

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.* ROBERT PARRIS, SC 20837

Judicial District of New Haven

Criminal; Whether Cumulative Effect of State's Arguments Misstating the Law, Denigrating Extreme Emotional Disturbance Defense, and Inviting Jury to Engage in Nullification Violated Right to Fair Trial; Whether Defendant Was Prejudiced by Admission of Improper Incendiary Evidence Regarding His Use of Homophobic Language. The defendant confessed to the shooting death of Michael Rosario on December 19, 2019, but asserted the defense of extreme emotional disturbance. The defendant lived next door to Rosario in an apartment in New Haven where Rosario was the superintendent. A fellow tenant, George Arline, claimed that he spoke with the defendant on the morning of the shooting and that the defendant was very upset, showed him a gun, and stated that he intended to kill Rosario. Rosario's daughter, who lived in the apartment with her father, claimed that the defendant was in an agitated state that day and that he became increasingly more agitated as the day progressed. Around 4:00 p.m., the defendant shot Rosario as Rosario returned to his apartment. The next morning, the defendant turned himself into the police and consented to a taped interview. The defendant claimed that Rosario harassed him due to his sex offender status and sexual preference and that he had made numerous complaints to building management concerning Rosario, which was putting him at risk of losing his apartment that he had secured after more than a decade of being homeless. The defendant also claimed that his stepmother and Rosario were entering his apartment without permission, stealing his mail and threatening to expose a videotape showing him engaged in sexual acts with another man. At trial, the defendant requested that two homophobic slurs he repeatedly used while discussing the videotape in the interview be redacted. The court refused the request, finding that, although the evidence clearly had some prejudicial impact, the defendant's repeated use of the slurs was relevant to his defense. In closing argument, the state argued that the emotional disturbance defense was an excuse that the defendant contrived after

the murder to justify what he did and that it was a horrible thing for the defendant to use the defense to explain away killing Rosario. The state drew comparisons between the defendant's case and a series of hypothetical scenarios, which the state used to demonstrate its view that a reasonable person in everyday society should not get to kill someone because of the pressures of life. The state also questioned why the defendant's response was to shoot Rosario and not certain other specified individuals. The jury found the defendant guilty of murder, criminal possession of a pistol or revolver, and carrying a pistol without a permit. The defendant appealed from his conviction directly to the Supreme Court pursuant to General Statutes § 51-199 (b). On appeal, the defendant claims that (1) the cumulative effect of the state's improper arguments misstating the law, denigrating the extreme emotional disturbance defense, and inviting the jury to engage in nullification violated his right to a fair trial and (2) he suffered prejudice due to the improper admission of incendiary evidence regarding his use of homophobic language.

STATE *v.* CHRISTOPHER J. IVERSON, SC 20844
Judicial District of Waterbury

Criminal; Murder; Evidence; Whether Trial Court Improperly Denied Request to Instruct Jury on Lesser Included Offense of Manslaughter in First Degree; Whether Admission of Autopsy Report under General Statutes § 19a-412 Violated Defendant's Right to Confront Witnesses. Around 7:15 a.m. on the morning of August 28, 2018, the victim, Solita Billups, was discovered stabbed to death on the floor. The victim's husband reported that he had worked overnight, and, upon returning home in the morning, heard their eleven-year-old son, Gerald, yelling and discovered the victim's body. Gerald told the police that, around 1 a.m., he was awakened and witnessed the victim being stabbed by the defendant, who was a family friend and had previously had an affair with the victim. Gerald detailed that the defendant had tied him to a chair before leaving the residence and that he observed smoke coming from his mother's bedroom before losing consciousness. The defendant was charged with, *inter alia*, murder, and, at trial, he testified that the victim had summoned him to her residence on the evening of August 27, 2018, to sign documents to remove him from her cell phone service plan. The defendant recounted that he told the victim that evening that they should "come

