

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. 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.

**HEALTH BODY WORLD SUPPLY, INC. et al. v.
REED WANG, SC 21051**
Judicial District of Stamford-Norwalk

Product Liability; Action for Contribution; General Statutes § 52-572o; Whether Plaintiffs Barred From Seeking Contribution Because Defendant Was Not Party To Underlying Action; Whether Plaintiffs' Contribution Action Untimely. In a previous action, a jury awarded Judith Kissel \$1 million each on her medical malpractice claim against her acupuncturist, Reed Wang (Wang), and on her product liability claim against the distributor of an acupuncture heat lamp, Health Body World Supply, Inc. (HBWS). With respect to the product liability claim, the jury found HBWS 80 percent responsible and Wang 20 percent responsible for Kissel's damages. On appeal, the Appellate Court affirmed the judgment against HBWS but reversed the judgment against Wang for lack of personal jurisdiction. The Supreme Court denied HBWS' petition for certification to appeal on November 9, 2021. Landmark American Insurance Company (LAIC), which is HBWS's insurance carrier, paid Kissel \$1.2 million to satisfy the judgment. In May 2022, the plaintiffs, HBWS and LAIC, commenced this contribution action against Wang pursuant to General Statutes § 52-572o of the Product Liability Act, seeking to recover 20 percent of the amount paid to Kissel in satisfaction of that judgment. Subsection (e) of § 52-572o provides that any "action for contribution must be brought within one

year after the judgment becomes final." Wang moved for summary judgment on the ground that this contribution action was untimely because the phrase "judgment becomes final" in § 52-572o (e) refers to the final judgment of the trial court. The trial court rejected Wang's interpretation of § 52-572o (e) and ruled that this action was timely filed within one year of November, 2021, when the judgment in the Kissel action became final following the exhaustion of appellate remedies. Next, Wang contended that the plaintiffs were barred from pursuing their contribution claim against him under § 52-572o because he was not a party to the Kissel action. Specifically, Wang argued that he was not a party to the medical malpractice claim based on the Appellate Court's ruling that the trial court lacked personal jurisdiction over him and also argued that he was not a party to the product liability claim because HBWS had not filed a cross complaint against him. The trial court disagreed, stating that, after withdrawing his product liability claim against HBWS, Wang took no action to remove himself from the product liability portion of the Kissel action and, thus, remained named as a responsible party in the defense asserted by HBWS to Kissel's product liability claim. Accordingly, the court denied Wang's motion for summary judgment and granted the plaintiffs' cross motion for summary judgment. Wang appealed to the Appellate Court, and the Supreme Court transferred the appeal to itself pursuant to General Statutes § 51-199 (c). On appeal, Wang claims, contrary to the trial court's ruling, that he was not a party to the Kissel action and, therefore, the plaintiffs were barred from seeking contribution from him under § 52-572o. He also claims that the trial court erred in concluding that the plaintiffs' contribution action was timely under § 52-572o.

JANEL SIMPSON v. ROBERT R. SIMPSON, SC 20988
Judicial District of Hartford

Dissolution; Whether Appellate Court Erred in Reversing Remedial Orders on the Basis of Its Conclusion That Separation Agreement Unambiguously and Clearly Relieved Defendant of Obligation to Pay Supplemental Support. In 2013, the trial court dissolved the parties' marriage, incorporating the parties' separation agreement (agreement) into the dissolution judgment. The agreement required the defendant to pay to the plaintiff set amounts of child support and alimony. The agreement also required the defendant to pay supplemental child support and alimony, which were calculated as a percentage of his annual bonus, but provided that the defendant make no supplemental support payments on his gross earned income in excess of

