# SUPREME COURT PENDING CASES

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

STATE *v.* WILLIAM CASTILLO, SC 19777
*Judicial District of Litchfield*

**Criminal; Whether Defendant Was in Custody during In-Home Police Interrogation for *Miranda* Purposes; Whether Trial Court's Factual Finding That Defendant Was at Home When Police Arrived Clearly Erroneous; Whether Appellate Court Properly Declined to Consider Defendant's Supervisory Authority Claim.** The defendant was seventeen years old when he was arrested and charged with attempt to commit robbery. He was convicted and he appealed, claiming that the trial court erred in denying his motion to suppress his oral and written statements to the police as the product of a custodial interrogation conducted without proper warnings under *Miranda* v. *Arizona*, 384 U.S. 436 (1966). Before he gave his statements, the defendant was informed of and waived his *Miranda* rights, but he argued in support of his motion to suppress that his waiver was not knowingly, intelligently, or voluntarily given. The Appellate Court (165 Conn. App. 703) affirmed the defendant's conviction and concluded that the defendant had not been in custody, such that *Miranda* warnings were not required, where he gave his statements during a police interview at his home while his mother was present, the police officers involved were invited to enter the home, and the officers did not engage in any intimidating or restricting conduct, instead telling the defendant and his mother before any questioning that the interview was voluntary and could be ended at any time. The Appellate Court thereafter declined to exercise its supervisory authority to address the defendant's request for a per se rule that any *Miranda* warnings given to a juvenile should include notice that his or her statements may be used against him or her in adult criminal court if the case is transferred there from juvenile court, as was the defendant's case. The defendant has been granted certification to appeal the Appellate Court's decision. The Supreme Court will decide whether the Appellate Court correctly determined that the defendant was not in custody during the in-home interrogation for *Miranda* purposes. The Supreme Court will also decide whether the Appellate Court correctly determined that the trial court's finding that the defendant was at home when the officers arrived to interrogate him was not clearly erroneous. Finally, the Supreme Court will decide whether the Appellate Court correctly determined that it was inappropriate or

premature for that court to consider the defendant's supervisory authority claim.

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BARRY GRAHAM *v.* COMMISSIONER OF TRANSPORTATION, SC 19867

*Judicial District of New London*

**Highway Defect; Whether § 13a-144 Sovereign Immunity Waiver Extends to State Police Negligence in Failing to Close Bridge Before Defect Could be Remedied; Whether State Has Duty to Employ Adequate Interim Measures to Remedy Highway Defect Within Reasonable Time.** The plaintiff was injured in a motor vehicle accident involving icy conditions on the Gold Star Memorial Bridge, located between New London and Groton. He brought this action against the defendant under the defective highway statute, General Statutes § 13a-144, alleging that his accident was caused by ice on the bridge which constituted a highway defect. The defendant moved for summary judgment, claiming that it did not have actual notice of the defect that caused the accident and that, even if it had constructive notice of the icy condition, the plaintiff's accident occurred before it had a reasonable time to respond. The trial court granted the defendant's motion for summary judgment, and the plaintiff appealed. The Appellate Court (168 Conn. App. 570) reversed the trial court's judgment and remanded with direction to deny the defendant's motion for summary judgment. The Appellate Court held that the trial court erred in rendering summary judgment where there were genuine issues of material fact as to whether the state police responded unreasonably by failing to close the bridge before the plaintiff's accident where they had responded to an earlier accident also involving icy conditions on the bridge and whether the conduct of the state police constituted "neglect . . . of the state or any of its employees" under § 13a-144. The Appellate Court further held that there were genuine issues of material fact as to whether the defendant breached his statutory duty by failing to use available temporary remedies such as warning travelers of the bridge's icy conditions or temporarily closing the bridge. The defendant has been granted certification to appeal the Appellate Court's decision. The Supreme Court will decide whether the Appellate Court properly concluded that the waiver of sovereign immunity under § 13a-144 extends to a claim that the state police were negligent in failing to close a bridge before the defendant's crew could arrive to address the condition. The Supreme Court will also decide whether the Appellate Court properly imposed a duty on the state to

employ "adequate interim measures" in place of or in addition to the defendant's duty to remedy a highway defect within a reasonable time under the circumstances after actual or constructive notice.

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STANDARD PETROLEUM COMPANY *v.* FAUGNO ACQUISITION, LLC, et al., SC 19874

