

SUPREME COURT PENDING CASES

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

ANGEL DO *v.* COMMISSIONER OF MOTOR VEHICLES, SC 19722
Judicial District of New Britain

Driving Under the Influence; Whether Appellate Court Properly Determined that Police Report of DUI Arrest Unreliable and Inadmissible at License Suspension Hearing. The plaintiff's driver's license was suspended for ninety days after her arrest for operating a motor vehicle while under the influence in violation of General Statutes § 14-227a. While there was no testimony presented at the suspension hearing, the Department of Motor Vehicles offered as an exhibit the police report of the plaintiff's arrest that was signed under oath by the arresting officer in accordance with § 14-227b (c). The DMV hearing officer admitted the exhibit into evidence over the plaintiff's objection, finding that certain internal discrepancies and errors in the exhibit amounted to scrivener's errors that pertained only to the weight to be given the exhibit. The plaintiff appealed to the trial court, which found that the hearing officer did not abuse his discretion in admitting the exhibit because it was sufficiently reliable. The plaintiff appealed, and the Appellate Court (164 Conn. App. 616) reversed the trial court's judgment and remanded the matter to the trial court with direction to sustain the plaintiff's appeal, ruling that the trial court improperly concluded that the hearing officer did not abuse his discretion by admitting the exhibit into evidence. The Appellate Court determined that the extent of the internal discrepancies and errors in the exhibit far surpassed mere scrivener's errors and that they substantially undermined the exhibit's reliability and established that the exhibit did not meet the requirement of § 14-227b (c) that the arresting officer swear under oath to the accuracy of the police report because, at most, the officer swore to the accuracy of only certain portions of the exhibit. The Appellate Court further held that because the plaintiff objected to the admission of the exhibit and raised serious questions regarding its reliability, it was DMV's burden to produce sufficient evidence to demonstrate the reliability of the exhibit and that it failed to do so. Finally, the Appellate Court held that, without the improperly admitted exhibit, the administrative record lacked substantial evidence to support the hearing officer's determination that the plaintiff had violated § 14-227a. The Supreme Court granted DMV certification to appeal, and it will consider whether the Appellate Court properly determined that principles of fundamental

fairness dictated that despite the fact that the arresting officer swore to the accuracy of the police report in accordance with General Statutes § 14-227b (c), the DMV hearing officer should have excluded the police report of the plaintiff's arrest as unreliable.

STATE *v.* CHRISTOPHER TIERINNI, SC 19778
Judicial District of Tolland

Criminal; Whether Appellate Court Properly Concluded that Defendant Waived his Right to be Present at Critical Stages of Criminal Proceedings During Arguments on Evidentiary Objections; Whether Trial Court's Approach to Handling Evidentiary Objections Constituted Structural Error. The defendant was charged with several offenses arising out of his sexual contact with a minor. Prior to the start of evidence, the trial court explained its practice of hearing arguments on evidentiary objections at sidebar rather than excusing the jury for arguments on the record after each objection. The court allowed counsel to make a record of their arguments during breaks and to request that the jury be excused for particular arguments as necessary. The defendant was ultimately convicted of multiple counts of sexual assault in the second degree and risk of injury to a child. On appeal, the defendant claimed that he was denied his federal and state constitutional rights to due process and a fair trial when he was excluded from critical stages of the proceedings as a result of the trial court's procedure of hearing arguments on evidentiary objections at sidebar. He sought review of his unpreserved claim pursuant to *State v. Golding*, 213 Conn. 233 (1989), or under the plain error doctrine. The Appellate Court (165 Conn. App. 839) rejected the claim and affirmed the defendant's conviction, finding that the defendant failed to show that the alleged constitutional violation existed and deprived him of a fair trial as required to prevail under *Golding* or that he was entitled to plain error review. It reasoned that the defendant waived any claim regarding his constitutional right to be present at all of the critical stages of the trial when he expressly agreed to the trial court's procedure and failed to request that he be present at sidebar discussions. The defendant appeals, and the Supreme Court will decide whether the Appellate Court properly concluded that the defendant waived his right to be present at critical stages of the criminal proceedings during arguments on evidentiary objections. The Supreme Court may also decide whether the trial court's approach to handling evidentiary objections constituted structural error.

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

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.

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