clean" with their spouses about the earlier affair. Upon discovering that the victim did not have the documentation, the defendant protested, and the victim stated in response, "well, you're not going to leave here alive anyway." The defendant testified that the victim struck him with a frying pan while wielding a knife in her other hand and stabbed herself. The victim chased the defendant into her bedroom, where she lit a lighter, "locked it," and threw it at the defendant, but it landed on the bed. The defendant then ran into Gerald's room, where he saw Gerald tied to a chair. The defendant described a struggle that ensued between him and the victim, which resulted in him "pass[ing] out." When he awoke, he saw the victim lying on the ground with the knife embedded in her, which he removed before leaving. At the charge conference, the defendant argued that the jury should be instructed on the lesser included offense of manslaughter in the first degree. He asserted that his intent was at issue and that there was evidence that he had acted with "reckless indifference," which was insufficient intent for a murder conviction but would permit the jury to find him guilty of the lesser included offense. The state, relying on the nature of the wounds, the defendant's self-defense claim and his testimony that whoever killed the victim had killed her intentionally, argued that "recklessness is not in play." The trial court denied the request to charge in light of the defendant's testimony and "no other evidence [that] would indicate . . . recklessness." The defendant was convicted of, inter alia, murder and appeals directly to the Supreme Court pursuant to General Statutes § 51-199 (b) (3). On appeal, the defendant claims that the trial court improperly declined to instruct the jury on the lesser included offense of manslaughter because the court failed to consider whether the defendant acted "recklessly with extreme indifference to human life," for purposes of a manslaughter conviction, or whether the evidence was sufficiently negated the specific intent required for murder. The defendant also claims that an autopsy report admitted into evidence pursuant to General Statutes § 19a-412 was testimonial hearsay that violated his right to confront witnesses under United States Supreme Court precedent, including *Crawford v. Washington*, 541 U.S. 36 (2004), and its progeny, which was decided after the passage of § 19a-412.

STATE *v.* ROBERT C. SIMMONS, SC 20846
Judicial District of Stamford/Norwalk

Criminal; Whether Trial Court Properly Denied Defendant's Request For Third-Party Culpability Instruction; Whether Evidence Was Sufficient to Establish Defendant's Identity as Perpetrator of the Crimes; Whether Alleged Prosecutorial Improprieties Deprived Defendant of Fair Trial.

At approximately 8:00 p.m. on September 25, 2019, the victim, Isabella Mehner, was found bludgeoned to death in the basement of her home. The police found a hammer, which was stained with blood, near the victim's body. There was also evidence indicating that a robbery had taken place. The victim's wedding rings were missing from her left hand, and the victim's wallet, in which she habitually kept \$40 to \$50 in cash, did not contain any cash. Following an investigation by the police, the defendant was charged with the victim's murder, home invasion, felony murder, and burglary. At trial, the state used surveillance video footage to create a timeline of the defendant's movements on the evening of the murder. At approximately 5:37 p.m., the defendant entered the victim's home through a side door. The defendant remained in the victim's home for approximately eight minutes, and he exited through the side door at approximately 5:48 p.m. The state also presented incriminating forensic evidence, including evidence that two of the four reddish-brown stains found on the defendant's jeans contained DNA that was consistent with the victim's DNA. There was other forensic evidence, however, that did not link the defendant to the victim's murder. Specifically, the DNA of an unknown male was found on the handle of the bloodstained hammer. In addition, an unknown man's DNA was found on a jewelry box in the victim's bedroom. The defendant's DNA, however, was not found on those items or on any item near the victim's body. Based on this DNA evidence, the defendant requested that the trial court instruct the jury on third-party culpability. The trial court, however, refused to give such an instruction on the ground that the evidence failed to establish a direct connection between a third party and the crime. The court explained that, although there was unknown male DNA on the handle of the hammer, there was no evidence that "some other male other than the defendant entered [the victim's home] between 5:15 and 8:00 in the evening." In addition, the court noted that there was physical evidence linking the defendant to the crime scene. After the trial, the jury found the defendant guilty of all charged crimes. The defendant

directly appealed from the judgment of conviction to the Supreme Court pursuant to General Statutes § 51-199 (b) (3). On appeal, the defendant claims that the trial court erred in denying his request for a third-party culpability instruction because, contrary to the trial court's conclusion, the DNA evidence provided a direct connection between the crime scene and a third party. The defendant also claims that the evidence was insufficient to prove the element of identity beyond a reasonable doubt for all four charged offenses. Specifically, he argues that the jury could not have found that he was the perpetrator of the charged crimes without resorting to speculation and conjecture. In addition, the defendant claims that he was deprived of his constitutional right to a fair trial by prosecutorial improprieties. Specifically, he contends that, during closing arguments, the prosecutor mischaracterized the evidence by arguing (1) that the victim's blood was on the defendant's jeans, (2) that the defendant's DNA was "in" the victim's fingernails, (3) that the defendant was the only person to enter the victim's home, and (4) that the victim fought with the defendant.