KENNYNICK, LLC, et al. *v.* STANDARD PETROLEUM COMPANY, SC 19875

*Judicial District of Fairfield*

**Class Actions; Whether Trial Court Properly Granted Class Certification.** In the above actions, Faugno Acquisition, LLC (Faugno), and KennyNick, LLC, asserted claims and counterclaims against Standard Petroleum Company on behalf of themselves and all other persons and/or entities that were supplied with gasoline products by Standard Petroleum over a several year period. Faugno and KennyNick alleged that they were overcharged for each gallon of fuel purchased due to Standard Petroleum's incorrect calculation of the federal gasoline tax and the state gross receipts tax, and they asserted several causes of action including breach of contract, unjust enrichment, violation of the Connecticut Unfair Trade Practices Act and misrepresentation. The cases were consolidated, and Faugno and KennyNick filed motions for class certification, which the trial court granted. In granting class certficiation, the court found that the four prerequisites to a class action specified in Practice Book § 9-7 were satisfied in that (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims are typical of the class, and (4) Faugno and KennyNick are adequate class representatives. Further, the court determined that Faugno and KennyNick satisfied their burden under Practice Book § 9-8 of showing that common issues of law and fact predominate as to each of the claims and that a class action is superior to other methods of adjudicating the claims. As to the predominance requirement, the court found, with respect to each of the causes of action, that once the class members have established that they purchased gasoline from Standard Petroleum during the relevant time period, the elements of each claim will be determined by the common questions relating to the application of the taxes. Standard Petroleum appeals, claiming that the trial court failed to undertake the required rigorous analysis for class certification. It also challenges the trial court's conclusion that all of the requirements for class certification were met, especially

the court's determination that common issues predominate over issues that affect only individual class members. Standard Petroleum contends that the elements of the claims, the special defenses and the damages will require highly individualized and complex proof in light of the fact that half of the class members have oral contracts and that the written contracts of the other members vary in that some contain arbitration provisions and some have jury trial waivers.

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STATE *v.* NEMIAH ALLAN, SC 19880
*Judicial District of New Haven*

STATE *v.* ALRICK EVANS, SC 19881
*Judicial District of New Britain*

**Criminal; Sentencing; Whether Sentences Imposed for Sale of Narcotics in Violation of § 21a-278 were Illegal Because Defendants' Lack of Drug Dependency was not Found by Fact Finder Beyond Reasonable Doubt.** The defendants were convicted in separate cases of violating General Statutes § 21a-278 (b), which criminalizes the sale of narcotics by a person who is not drug-dependent at the time of the criminal activity and provides for a mandatory minimum sentence of five years of incarceration. Nemiah Allan was sentenced to twelve years of incarceration followed by five years of special parole, and Alrick Evans was sentenced to five years of incarceration followed by five years of special parole. The defendants filed motions to correct their sentences, claiming that the sentences were illegal and imposed in an illegal manner. These are the defendants' appeals from the judgments denying their motion to correct the sentences as illegal. On appeal, the defendants argue that the lack of a drug dependency under § 21a-278 (b) is a criterion that aggravates punishment, as § 21a-277 also criminalizes the sale of narcotics but does not refer to the lack of a drug dependency or provide for a mandatory minimum sentence. They further argue that their sentences were illegally imposed under *Alleyne* v. *United States*, 133 S. Ct. 2151 (2013), and *Apprendi* v. *New Jersey*, 530 U.S. 466 (2000), because the lack of a drug dependency is a required element for a crime charged under § 21a-278 (b), and that element was never submitted to the fact finder in their cases for a determination as to whether the state proved the element beyond a reasonable doubt. In *Apprendi*, the United States Supreme Court held that any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to the finder of fact and proved beyond a reasonable doubt. *Alleyne* extended

the holding of *Apprendi* to facts that increase a mandatory minimum sentence. The defendants contend that *Alleyne* implicitly overruled *State* v. *Ray*, 290 Conn. 602 (2002), which held that the lack of drug dependency under § 21a-278 (b) is an affirmative defense that must be proven by the defendant, and not an element of the charged crime. The defendants also claim the *Ray* court's reading of § 21a-278 (b) violates the separation of powers doctrine because it usurps the sentencing authority of the trial court and improperly vests it in the prosecutor by allowing the prosecutor to choose between charging a defendant under § 21a-278, which provides for a mandatory minimum sentence, and § 21a-277, which does not.

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TRINITY CHRISTIAN SCHOOL *v.* COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES et al., SC 19884

*Judicial District of New Britain*

**Employment Discrimination; Whether Trial Court Properly Dismissed Administrative Appeal taken by Religious Institution from Agency's Interlocutory Order on Finding that Religious Institution not Immune from Employment Discrimination Suit.** Andrea Sokolowski filed a complaint with the Commission on Human Rights and Opportunities (CHRO) alleging that Trinity Christian School (the school) discriminated against her in violation of the Connecticut Fair Employment Practices Act by terminating her employment as a teacher at the school on the basis of her sex, her marital status and her pregnancy. The school is a religious ministry which is owned, controlled and operated by Trinity United Methodist Church. The school moved that the CHRO complaint be dismissed, claiming that it enjoyed statutory immunity from the complaint under General Statutes § 52-571b (d), which provides that "[n]othing in this section shall be construed to authorize the state or any political subdivision of the state to burden any religious belief." CHRO denied the school's motion to dismiss, and the school appealed to Superior Court pursuant to General Statutes § 4-183. CHRO moved to dismiss the administrative appeal, claiming, among other things, that the trial court lacked jurisdiction over the appeal because the CHRO ruling denying the school's motion to dismiss was interlocutory and because CHRO had yet to render a "final decision" in the matter as contemplated by § 4-183 (a). The plaintiff opposed the motion, contending that the CHRO ruling was immediately appealable because, under § 52-571b (d), it had a colorable claim to a right to be free from the action. The trial court granted the motion to dismiss on concluding that the plaintiff could

