Week of September 24

Welcome to our Supreme and Appellate Court summaries webpage. On this page, I provide abbreviated summaries of decisions from the Connecticut appellate courts which highlight important issues and developments in Connecticut law, and provide practical practice pointers to litigants. I have been summarizing these court decisions internally for our firm for more than 10 years, and providing relevant highlights to my municipal and insurance practice clients for almost as long. It was suggested that a wider audience might appreciate brief summaries of recent rulings that condense often long and confusing decisions down to their basic elements. These summaries are limited to the civil litigation decisions based on my own particular field of practice, so you will not find distillations of the many criminal and matrimonial law decisions on this page. I may from time to time add commentary, and may even criticize a decision's reasoning. Such commentary is solely my opinion . . . and when mistakes of trial counsel are highlighted because they triggered a particular outcome, I will try to be mindful of the adage . . . "There but for the grace of God . . .." I hope the reader finds these summaries helpful. – Edward P. McCreery

Posted September 24, 2014

- SC18960 - State v. Carrion
- SC18960 Concurrence - State v. Carrion

Who knows the ***Whelan Exception to the Rule of Hearsay***? You don't? I'm sure you're not alone. Now known more appropriately as the Connecticut Code of Evidence Rule 8-5(1), if you are a litigator, you should be aware of it.

This case was a criminal matter where the issue became the propriety of admitting into evidence the prior (videotaped) forensic interview of a little girl who was molested by the defendant in order to explain inconsistencies in her trial testimony. The decision held it was proper and applied the Whelan rule which has equal applicability to civil litigation.

Generally statements made outside of court are considered hearsay.....even statements of the witness on the witness stand.....unless they fit one of the exceptions to the hearsay rule. The *Whelan* hearsay exception applies to a relatively narrow category of prior inconsistent statements and is carefully limited to those prior statements that carry such substantial indicia of reliability as to warrant their substantive admissibility. As with any statement that is admitted into evidence under a hearsay exception, a statement that satisfies the *Whelan* criteria may or may not be true in fact. But, as with any other statement that qualifies under a hearsay

exception, it nevertheless is admissible to establish the truth of the matter asserted because it falls within a class of hearsay evidence that has been deemed sufficiently trustworthy to merit such treatment. The fact finder is allowed to determine whether the hearsay statement is credible upon consideration of all the relevant circumstances. Consequently, once the proponent of a prior statement has established that the statement satisfies the requirements of *Whelan*, that statement, like statements that satisfy the requirements of other hearsay exceptions, is presumptively admissible. The opponent to the admission may argue against its admissibility on the grounds that it was obtained under circumstances that make it totally untrustworthy such as coercion, intimidation, suggestion, etc.