STATE OF CONNECTICUT *v.* GARRY RAMSEY, SC 20852
Judicial District of Hartford

Criminal; Whether Evidence Sufficient to Disprove Self-Defense Claim Based on Statutory Exceptions of Duty to Retreat and Initial Aggressor. The defendant admitted to the stabbing death of Bob Callahan on June 5, 2021, but claimed he did it in self-defense. On the evening of the crime, the defendant drove to Callahan's apartment in Manchester to confront Tiffany Menendez because he was angry with her over the condition in which she left a hotel room that he had rented in his name. When the defendant arrived, he approached Callahan, who was parked outside. The defendant claimed that he had no conflict with Callahan, that they had a "nice" conversation, and that he asked if Menendez was in the apartment. Callahan responded in the negative, and the two men drove away. Callahan immediately returned, parked behind his apartment, and entered through the back door. The defendant also returned and knocked on the front door of the apartment. Callahan opened the door and again denied that Menendez was inside. The defendant did not believe Callahan and proceeded into the apartment. The defendant claimed that Callahan kicked him in the leg, causing him to fall to his knees, and that when he turned around, Callahan

was coming at him with a knife to stab him. The defendant claimed that the two men tussled, Callahan dropped the knife, and the defendant picked it up. The defendant further claimed that Callahan then came at him and that he stabbed Callahan in the chest. The defendant did not call emergency services but, rather, fled the apartment, drove away, and disposed of the knife. There was evidence at trial that Callahan had cocaine and fentanyl in his blood at the time of his death, that he had defensive wounds on his hands, arms and legs, and that a pair of brass knuckles was recovered on the front lawn near where his body was found. There was also testimony from the defendant's prison cellmate that the defendant had told him that when he and Callahan tussled, the defendant pulled out a knife and stabbed Callahan. The jury convicted the defendant of murder in the first degree, and the defendant filed this appeal from his conviction directly to the Supreme Court pursuant to General Statutes § 51-199 (b). On appeal, the defendant claims that the evidence was insufficient to prove beyond a reasonable doubt that the exceptions set forth in General Statutes § 53a-19, which provide that a person is not justified in using deadly physical force in self-defense if the person knows that he can avoid it in complete safety by retreating or when the person is the initial aggressor, applied to disprove his claim of self-defense.

STATE OF CONNECTICUT *v.* DAMOND BESTER, SC 20858
Judicial District of Hartford

Criminal; Whether Defendant's Right to Confrontation was Violated When State Introduced (1) Hearsay Statements of Original Gunshot Residue Analyst Through Testimony of In-Court Expert with No First-Hand Knowledge of Testing and (2) Hearsay Statements of Non-Testifying Witnesses; Whether Defendant's Right to a Fair Trial was Violated When Prosecutor Introduced Facts Not in Evidence. On June 25, 2018, the defendant, who was driving the car of his partner, Selena Hampton, and the victim, who was driving his fiancée's car, were involved in a car accident. After obtaining an estimate, the defendant allegedly agreed to pay the victim for the damage to his car, and the men arranged to meet up later that evening. During the meeting, the defendant shot and killed the victim. The defendant was charged with the victim's murder. At trial, the state called Robert Joseph, who had witnessed the shooting. Joseph testified that on the day of the shooting, he saw a man who appeared to have been shot, crawling

