. After the plaintiff commenced the second action, which he claimed was saved by the accidental failure of suit statute, General Statutes § 52-592, the defendant moved for summary judgment on the ground that § 52-592 was inapplicable because the prior action had not been "commenced" within the two-year limitations period set forth in § 52-584. After initially denying the motion, the court granted it on reconsideration, concluding that the undisputed facts supported the defendant's claim that neither she nor Vinci had received effective, timely notice of the prior action. The plaintiff appealed, claiming that the trial court improperly concluded that § 52-592 did not operate to save his action because the prior action was timely "commenced" as required by § 52-592. A majority of the Appellate Court (216 Conn. App. 344) affirmed the judgment, conclud-

ing that § 52-592 could not save the plaintiff's action as it was undisputed that the defendant herself never received the summons and complaint in the prior action, and, as Vinci stated in her affidavit, the plaintiff never provided Vinci with the summons and complaint until the attorney for the defendant's insurance company emailed them to her two days after the statute of limitations expired. In addition, the Appellate Court found that the plaintiff's contention that it was of no consequence that the defendant did not have notice of the original action until after the statute of limitations expired could not be reconciled with the requirement of *Rocco v. Garrison*, 268 Conn. 541 (2004), *Dorry v. Garden*, 313 Conn. 516 (2014) and *Kinity v. US Bancorp*, 212 Conn. App. 791 (2022), that a defendant have actual or effective notice of the action by way of receipt of the summons and complaint within the time limited by law so as to bring the action within the confines of § 52-592. The concurrence to the majority determined that, although it was obligated to concur with the result reached by the majority based on an interpretation of Supreme Court precedent regarding § 52-592 as articulated in *Kinity*, it believed that interpretation was unnecessarily narrow and restrictive. The plaintiff was granted certification to appeal, and the Supreme Court will consider whether the Appellate Court correctly concluded that the plaintiff's failed action did not come within § 52-592 because it was never "commenced" within the meaning of that statute.

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
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