not make a colorable claim that § 52-571b (d) afforded it immunity from suit. In so deciding, the court determined that neither the language of the statute nor the rules of statutory construction provided a basis for determining that § 52-571b (d) conferred statutory immunity on religious institutions. Moreover, the court observed that the common law ministerial exception to the enforcement of employment discrimination statutes, which § 52-571b (d) has not displaced, no longer provides immunity from suit but, instead, acts as an affirmative defense. The school appeals, claiming that the trial court wrongly dismissed its administrative appeal for lack of jurisdiction on determining that § 52-571b (d) does not give the school a colorable claim to immunity from Sokolowski's employment discrimination claim.

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STATE *v.* EDWARD F. TAUPIER, SC 19950
*Judicial District of Middlesex*

**Criminal; Threatening; Free Speech; Whether Defendant Must Have Specific Intent to Communicate a Threat in Order for Statement to Constitute a True Threat.** The defendant sent an e-mail to several individuals in which he appeared to threaten to shoot the judge overseeing his divorce case, gave the location of the judge's home and described the topography of the property surrounding it. Based on that e-mail, the defendant was charged with threatening in the first degree, disorderly conduct and breach of the peace. The defendant claimed that the e-mail did not constitute a "true threat" and that it was therefore constitutionally protected speech and not punishable. The trial court disagreed, concluding that the e-mail constituted a true threat under the objective test set out in *State* v. *Krijger*, 313 Conn. 434 (2014). Specifically, the court found that a reasonable person would foresee that the language in the e-mail would be interpreted by those to whom it was communicated as a serious expression of an intent to harm, and that a reasonable recipient of the e-mail would be highly likely to interpret it as a genuine threat of violence. The defendant was convicted of the crimes and he appeals. On appeal, the defendant claims that because *Krijger*'s objective test only requires the state to show that a defendant acted with the mens rea of negligence, that test is not sufficient to protect an individual's free speech rights. He contends that, under the federal and state constitutions, the heightened mens rea of specific intent is required to prove a true threat, that is, that the speaker specifically intended to communicate a threat and he urges that *Krijger*'s objective test be modified to include that scienter requirement. Alternatively, the defendant claims

that the trial court wrongly concluded that his e-mail constituted a true threat under *Krijger*'s objective test.

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CORSAIR SPECIAL SITUATIONS FUND, L.P. *v.* ENGINEERED FRAMING SYSTEMS, INC., et al., SC 19953

*United States Court of Appeals for the Second Circuit*

**State Marshal's Fees; Whether Marshal Entitled to Fee of 15 Percent of Execution under General Statutes § 52-261 (a) (F) for Serving Writ of Execution Where Marshal did not Actually Secure Monies Sought by Writ of Execution.** The plaintiff obtained a $5.5 million judgment against the defendants in Maryland federal district court. On learning that one of the defendants (now a judgment debtor) was owed more than $3 million by National Resources, a Connecticut company, the plaintiff registered the Maryland judgment in Connecticut federal district court and hired Mark Pesiri, a state marshal, to serve a writ of execution upon National Resources ordering it to pay Pesiri the amount it owed to the judgment debtor. National Resources ignored the writ. After undertaking extensive postjudgment discovery, the plaintiff obtained a turnover order requiring National Resources to pay it $2,308,504 in accordance with the writ. Pesiri intervened in the district court action and sought to recover 15 percent of the $2,308,504 pursuant to General Statutes § 52-261 (a) (F), which governs fees for officers serving writs of execution and provides that, when an officer levies an execution, and "when the money is actually collected and paid over, or the debt or a portion of the debt is secured by the [officer]," the officer shall be paid fifteen percent on the amount of the execution. The plaintiff claimed that Pesiri was not entitled to the statutory fee because he had failed to collect the amount due under the writ. The district court awarded Pesiri $346,275.60, or fifteen percent of $2,308,504, after determining that Connecticut law defines a "levy" as an "actual or constructive seizure" and that Pesiri had constructively, if not actually, seized the amount owed by National Resources to the plaintiff's judgment debtor by putting National Resources on notice of its legal obligation under the writ. The plaintiff appealed the district court's order to the United States Court of Appeals for the Second Circuit. The Second Circuit determined that the law regarding the interpretation of § 52-261 (a) (F) is ambiguous and certified the following questions for review by the Supreme Court pursuant to General Statutes § 51-199b: (1) Was Marshal Pesiri entitled to a 15 percent fee under the terms of § 52-261 (a) (F)? (2) In answering the first question, does it matter that the writ was ignored and that the

monies that were the subject of the writ were procured only after the judgment creditor, not the marshal, pursued further enforcement proceedings in the courts?

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*The summaries appearing here are not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. These summaries are prepared by the Staff Attorneys' Office for the convenience of the bar. They in no way indicate the Supreme Court's view of the factual or legal aspects of the appeal.*

*John DeMeo*
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