towards the passenger side of a car that was up on a lawn. Joseph further testified that he then saw another man who was standing in the street walk towards the car and fire three shots into the car. Although Joseph was unable to see the shooter's face, he described the shooter as wearing a white shirt with red lettering, khaki shorts and a red cap. The police seized a white shirt with red lettering, cargo shorts and a red cap from the defendant's residence during the investigation. At trial, the state also offered the testimony of Alison Gingell, an expert on gunshot residue. She testified that the articles of clothing recovered from the defendant's residence contained particles that were consistent with gunshot residue. Gingell, however, was not the original analyst assigned to the case, and she did not collect the evidentiary samples or perform the testing. Her opinion instead was based on the notes, data, and photographs created by the original analyst, who was no longer employed by the state and had not been called to testify. During the defense case, the defendant testified that the victim wanted to settle the matter privately and denied that he did not want to file an insurance claim because he did not want Hampton's insurance to increase. He further testified that he had told Hampton about the accident. During cross-examination, the prosecutor asked the defendant if he knew "that [Hampton] said you never told her about the accident"; the defendant responded in the negative. The prosecutor also asked the defendant about speaking on the phone with his cousin, Russel Smith, a few days after the shooting. The prosecutor specifically asked the defendant if he said "I'm in trouble" and if Smith replied "I don't want to know, but I'm here for you"; the defendant responded in the negative. Although Hampton and Smith both provided statements to the police during the investigation, neither testified at the trial. After the trial, the jury found the defendant guilty of murder, and he directly appealed to the Supreme Court pursuant to General Statutes § 51-199 (b) (3). On appeal, the defendant claims that the state violated his constitutional right to confrontation by introducing hearsay statements, i.e., data, testing and photos of the original gunshot residue analyst through the testimony of Gingell, who had no first-hand knowledge of the testing that was performed. The defendant also claims that his right to confrontation was violated when the prosecutor introduced hearsay statements of Hampton and Smith during his cross-examination. He further claims that the prosecutor committed improprieties by introducing facts not in

evidence, when, on three occasions, the prosecutor cross-examined the defendant with questions that had no factual basis in the record.

STATE OF CONNECTICUT *v.* DAVIS ROMAN VILLANUEVA,
SC 20869

Judicial District of New Haven

Criminal; Whether Evidence Was Sufficient to Merit Jury Instruction on Adequacy of Police Investigation; Whether Threat of Prosecution and Incomplete Instruction on Photo Lineup Procedure Rendered Identification Unreliable. The defendant was convicted of murder and firearm offenses in connection with the killing of Casey Schoonover outside a nightclub in Meriden in 2020. On the night of the shooting, the state's only eyewitness, Diana Baez, had been consuming alcohol and smoking marijuana for hours before going to the nightclub, where she continued to drink and smoke. While there, Baez briefly interacted with a man whom she did not know. At some point, an acquaintance, Ramphis Pacheco, joined the group. The group decided to leave the club at around 4 a.m. after Pacheco, who was intoxicated, became belligerent. As they exited the building, the stranger tagged along and began conversing with Pacheco. While walking to the parking lot, Pacheco accosted the victim, whereupon the stranger threw his beer can at the victim, punched him, and shot him with a gun. The victim then ran off, and the stranger fled in his vehicle. Within moments, a police officer stationed nearby arrived on the scene. After inquiring as to the source of the gunshots, the officer, Zack Golebiewski, drove away in pursuit of the stranger without interviewing or taking the names of any of the eight witnesses present. After failing to apprehend the shooter, Golebiewski returned to the scene with other officers, made a cursory search of the area, and then left without securing the scene. The victim was found several hours later, lying dead next to his car. Four days after the shooting, Detective David Visconti interviewed Baez and suggested that she could be charged with murder if she did not help identify the shooter. Six days later, Visconti met with Baez again, accompanied by another officer, who administered a photo lineup. Baez identified the defendant as the man who most resembled the shooter but was not completely confident. A man from the defendant's hometown later came forward and identified the defendant as the shooter from surveillance footage. The police also recovered the defendant's DNA from a beer can found at the scene. Before his jury