\$700,000 per calendar year. The plaintiff subsequently filed a motion for contempt alleging that the defendant had failed to pay the proper amount of child support and alimony. The trial court issued a decision finding that the relevant provisions of the agreement were unclear and ambiguous, calculating that the defendant owed more than \$300,000 in arrearages, and ordering the defendant to pay the arrearages. The defendant appealed, and a majority of the Appellate Court (222 Conn. App. 466) held that the relevant provisions of the agreement were clear and unambiguous and provided that the defendant's supplemental support obligations did not extend to his gross earned income in excess of \$700,000 and were not tied to the amount of his annual bonus. The majority found that the trial court's conclusion that the \$700,000 cap applied only to the defendant's bonus was inconsistent with the plain meaning of the words used by the parties in the agreement and that the agreement as a whole reflected the parties' clear understanding that the defendant's compensation package could change in the future and provided for a remedy of renegotiation of support obligations in the event thereof, which the plaintiff failed to pursue. One judge, dissenting in part, determined that each party had set forth a plausible construction of the relevant provisions of the agreement based on the language used in the agreement and therefore concluded that the agreement was ambiguous because it did not convey the definite and precise intent of the parties. The dissent contended that, as recognized by the majority, the parties did not offer and the trial court did not admit any extrinsic evidence of the parties' intent in drafting the relevant provisions of their agreement and stated that it would remand the matter to the trial court to hold a hearing to determine the intent of the parties after consideration of all the available extrinsic evidence. The Appellate Court reversed the judgment with respect to the trial court's remedial orders calculating the arrearage owed by the defendant to the plaintiff and remanded the matter for further proceedings consistent with its opinion. In this certified appeal by the plaintiff, the Supreme Court will decide whether the Appellate Court erred in reversing the trial court's remedial orders on the basis of its conclusion that the agreement clearly and unambiguously relieved the defendant of the obligation to pay supplemental child support and alimony. The court will also decide whether the Appellate Court erred in concluding that the parties' separation agreement clearly and unambiguously relieved the defendant of the obligation to pay supplemental child support and alimony when, according to the plaintiff, (a) both parties advanced reasonable and plausible interpretations of the relevant provisions, (b) the majority failed to give effect to the intent of the parties as expressed in the agreement, (c) the dissent correctly concluded that the agreement was ambiguous and thus its meaning presented a question of fact for the trial court, and (d) both the majority and the

dissent noted the absence of extrinsic evidence on the issue of the parties' intent, as well as the need for such evidence in order to interpret the agreement.

STATE v. JAROD HAMILTON, SC 20806
Judicial District of Bridgeport

Criminal; Whether Trial Court Improperly Admitted Statements Made by Uncooperative State's Key Witness under *State v. Whelan*; Whether Trial Court Improperly Admitted Statements Made by Father of State's Key Witness During Witness' Interview under *Whelan* Because Witness Adopted Statements; Whether Trial Court Improperly Admitted Photographs and Video of Defendant Posted on Social Media. On December 23, 2017, a man wearing "Jordan 13" sneakers shot and killed the victim, Khali Davis, outside a deli in Bridgeport. After the shooter fled, he entered the passenger side of a vehicle owned by Daequan Carr. Carr subsequently gave two recorded statements to the police that inculpated the defendant in the murder of the victim. Carr appeared alone for the first interview, but his second interview was conducted in the presence of his father, Dennis Cobia. The defendant was subsequently charged with murder. At trial, when the state asked Carr if he "picked up" the defendant on the morning of the murder, Carr responded that he could not remember. The state then asked Carr several times whether he remembered giving statements to the police about whom he picked up that morning. In response, Carr repeatedly testified that he did not "want to be here" and that he did not "want to speak." Thereafter, upon the state's motion, the trial court admitted Carr's statements into evidence pursuant to the prior inconsistent statement exception to the hearsay rule adopted in *State v. Whelan*, 200 Conn. 743 (1986). Subsequently, defense counsel objected to several disparaging comments regarding the defendant made by Cobia that could be heard in the recording of Carr's second interview on the ground that they constituted inadmissible hearsay. The court overruled the objection, ruling that, to the extent Carr "adopted" Cobia's statements either by verbally agreeing with them or by nodding affirmatively, the statements were admissible as Carr's statements under *Whelan*. After the trial, the jury found the defendant guilty of murder. The defendant now appeals directly to the Supreme Court pursuant to General Statutes § 51-199 (b) (3). On appeal, the defendant claims that the trial court improperly admitted Carr's statements under *Whelan* because, although Carr was uncooperative, his

trial testimony was not inconsistent with his statements. Next, the defendant claims that the trial court improperly admitted irrelevant and prejudicial comments by Cobia in Carr's second *Whelan* statement under the adoptive admissions exception to the hearsay rule. See Conn. Code Evid. § 8-3 (1) (B). He asks that the Supreme Court hold that *Whelan* statements may not include adoptive admissions by a witness because a witness, as opposed to a defendant, has no natural incentive to contradict incorrect statements that inculpate a third party. Alternatively, he argues that Cobia's statements did not constitute adoptive admissions by Carr because there was no definite proof that the Carr intended to adopt Cobia's comments. He also argues that the Cobia's statements should have been excluded because they were irrelevant and more prejudicial than probative. Finally, the defendant claims that the trial court erred in admitting into evidence (1) a Facebook photograph of the defendant wearing "Jordan 13" sneakers and (2) photographs and video from the defendant's Snapchat account showing him holding a firearm on the ground that the evidence was probative of the defendant's identity as the shooter. He argues that the prejudicial effect of this evidence far outweighed its probative value.

