

SUPREME COURT PENDING CASES

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

STATE *v.* DEMETRICE L. LEWIS, SC 20002
Judicial District of New Haven

Criminal; Search and Seizure; Whether Motion to Suppress Evidence of Firearm Seized by Police During Investigatory Stop Properly Denied. A police officer discovered the defendant standing alone outside in the pouring rain in the dark early morning hours and in close proximity to an alleged domestic violence crime scene. The area was known for its high crime and drug usage. The defendant was wearing clothing that generally matched the description of the suspect given by a 911 caller, and the officer claimed that the defendant exhibited guarded and evasive behavior when questioned and that he appeared to be under the influence of alcohol or drugs. The officer conducted a pat down during which the defendant dropped his hand toward his side, and the officer discovered a nine millimeter handgun tucked into the defendant's waistband. The defendant was charged with carrying a pistol without a permit and criminal possession of a pistol or revolver, and he moved to suppress the evidence seized by the police. The trial court denied the motion to suppress, and the defendant was convicted on a conditional plea of nolo contendere. He appealed and challenged the denial of his motion to suppress, claiming he was seized when the officer stopped his patrol car nearby and called out to him or, in the alternative, when the officer exited his vehicle and approached him. The defendant claimed that the officer did not have a reasonable and articulable suspicion that he was engaged in criminal activity at the time of the seizure and that, because he was unlawfully seized, the officer's subsequent pat down search also was unlawful because the officer did not have a reasonable suspicion that the defendant was armed and dangerous. The Appellate Court (173 Conn. App. 827) disagreed and affirmed the judgment, holding that the trial court properly denied the motion to suppress. The Appellate Court concluded that the defendant was seized when the officer physically touched him, and it rejected the defendant's claim that he was seized when the officer called to him from his patrol car, noting that the officer stopped his vehicle fifteen to twenty feet from the defendant, did not activate his lights or siren, did not use any language or tone that connoted a display of authority and did not use the patrol car in an aggressive manner to block or control his movement. The Appellate Court also rejected the defendant's argument that he was seized when

the officer exited the patrol car and approached him, noting that the officer took no measures to impede his movement either by blocking his means of egress or by any threatening behavior. The Appellate Court further concluded that the seizure was lawful because, while there was some discrepancy between the defendant's clothing and the clothing described by the 911 caller, the officer nonetheless had a reasonable and articulable suspicion based on the totality of the circumstances existing at the time that the defendant was the suspect in the domestic violence incident. Finally, the Appellate Court concluded that the pat down and ensuing seizure of the weapon were lawful because it was reasonable under the totality of the circumstances for the officer to believe that the defendant might be armed and dangerous. The defendant appeals, and the Supreme Court will determine whether the Appellate Court erred in affirming the trial court's denial of the defendant's motion to suppress evidence of a firearm that police seized during an investigatory stop.

STATE *v.* JAMES RAYNOR, SC 20042

Judicial District of Hartford

Criminal; Whether Appellate Court Properly Determined that Record Inadequate to Review Defendant's Claim that State Used a Peremptory Challenge to Strike a Minority Juror in Violation of *Batson*. The defendant was convicted following a jury trial of assault in the first degree as an accessory and conspiracy to commit assault in the first degree. The defendant appealed, claiming that his constitutional rights were violated when the state used a peremptory challenge to strike a minority juror, R, without providing a sufficient race neutral explanation in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986). The Appellate Court (175 Conn. App. 409) affirmed the judgment, holding that the record was inadequate to review the *Batson* claim because the defendant did not preserve it before the trial court or satisfy the requirements for review of unpreserved claims under *State v. Golding*, 213 Conn. 233 (1989), because the transcripts of the voir dire did not indicate the racial composition of the empaneled jury. The Appellate Court found that the record belied the defendant's assertion that there were sufficient facts to demonstrate that the state, which excused R due to his employment history, engaged in racially disparate treatment by accepting other venirepersons, I and G, whom the defendant claims were nonminorities with work restrictions similar to R's. The Appellate Court further found that, while the trial court expressly stated that R was not of the same race as the defendant,

there is nothing in the record demonstrating R's race or ethnicity. The Appellate Court also found that there was a similar lack of facts regarding I's race and that, without such information, it could not engage in an analysis of disparate treatment of I and R. The Appellate Court additionally found that, contrary to the defendant's assertion, the trial court expressly stated that G was an African-American female such that the prosecution's acceptance of G but not R could not serve as evidence of the state's discriminatory use of peremptory challenges to exclude similarly situated minority persons from the defendant's jury. The defendant appeals, and the Supreme Court will determine whether the Appellate Court properly concluded that the record was inadequate for review of the defendant's *Batson* claim in that the record did not indicate the racial composition of the venire or the empaneled jury.

STATE *v.* QUENTINE L. DAVIS, SC 20157
Judicial District of New Haven

Criminal; Search and Seizure; Whether Anonymous 911 Tip Sufficiently Reliable to Justify Police Investigatory Stop. New Haven police received a 911 call from a man who did not want to identify himself reporting that there were several men congregating around a black Infiniti SUV in the area of 472-476 Winthrop Avenue and that one of the men had a gun. The caller stated that he was watching the men from a window across the street. Within minutes of the call, police arrived at the scene, which is located in a high crime area, and observed six men standing around a black Infiniti SUV. As the officers exited their vehicles, all six men started to walk away. The officers ordered the men to stop and five of them complied. The defendant, however, kept walking away at a swift pace and dropped what was later identified as a gun into a garbage can. The defendant was arrested and charged with criminal possession of a firearm and carrying a pistol without a permit. He filed a motion to suppress the evidence seized by the police, claiming that the anonymous tip was not sufficiently reliable to give the police a reasonable and articulable suspicion justifying their investigatory stop. In ruling on the motion to suppress, the trial court engaged in an analysis of state and federal law, mainly relying on the United States Supreme Court decision in *Navarette v. California*, 134 S. Ct. 1683 (2014), which it found to be substantively similar to the present case. In *Navarette*, the court found an anonymous 911 tip sufficiently reliable where the informant was an eyewitness to the incident, where the informant reported a startling

incident shortly after it occurred, and where the informant used the 911 emergency system, which has features that allow for identifying and tracing callers. The court noted that although the startling incident in *Navarette* involved the caller being run off the road by a suspected drunk driver, it was reasonable to conclude that seeing a firearm in an area known for gun violence would also be a startling event that potentially corresponded with ongoing criminal activity. The trial court denied the motion to suppress, finding the 911 tip sufficiently reliable to give rise to a reasonable and articulable suspicion that a crime was being committed, and the defendant then pleaded guilty to the weapons charges conditioned on his right to file this appeal challenging the denial of his motion to suppress. On appeal, the defendant claims that the trial court improperly relied on and expanded the scope of *Navarette* to cases other than drunk driving or ongoing crimes and that, even if *Navarette* applies, the anonymous 911 tip was not reliable under the totality of the circumstances. The defendant also claims that the Supreme Court should reject or limit the scope of *Navarette* under the state constitution.

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
Chief Staff Attorney