trial, the defendant moved to suppress Baez' identification on the ground that the police's threat of prosecution and failure to fully instruct her regarding the lineup as required by General Statutes § 54-1p rendered the identification unreliable and violative of his right to due process and a fair trial. The trial court denied the motion, concluding that Visconti's threat was irrelevant because it was not made at the time the lineup was administered, the failure to instruct Baez in accordance with § 54-1p did not render the identification procedure unnecessarily suggestive, and her identification was reliable. At trial, the state presented the testimony of a medical examiner regarding the victim's wounds. The defendant objected to the testimony on the ground that the medical examiner had not conducted the victim's autopsy and had based her opinions on the report of another examiner, thereby violating his sixth amendment right of confrontation. The trial court determined that the testifying examiner's opinions were admissible, despite being based on hearsay information, because they represented her own independent conclusions and not merely a recitation of another examiner's conclusions. Following the presentation of evidence, the defendant requested that the court instruct the jury on the adequacy of the police investigation. The trial court denied the request, concluding that there was insufficient evidence of investigative failures to warrant it. From his conviction, the defendant now appeals directly to the Supreme Court pursuant to General Statutes § 51-199 (b) (3), claiming that the trial court erred in (1) denying his request to charge, (2) denying his motion to preclude Baez' identification, and (3) overruling his objection to the medical examiner's testimony.

STATE OF CONNECTICUT *v.* RICKEY TRAYNHAM, SC 20883
Judicial District of New Haven

Criminal; Hearsay Statement Against Penal Interest Under Code of Evidence § 8-6 (4); Whether Trial Court Improperly Admitted Hearsay Statements Into Evidence; Whether Alleged Evidentiary Error Was Harmless. The victim, Rondell Atkinson, worked for a rideshare service but also, personally drove people in exchange for cash. On the evening of June 7, 2021, the victim picked up Jordan Rudel and brought him to the defendant's house. When the defendant entered the car, he put a gun to the victim's head and ordered the victim to drive to a park in Woodbridge. In the park, the defendant ordered the victim out of the car, took his personal

belongings, and, when the victim started to pray, the defendant shot the victim in the leg. The defendant then walked over to the victim and shot him multiple times before leaving with the victim's car. The next morning, a jogger found the victim's body and alerted the police. At that time, Rudel recounted the foregoing to his girlfriend, Adriana Santiago, who was on vacation in Florida with their children. Rudel showed Santiago a copy of the victim's license and told her to search for the victim's name, and she reported that the person was a homicide victim. When Santiago returned to Connecticut about a week later, she met with Rudel, and he explained that he and the defendant had intended only to rob the victim. A few days after the murder, Rudel also spoke with Monique Jackson, his father's longtime girlfriend, and told Jackson details of the killing as well. Prior to trial, the parties argued over whether to admit into evidence Rudel's out-of-court statements recounting the crime to Santiago and to Jackson. The state argued that the statements were admissible as statements against penal interest under § 8-6 (4) of the Code of Evidence, as Rudel had invoked his fifth amendment right against self-incrimination and therefore was unavailable to testify. The defendant argued that the statements should be suppressed because they were not trustworthy and because Rudel should be made available for cross examination. In response, the state contended that the hearsay statements were corroborated by forensic evidence, the ballistics report, and the fact that the victim's personal items were found with the defendant's girlfriend. The trial court allowed the statements into evidence, and, following a jury trial, the defendant was convicted of, inter alia, felony murder in violation of General Statutes § 53a-54c. He brings this appeal directly to the Supreme Court pursuant to General Statutes § 51-199 (b) (3), and the defendant's sole claim is that the trial court erred in admitting into evidence pursuant to § 8-6 (4) Rudel's hearsay statements to Santiago and Jackson. He argues that the factors enumerated in that section weigh in favor of excluding the statements because there were material differences between the statements and also because the statements were inconsistent with the other evidence. Moreover, the defendant argues that Rudel's statements shifted blame and minimized his role in the crimes, which the trial court failed to consider, and, as a result, the court erred by finding that the statements were sufficiently reliable so as to be admitted into evidence. In response, the state contends that the trial court did not abuse its discretion by admitting Rudel's hearsay statements into evidence, as they were corroborated by "overwhelming evidence,"

including, inter alia, the location of the victim's body, the ballistics evidence, the fact that the victim's personal items were recovered from the defendant's girlfriend, and the recovery of the defendant's DNA and fingerprints from the victim's vehicle. The state finally argues that, even if the evidence was improperly admitted, any error was harmless "because there was significant corroborating evidence and the state's case was overwhelming."