STATE OF CONNECTICUT v. ANTWON B., SC 20833

Judicial District of Hartford

Criminal; Attempted Assault in First Degree; Larceny in Third Degree; Prosecutorial Impropriety; Whether Evidence Sufficient to Prove Specific Intent to Cause Serious Physical Injury; Whether Evidence Sufficient to Prove that Taking Was Wrongful and Specific Intent to Permanently Deprive Owner of Property. The defendant and L.P. previously were in a relationship and had resided together but were living in separate apartments located in the same complex. The defendant, who worked as an overnight security guard at a parking lot, planned to visit the gun range on October 21, 2022. At that time, L.P. was in a relationship with the victim, Leroy Jefferson. The defendant, carrying his Glock-19 handgun, was retrieving ammunition from his garage when he encountered L.P. and the victim in a stairwell. Without warning, the defendant shot the victim forty-one times and killed him. At trial, L.P. testified that during the shooting the defendant had grabbed the hood of her sweatshirt, "put the gun to [her] face," and "[p]ulled the trigger but nothing happened." L.P. testified to hearing "a click sound" and that the defendant reloaded the gun before again pointing it in her face. After L.P. mentioned their child, the defendant resumed shooting the victim before fleeing to his work,

where he took a customer's Ford Explorer. The defendant's sister convinced him to turn himself in to the police, and, following his arrest, she drove the Ford Explorer away from the police station but returned it upon realizing that the vehicle was not the defendant's. The trial court denied the defendant's motion for a judgment of acquittal on the attempted assault in the first degree charge pertaining to L.P. because her testimony was sufficient to submit the charge to the jury. The defendant testified that he did not remember the incident, and neither the defendant's employer nor the owner of the Ford Explorer testified. The jury found the defendant guilty of the lesser included offense of manslaughter in the first degree with a firearm by reason of extreme emotional disturbance and attempted assault in the first degree. The defendant also was convicted of larceny in the third degree for "wrongfully [taking] a 2016 Ford Explorer from the owner . . . with the intent to permanently deprive" him of it and appeals directly to the Supreme Court pursuant to General Statutes § 51-199 (b) (3). With respect to the assault, he claims that the evidence was insufficient to prove that he intended to cause serious physical injury because the jury needed to speculate in order to infer that he pulled the trigger of the handgun while pointing it at L.P. As to the larceny, the defendant claims that the evidence was insufficient to show that the taking was wrongful, absent testimony from either the owner of the Ford Explorer or the defendant's employer to demonstrate that he was not authorized to possess the vehicle, and, also, that the evidence was insufficient to prove that he intended to permanently deprive the owner of the vehicle given that he brought it to the police. The defendant lastly claims that prosecutorial improprieties during closing argument deprived him of a fair trial.

STATE OF CONNECTICUT v. JAMES MAHARG, SC 20855
Judicial District of Danbury

Criminal; Whether State's Indirect Reliance on Suppressed Statement to Police Rendered Defendant's Trial Fundamentally Unfair; Whether Trial Court Improperly Declined to Suppress Subsequent Statement Made Shortly After Initially, Improperly Procured Statement. In the early morning hours of March 20, 2019, the defendant called 911 and reported that he had found his husband, Thomas Conley, dead in their home. The defendant told the dispatcher that, after a night of heavy drinking by the couple, Conley had fallen into a kitchen cabinet and hit his head but that the defendant had treated the wound and that the couple had then gone upstairs to bed. According to the defendant, he subsequently woke up and found Conley dead

