SUPREME COURT PENDING CASES

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

STATE *v.* DARNELL MOORE, SC 19869
Judicial District of New London

Criminal; Voir Dire Panels; Whether Census Data Probative of Claim that African-American Males Underrepresented in Jury Pool; Whether Collection of Demographic Data to Analyze Diversity of Jury Pools Necessary Given General Statutes § 51-232 (c)'s Directive to Enforce Nondiscrimination in Jury Selection. The defendant, an African-American male, appealed to the Appellate Court from his murder conviction. He argued that the trial court violated his sixth amendment and equal protection rights in denying his motion to strike the voir dire panel from which the jurors for his trial were to be selected for its failure to reflect a fair cross section of potential jurors in the community due to its lack of African-American men. He claimed that there was a disparate impact on how juries were selected in New London county and that the Judicial Branch demonstrated a wilful blindness in regard to General Statutes § 51-232 (c)'s directive to enforce nondiscrimination in jury selection. That statute provides that each prospective juror shall be given a confidential questionnaire that contains questions regarding the juror's race and ethnicity and also states that such information is required "solely to enforce nondiscrimination in jury selection" and need not be furnished if the juror finds it objectionable to do so. The Appellate Court (169 Conn. App. 470) affirmed the conviction, concluding that the defendant's rights were not violated. It reasoned that the defendant failed to present evidence that the representation of African-American males in voir dire panels was not fair and reasonable in relation to the number of such persons eligible to serve as jurors. It also stated that the defendant failed to provide evidence of the racial and ethnic characteristics of all the prospective jurors in his case or in the entire New London jury pool. Moreover, it found that the census data that he relied on in support of his motion, which showed the population of African-Americans in the state and in New London, was not probative of the percentage of African-American males eligible for jury service. It additionally found that the defendant's equal protection claim failed because he did not present evidence of discriminatory intent and did not demonstrate that substantial underrepresentation of African-American males had occurred over a significant period of time. The Appellate Court indicated that the evidence showed that

Judicial Branch officials were unaware of the racial and ethnic characteristics of persons summoned for jury duty and that the information in the juror questionnaires was not retained or recorded. Finally, the Appellate Court declined the defendant's request that it exercise its supervisory authority over the administration of justice to require the collection of demographic data so that the diversity of jury panels in the state could be analyzed. It found that the defendant's claims about the jury panel at issue were unproven and noted that § 51-232 (c) does not require prospective jurors to provide race and ethnicity information. The defendant appeals, and the Supreme Court will decide whether the Appellate Court properly found that the census data was not probative of the claim that African-American males were underrepresented in the jury pool. It will also decide whether the Appellate Court properly declined, in light of the provisions of § 51-232 (c), to exercise its supervisory authority over the administration of justice to enforce the collection of demographic data in order to analyze the diversity of the state's jury panels.

STATE *v.* JOHN WHITE, SC 20168
Judicial District of Waterbury

Criminal; Whether Trial Court Properly Denied Defendant's Motion for Public Funds to Hire DNA Expert; Whether Trial Court Properly Admitted Evidence of Victim's Post-Identification Confidence in the Certainty of her Identification. The defendant was charged with assault in the first degree in connection with a May, 2009 attack on a woman who was stabbed multiple times with a box cutter. The victim reported that her assailant was wearing a red hooded sweatshirt, and the police recovered a box cutter and a red hooded sweatshirt nearby. Four years after the attack, the victim identified the defendant in a double-blind sequential photographic array procedure, writing on the defendant's picture at the time she made the identification that she was "pretty certain that this is the young man that stabbed me six times." Shortly after making the identification, the victim told a detective that she was absolutely certain of her identification, but that she had "put it down wrong." After jury selection began, the state gave notice of its intent to offer DNA evidence, and, during the trial, the state offered evidence of DNA analysis that concluded that both the defendant's and the victim's DNA were found on the red sweatshirt. The defendant was convicted following a trial to a jury, and he appeals, claiming that the trial court abused its discretion by denying his motion to preclude the victim from testifying at trial that she was "absolutely

certain" that the defendant was her assailant when she signed the photograph. The defendant claims that the evidence of the victim's post-identification procedure confidence in her identification was irrelevant and that its admission was more prejudicial than probative. The defendant also claims that the trial court abused its discretion and violated his constitutional rights when, after the state gave untimely notice of its intent to rely on DNA evidence at trial, it denied his motion for an award of public funds so that he could hire a DNA expert. In denying the motion, the court refused to find that the defendant was indigent, noting that it is the responsibility of the Office of the Chief Public Defender to make determinations as to indigency, and it cited *State* v. *Wang*, 312 Conn. 322 (2014), which held that a defendant seeking public funding for defense costs must request the funding from the Public Defender Services Commission. The defendant claims on appeal that, although he could afford to retain a private attorney and an expert in eyewitness identification, he was nonetheless indigent insofar as he did not have the resources to pay for the unexpected cost of hiring a DNA expert at a late juncture in the proceedings. The defendant argues that the need for a DNA expert for the defense in this case was clear because the DNA evidence was central to the case and because the DNA analysis involved was complex. Finally, the defendant urges that the state is constitutionally required to provide an indigent defendant with funding for ancillary services that are reasonably necessary to mount an adequate and effective defense, regardless of whether the defendant is self-represented or represented by a public defender, by assigned counsel, or by private counsel.

STATE *v.* LIONEL G. DUDLEY, SC 20177
Judicial District of New London

Criminal; Decriminalization; Whether Trail Court Erred in Refusing to Erase Record of Probation Violation Finding Pursuant to General Statutes § 54-142d Following Erasure of Record of Defendant's Marijuana Conviction. In 2010, the defendant was convicted of possession of marijuana and found to have violated the terms of his probation for a prior conviction when he pleaded guilty to the charge of possession of marijuana. In 2015, the defendant moved that the record of the marijuana conviction be erased, citing *State* v. *Menditto*, 315 Conn. 861 (2015). In *Menditto*, the Supreme Court held that, because the legislature decriminalized possession of less than one-half ounce of marijuana in 2011, a defendant convicted of possessing less than a one-half ounce of marijuana was entitled to erasure

of the record of the conviction pursuant to General Statutes § 54-142d. Section 54-142d provides that "[w]henever any person has been convicted of an offense . . . and such offense has been decriminalized subsequent to the date of such conviction, such person may file a petition with the [S]uperior [C]ourt . . . for an order of erasure, and the Superior Court . . . shall direct all . . . records . . . pertaining to such case to be physically destroyed." The trial court here granted the defendant's motion to erase the record of his marijuana conviction. Thereafter, the defendant filed a motion asking for the erasure of the record of the judgment revoking his probation, arguing that the only basis for finding him in violation of probation was the possession of marijuana conviction which had since been erased. The trial court denied the motion, noting that a defendant may be found in violation of probation without any conviction and that all that was necessary to support a judgment of violation of probation was a finding by the preponderance of the evidence that the defendant failed to satisfy the condition of his probation that he not violate any laws of the United States or any state. The defendant appeals, and the Supreme Court will decide whether the trial court properly found that the record pertaining to the probation violation adjudication should not be erased pursuant to § 54-142d following the erasure of the marijuana conviction on which it was predicated.

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