MODZELEWSKI'S TOWING & STORAGE, INC., ET AL. *v.*
COMMISSIONER OF MOTOR VEHICLES, SC 21039
Judicial District of New Britain

Administrative Appeal; Statutory Construction; Motor Vehicles; Whether Rates for "Exceptional Services" Allowed by Regulation to Be Charged for Nonconsensual Towing and Storage Services Exclude Equipment-Related Costs. In December, 2014, the plaintiffs, Modzelewski's Towing & Storage, Inc., and Modzelewski's Towing & Recovery, Inc., who are licensed motor vehicle dealers and repairers, were summoned by law enforcement to perform recovery and towing services involving a tractor trailer that had become wedged beneath a guardrail on Interstate 84. Using multiple pieces of heavy machinery, the plaintiffs cleared the trailer and debris from the highway within an hour and towed it to a storage facility, where it remained for nearly a month. The plaintiffs invoiced the trailer owner over \$29,000 for their services, which was paid by the owner's insurer, the defendant Sentry Select Insurance Company (Sentry). Sentry subsequently filed an administrative complaint with the Department of Motor Vehicles (department), alleging, in relevant part, that the fees charged by the plaintiffs were out of line with the state's regulatory standards for nonconsensual towing of vehicles. In 2020, after a hearing, the department's hearing officer concluded that the plaintiffs had overcharged Sentry for certain fees categorized as "exceptional services" and ordered them to pay Sentry over \$24,000 in restitution. The hearing officer determined that the plaintiffs had improperly based their rate schedule on the equipment used to render their services. In so finding, the hearing officer determined that, although § 14-63-36c (c) of the Regulations of Connecticut State Agencies permits towors to charge an additional fee when they provide "exceptional services," the fees must be based on the towors' hourly rate for labor. On appeal to the Superior Court, the court agreed with the hearing officer's determination that charges for exceptional

services must be based on labor only and that the "pro rata cost of equipment may not be a factor." The court concluded that there was substantial evidence presented to support the hearing officer's findings that the plaintiffs had failed to post a sign that complied with the regulations in that the sign posted by the plaintiffs included fees that "included not just those [charges] for labor" but also charges that "reflected the cost of the [plaintiffs'] machinery." The court further concluded that there was substantial evidence to support the hearing officer's determinations as to which of the plaintiffs' charges to Sentry were permissible and which were not. The plaintiffs thereafter appealed to the Appellate Court, claiming, in relevant part, that the trial court had improperly concluded that the charges they levied in connection with the tow at issue in this case violated §§ 14-63-36b (4) and 14-63-36c (c) of the regulations in that they were not based on an hourly labor rate. The plaintiffs argued that, because the regulations allow towing companies to charge "additional fees for exceptional services" and "exceptional services" is defined as "the use of special equipment," their inclusion of the cost of procuring, maintaining, repairing and insuring the special equipment used for the tow at issue was appropriate. The Appellate Court (225 Conn. App. 386) disagreed and affirmed the trial court's judgment, concluding that the regulations clearly and unambiguously do not provide for the inclusion of equipment-related costs in setting the hourly rate for exceptional services but, rather, only permit an hourly charge for exceptional services that is specifically based on labor. In so concluding, it noted that § 14-63-36c (c) specifically requires "additional fees for exceptional services" to be "itemized in accordance with the hourly charge for labor." Upon the granting of certification to appeal, the plaintiffs appealed to the Supreme Court, which will decide whether the Appellate Court correctly concluded that the rates for exceptional services pursuant to § 14-63-36c (c) exclude costs associated with the use of special equipment to accomplish the exceptional services provided.