downstairs. Arriving police and paramedics found Conley on the floor at the base of the stairs with several wounds on his head. Shortly thereafter, the defendant, who was heavily intoxicated, was transported to the state police barracks. At the barracks, he was interrogated by two detectives for nearly thirteen hours. Throughout the interrogation, the defendant exhibited obvious signs of alcohol withdrawal, including vomiting and shaking, and he repeatedly asked for alcohol, indicated that he needed medical attention, and stated that he wanted to leave. The detectives, however, insisted on proceeding with their questioning and noted that they needed information to provide to the medical examiner. After the defendant repeated what he had told the first responders, the detectives stated that blood had been found in a barn on the couple's property in the vicinity of a hatchet and suggested that the defendant had struck Conley with the hatchet while he was blackout drunk. Initially, the defendant denied hurting Conley and continued to do so for much of the interrogation. When the detectives later vowed to speak with all of the defendant's acquaintances, however, the defendant stated that he had pushed Conley into the cabinet, but he denied hitting Conley. After the detectives persisted in suggesting that the defendant had struck Conley with the hatchet, the defendant stated, "it sounds like that's what I did." The interrogation finally ended when the defendant fell to the floor in a seizure and became unresponsive. He was thereafter transported to the hospital, where, after waking up a couple of hours later, he spontaneously stated that he had killed his husband. The defendant was subsequently charged with murder and tried before a three-judge panel. The trial court suppressed all of the statements made by the defendant while at the police barracks, concluding that his obvious need for medical care had been so apparent and critical that the interrogation violated his constitutional rights. The court declined, however, to suppress the defendant's statement at the hospital, and he was ultimately convicted. The defendant now appeals directly to the Supreme Court pursuant to General Statutes § 51-199 (b) (3). He first claims that the trial was fundamentally unfair because, although his statements at the police barracks had been suppressed, the state indirectly relied on the statements to establish his guilt. In particular, the defendant notes that some of the details from the interrogation had been relayed to the medical examiner, which colored her assessment that Conley's injuries were indicative of "chop wounds" and that the manner of his death was a homicide. The defendant also claims that the trial court erroneously declined to suppress his hospital statement, arguing that this statement was merely a continuation of the custodial interrogation that had begun at the police barracks. Accordingly, the defendant seeks acquittal or, at minimum, a new trial.

**LASCELLES A. CLUE v. COMMISSIONER OF
CORRECTION, SC 21002**
Judicial District of Tolland

Habeas; Whether Habeas Court Has Equitable Authority to Open Judgment After Expiration of Four Month Period Set Forth in General Statutes § 52-212a in Absence of Fraud, Duress or Mistake Based on Ineffective Assistance of Habeas Counsel. The petitioner filed this habeas action challenging a conviction for robbery in the first degree on the ground of ineffective assistance of counsel. During the pendency of the habeas action, the petitioner was deported to Jamaica. The petitioner's assigned counsel filed a request for a video status conference representing that his attempts to contact the petitioner had been unsuccessful and a notice detailing his efforts to communicate with the petitioner and his family. The habeas court ordered that the matter be scheduled for a hearing on its own motion to dismiss the action due to the petitioner's failure to cooperate with counsel in prosecuting with due diligence and issued a notice that the matter could be dismissed if the petitioner did not appear at the hearing. Following the hearing in February, 2021, which the petitioner did not attend, the habeas court dismissed the action. In May, 2022, the petitioner filed a motion to open the judgment alleging that his counsel had failed to communicate effectively with him and had made material misrepresentations about his exercise of due diligence in locating the petitioner. The habeas court denied the motion on the basis that it did not have authority to open the judgment beyond the four month period set forth in General Statutes § 52-212a in the absence of a showing that the judgment was obtained by fraud, duress or mutual mistake. The petitioner appealed, and the Appellate Court (223 Conn. App. 803) reversed the judgment. The Appellate Court held that the habeas court improperly found that its authority to grant the petitioner's late motion to open the judgment was exclusively limited to the exceptions for fraud, duress or mutual mistake, as our appellate courts have recognized other equitable exceptions where the protection of the finality of judgments must give way to principles of fairness and equity. The Appellate Court further held that, given both the significant liberty interests at stake in habeas proceedings and the importance of the right to counsel in such proceedings, an equitable exception to the statutory time period is warranted to avoid perpetuating the injustice of a judgment that was not rendered or not timely opened due to the constitutionally deficient performance of habeas counsel. The Appellate Court also noted that our Supreme Court held in *Rose v. Commissioner of Correction*, 348 Conn. 333 (2023), that ineffective assistance of counsel may constitute good cause to excuse the late filing of

a habeas petition under General Statutes § 52-470 and held that the same reasoning applied to a late motion to open a habeas judgment based on a claim of ineffective assistance of counsel. The Appellate Court remanded the matter to the habeas court for a new hearing on the habeas petition. The respondent filed a petition for certification to appeal, which the Supreme Court granted as to the question of whether the Appellate Court correctly concluded that a habeas court has equitable authority to open a judgment after the four month period set forth in § 52-212a in the absence of fraud, duress or mistake based on the ineffective assistance of habeas counsel.