LEE DEER ET AL. *v.* NATIONAL GENERAL INS. CO. ET AL.,

SC 21045

Judicial District of Hartford

Insurance; Negligence; Duty of Care; Whether Insurance Policy Originator Has Duty to Inform Insureds of Policy Nonrenewal. In 2019, the plaintiff Keleen Deer (Keleen), with the

assistance of the defendant The Trahan Agency, Inc., purchased a homeowners insurance policy underwritten by the defendant Century-National Insurance Company (Century-National). The plaintiff Lee Deer was named as an additional insured under the policy, which was effective from June, 2019, until June, 2020. Shortly after the policy was issued, an inspection of the plaintiffs' home was conducted at the behest of Century-National and the defendant National General Insurance Company (collectively, insurance companies). The inspection revealed that a portion of the exterior of the home was missing siding. Thereafter, in July, 2019, a home inspection assistant working on behalf of the insurance companies sent an email to The Trahan Agency, Inc.'s office manager, Jessica Perry, notifying her that repairs were required as a condition of continued coverage and advising her to discuss the issue with the plaintiffs. A follow-up email was sent to Perry in March, 2020, advising her that the insurance companies had not yet received a response regarding the missing siding and that the plaintiffs' policy was set to nonrenew if proof of repairs was not submitted by the policy expiration date. According to the plaintiffs, they never received any communication from Perry regarding the matter. The following month, Century-National sent a notice of nonrenewal to Keleen and The Trahan Agency, Inc., by certified mail, which the plaintiffs dispute having received. Less than a month after the plaintiffs' policy expired, their home was destroyed by fire. After they learned that the policy had not been renewed, the plaintiffs brought an action asserting a negligence claim against The Trahan Agency, Inc., and the defendant Kevin Trahan (collectively, Trahan defendants) for their alleged failure to notify the plaintiffs of the insurance companies' intention not to renew their policy. In rendering summary judgment in favor of the Trahan defendants, the trial court concluded, in relevant part, that the Trahan defendants did not have a duty to provide notice of nonrenewal to the plaintiffs under the common law because the agency relationship between the parties terminated upon the procurement of the policy and the plaintiffs had not alleged that any special circumstances existed that justified deviating from the general rule. On appeal, the plaintiffs claimed that the Trahan defendants continued to owe them a duty of care, even after the policy went into effect, because a special or fiduciary relationship existed between the parties. In support, the plaintiffs pointed to evidence indicating that they had a "very personal," "unusually close" relationship with The Trahan Agency, Inc.'s office manager and that they had relied on her for years to take care of their

insurance needs. The Appellate Court (225 Conn. App. 656) rejected this claim, concluding that the evidence submitted by the plaintiffs did not raise a genuine issue of material fact as to the existence of an agency relationship between the parties after the procurement of the policy in June, 2019, because that evidence provided no indication that the Trahan defendants undertook an obligation to seek continuation of the policy after that date. The Appellate Court therefore affirmed the trial court's grant of summary judgment. Upon the granting of certification to appeal, the plaintiffs filed the present appeal in the Supreme Court, which will decide whether the Appellate Court correctly concluded that an insurance agent who originates a homeowners insurance policy has no duty to inform the insureds of information received from the insurance carrier regarding nonrenewal of the policy.

TORRINGTON TAX COLLECTOR, LLC *v.* HOLLY RILEY,

SC 21048

Judicial District of Litchfield

Taxes; Whether Plaintiff Collaterally Estopped from Executing on Defendant's Funds to Satisfy Unpaid Taxes Based on Prior Judgment Granting Exemption on Same Tax Debt. In 2002, the defendant and her business partner filed a trade name certificate for their business with the city of Torrington (city) and indicated that the business' address was in the city. The defendant left the business in 2007 and moved to California in 2011. In 2020, the plaintiff, the entity authorized to collect taxes for the city, served a bank execution on the defendant's account to collect on personal property taxes assessed against the business. The defendant filed a claim for an exemption from execution, arguing that, despite previously providing the plaintiff with her California address, she never received either a personal demand as required by General Statutes § 12-155 (a) or a tax bill. The plaintiff countered that the trial court could not consider whether the tax bill was received but that the plaintiff nonetheless followed the proper procedure in sending the tax bill to the business address on file rather than to the defendant's California address. Following a hearing, the trial court issued an order (2021 order) granting the defendant an exemption. The trial court found that the plaintiff had not complied with the personal demand requirement of § 12-155 (a) and that the bank execution was not properly issued because the plaintiff had failed to provide notice of the