**AQUARION WATER COMPANY OF CONNECTICUT v.
PUBLIC UTILITIES REGULATORY AUTHORITY, SC 21010**
Judicial District of New Britain

Administrative Appeal; Utilities; Whether PURA's Disallowance of Certain Pro Forma Plant Additions Was Arbitrary and Capricious Where Plaintiff Argues That PURA Allowed Other Plant Additions to Enter Rate Base on Basis of Same Evidence; Whether PURA Properly Applied Governing Prudence Standard to Plaintiff's Claimed Conservation and Compensation Expenses; Whether PURA Erred in Assessing Whether Total Effect of Its Rate Order Was Confiscatory. The plaintiff has supplied water to residents and businesses in fifty-six municipalities across the state since 1857. On August 26, 2022, the plaintiff filed an application with the defendant to amend its existing rate schedules; it last requested an amendment to its rates in 2013. The plaintiff's application requested an annual approved revenue requirement of \$236 million, an approximately \$37 million increase over the revenue requirement approved in 2013, and a 10.35 percent return on equity (ROE). After extensive proceedings, the defendant issued a final decision approved by a vote of 2 to 1 that approved an annual revenue requirement of \$195,561,690, a decrease of \$1,969,517 or approximately 1 percent of the plaintiff's 2013 approved revenue requirement, and a ROE of 8.70 percent, rather than the 10.35 percent requested by the plaintiff. The plaintiff thereafter appealed the defendant's final decision to the trial court and filed a twelve-count complaint. The trial court dismissed nine counts, remanded two counts, and partially dismissed and partially remanded the final count. In particular, the trial court dismissed the plaintiff's claims (1) that the defendant's decision was confiscatory, (2) that the defendant's disallowance of \$42,136,826 in pro forma plant additions from September 1, 2022, through December 15, 2022, was arbitrary and

capricious where it had allowed \$51,177,892 in plant additions included in the plaintiff's application to enter the rate base, (3) that the defendant's disallowance of approximately \$2 million in employee incentive compensation costs was improper where such costs were necessary and therefore recoverable, and (4) that the defendant's disallowance of 50 percent of the plaintiff's deferred conservation costs was arbitrary and capricious where the defendant had allowed the plaintiff to incur the costs as a deferred regulatory asset in a prior rate decision. The trial court determined that the total effect of the defendant's rate decision was not confiscatory because the defendant possesses broad regulatory discretion in setting rates, the 8.7 percent ROE was commensurate with returns on investments in other enterprises having corresponding risks and fell within the range of estimates recommended during the hearing process, and there was no evidence in the record to support the plaintiff's argument that the defendant's decision would affect confidence in its financial integrity and its ability to attract capital. The trial court further dismissed the plaintiff's pro forma plant additions claim on the ground that there was substantial evidence to support the defendant's conclusion that the plaintiff had failed to establish the prudence and usefulness of the post-September 1, 2022 pro forma plant additions for purposes of satisfying the standard for an adjustment to the rate base and, in response to the plaintiff's argument regarding the prior allowance, that there was no authority that the defendant's factual conclusions were required to be consistent across the differing decisions and that the trial court's review was limited to the challenged disallowance. Additionally, the trial court concluded that the defendant's disallowance of the plaintiff's employee incentive compensation costs was within the defendant's broad discretion to balance competing interests in setting utility rates and supported by substantial evidence where the defendant referred to the record in deciding that the plaintiff's employee incentive compensation program did not achieve its stated goals. Finally, the trial court dismissed the plaintiff's deferred conservation expenses claim on the ground that the defendant's decision that the plaintiff had failed to establish that the expenses were reasonable and prudent was within the defendant's broad discretion and supported by substantial evidence. The plaintiff filed an appeal from the trial court's judgment to the Appellate Court, and the Supreme Court transferred the appeal to its docket pursuant to General Statutes § 51-199 (c). The Supreme Court will decide whether the defendant's disallowance of \$42 million of the plaintiff's used and useful plant additions was erroneous and arbitrary. The Supreme Court will also decide whether the defendant's application of the governing prudence standard to the plaintiff's operating expenses regarding deferred conservation and variable-pay compensation

warrants reversal. Finally, the Supreme Court will decide whether the defendant erred in assessing whether the total effect of its rate order was confiscatory.

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*