underlying tax bill to the defendant. The plaintiff appealed that judgment to the Appellate Court but later withdrew that appeal. In 2022, the plaintiff mailed a personal demand to the defendant's California address and issued a new execution to recover on the same tax debt. The plaintiff did not, however, send a tax bill to the defendant's California address. The defendant filed the current claim for an exemption for execution, arguing that the 2022 execution was precluded by the 2021 order granting her prior claim for an exemption. The trial court agreed that the 2022 execution was barred because the court in the prior action had granted the 2021 exemption in part due to its conclusion that the plaintiff had not sent the tax bill to the defendant and granted the defendant an exemption from the 2022 execution. The plaintiff appealed, and the Appellate Court (226 Conn. App. 211) affirmed the judgment. The Appellate Court concluded that the plaintiff was precluded from collecting on the tax debt under the doctrine of collateral estoppel because the issue of whether the plaintiff could execute on the defendant's funds without first sending a tax bill to her California address was actually and necessarily decided in the prior exemption proceeding even though it was not strictly essential to the final judgment in that action. Specifically, the court found that the issue was raised in the pleadings in the prior action and that the trial court heard testimony regarding the issue, specifically found that the tax bill had not been sent, and relied in part on that finding in granting the defendant's 2021 exemption in the prior proceeding. The court further found the issue was identical to the issue before the trial court in the 2022 action, as the plaintiff failed to send the defendant a tax bill at her California address before issuing the 2022 execution. The Supreme Court granted the plaintiff's petition for certification to appeal and will decide whether the Appellate Court correctly concluded that the plaintiff was collaterally estopped from executing on the defendant's funds to satisfy an unpaid personal property tax assessment based on a prior judgment granting an exemption from execution on the same tax debt.

FRANK CHARLES WHITE *v.* FCW LAW OFFICES et al., SC 21076
Judicial District of Middlesex

Damages; Whether Appellate Court Correctly Concluded That Plaintiff May Not Recover Both Punitive Damages Under CUTPA and Treble Damages for Identity Theft under General

Statutes § 52-571h Because Such Recovery Would Violate Rule Precluding Double Recovery. The plaintiff, a Connecticut attorney, brought this action against the defendants, FCW Law Offices and two John Does, asserting, inter alia, that the defendants had committed identity theft within the meaning of General Statutes § 53a-129a and that he was entitled to recover damages pursuant to General Statutes § 52-571h, which authorizes an action for damages resulting from identity theft. Specifically, the plaintiff alleged that the defendants intentionally made use of his name and juris number without his authorization and used that information to obtain or attempt to obtain money, credit, goods, services or property without his consent. The plaintiff also alleged a violation of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq., based on the same underlying conduct alleged in the identity theft claim. The defendants were defaulted for failure to appear. Following a hearing in damages, the trial court rendered judgment in favor of the plaintiff on both the identity theft claim and the CUTPA claim. The trial court awarded the plaintiff (1) \$150,000 in compensatory damages on the identity theft claim pursuant to § 52-571h and (2) \$300,000 in punitive damages on the CUTPA claim. The plaintiff appealed, claiming that the trial court improperly failed to award him treble damages for his identity theft claim in light of the mandatory language in § 52-571h (b). The Appellate Court (228 Conn. App. 1) agreed, concluding that the trial court violated the mandatory directive of § 52-571h (b) by failing to award the plaintiff treble damages on his identity theft claim. Thus, the court ruled that the plaintiff was entitled to recover \$450,000 in treble damages on his identity theft claim. The Appellate Court sua sponte determined, however, that the trial court's award of \$300,000 in damages for the plaintiff's CUTPA claim could not stand under the rule precluding double recovery because the CUTPA claim was "based upon the same transaction, occurrence or event on which the plaintiff based his action for damages resulting from identity theft under § 52-571h." Accordingly, the Appellate Court reversed the trial court's judgment in part and remanded the case to the trial court with direction to vacate both the compensatory damages award under § 52-571h and the punitive damages award under CUTPA and to instead award the plaintiff \$450,000 in damages under § 52-571h. The plaintiff was granted certification to appeal pursuant to General Statute § 51-197f, and the Supreme Court will decide whether the Appellate Court correctly determined that the plaintiff may not recover both punitive

damages under CUTPA and treble damages under § 52-571 because such recovery would violate the principle that a plaintiff is entitled to recover only once for losses sustained in connection with the same transaction, occurrence or event.

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*
