

**Supreme Court Appeals  
Pending Cases  
(02-17-10)**

1. **Style** Joann Absure, et al. v. Jeremiah Upshaw, et al.
  2. **Docket Number** W2008-01486-SC-R11-CV
  3. **Lower Court Decision Link** [www.tncourts.gov/OPINIONS/TCA/PDF/091/AbshureJoannOPN.pdf](http://www.tncourts.gov/OPINIONS/TCA/PDF/091/AbshureJoannOPN.pdf)
  4. **Lower Court Summary**

**This is a medical malpractice action filed against individual Defendants/Physicians and Defendant Hospital. Following Plaintiffs' second Tennessee Rule of Civil Procedure 41.01 voluntary dismissal of individual Defendants, Defendant Hospital moved for summary judgment. The trial court awarded Hospital summary judgment upon concluding that the evidence demonstrated negligence on part of one Defendant/Physician only, and Plaintiffs had failed to assert a claim of vicarious liability against Hospital for the alleged negligence of its agent, Defendant/Physician prior to twice dismissing Physician. The trial court determined Plaintiffs' cause of action had been extinguished where the statute of repose applicable to claim against Physician had expired, and that Plaintiffs had conferred on Physician an affirmative right not to be sued again. Plaintiffs appeal. We reverse in part, affirm in part, and affirm the award of summary judgment to Defendant Hospital.**
  5. **Status** Appellant's Reply Brief Filed 01/06/10
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1. **Style** In re: Adoption of A.E., E.E. and E.C.E.
  2. **Docket Number** W2008-00120-SC-R11-CV
  3. **Lower Court Decision Link** [www.tncourts.gov/OPINIONS/TCA/PDF/084/AEopn.pdf](http://www.tncourts.gov/OPINIONS/TCA/PDF/084/AEopn.pdf)
  4. **Lower Court Summary**

**This case involves a parental termination proceeding where Father originally consented to termination of his parental rights, but now appeals on the ground that his surrender was procedurally deficient and made under duress. Father also alleges that the trial court erred when it failed to grant him leave to conduct discovery on opposing counsel and when the trial court failed to recuse itself. On appeal we find no error; the trial court properly granted Mother's petition to terminate parental rights, Father failed to present any proof that he was under duress when he consented to the motion to terminate or that he was entitled to depose opposing counsel, and the trial court did not abuse its discretion in denying appellant's motion for recusal. We, therefore, affirm the judgment of the trial court.**
  5. **Status** Judgment of the Court of Appeals reversed on 02/16/10.
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1. **Style** **B & B Enterprises, et al. v. City of Lebanon, et al.**
  2. **Docket Number** **M2008-00572-SC-R11-CV**
  3. **Lower Court Decision Link** [www.tncourts.gov/OPINIONS/TCA/PDF/091/B&BEnterprisesOPN.pdf](http://www.tncourts.gov/OPINIONS/TCA/PDF/091/B&BEnterprisesOPN.pdf)
  4. **Lower Court Summary**

**The issue on appeal is whether the plaintiffs' inverse condemnation action against the City of Lebanon Regional Planning Commission and its members is barred by the one-year statute of limitations. This action arises from the February 26, 2002 decision of the Planning Commission denying approval of the plaintiffs' plans for Phases II and III of Chaparral Subdivision. This inverse condemnation action was not filed until December 2, 2005; however, the plaintiffs filed a petition for a common law writ of certiorari on April 12, 2002, challenging the denial of the plans, which remained on appeal until December 16, 2004. In the writ of certiorari action, the chancellor found that the City abused its discretion in denying approval of the plans and this court affirmed that decision in an opinion filed December 16, 2004. This inverse condemnation action was filed eleven months after this court rendered its ruling in the appeal of the certiorari action. When the plaintiffs subsequently filed this action in 2005, the defendants moved for summary judgment on the ground that the action was time barred because the triggering event in a regulatory takings case such as this occurred on February 26, 2002, when the plans were denied by the City's Planning Commission. In response, the plaintiffs contended the action was timely because it was filed within one year of this court's decision in the writ of certiorari action. We have determined the triggering event occurred on the date the plaintiffs knew the City was depriving them of the economic use of their property, which at the very latest was April 12, 2002, when the plaintiffs' filed their petition for a writ of certiorari. We therefore reverse the ruling of the trial court and remand with instructions to grant the defendants' motion for summary judgment.**
  5. **Status** **Oral argument heard in Nashville on 02/11/09.**
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1. **Style** **Joseph Bailey, et al. v. Blount County Board of Education, et al.**
2. **Docket Number** **E2007-01028-SC-R11-CV**
3. **Lower Court Decision Link** [www.tncourts.gov/OPINIONS/TCA/PDF/083/BaileyJosephOPN.pdf](http://www.tncourts.gov/OPINIONS/TCA/PDF/083/BaileyJosephOPN.pdf)
4. **Lower Court Summary**

**A nontenured teacher employed by the Blount County Board of Education was suspended for ten days without pay upon charges of inappropriate conduct. Several months later, upon further charges of inappropriate conduct, the Board terminated the teacher's employment. The teacher and his wife filed a complaint alleging injuries as the result of actions and omissions of the Board with respect to both the suspension and the termination. Upon the Board's motion for summary judgment, the trial**

court dismissed the complaint with prejudice upon the ground that the plaintiffs failed to exhaust all administrative remedies before filing suit, and, by separate order, upon its finding that the plaintiffs were aware of this failure when they filed their complaint, the trial court sanctioned the plaintiffs for filing a frivolous complaint. After careful review, it is our determination that the Board's decision terminating the teacher's employment was void ab initio because the Board denied the teacher due process by neglecting to afford him a hearing prior to such termination. Accordingly, we modify the trial court's summary judgment with respect to that portion of the complaint pertaining to the termination to dismissal without prejudice upon the ground that the matter complained of was not ripe for appeal, and we further vacate the trial court's order imposing sanctions on the plaintiffs. We affirm the trial court's grant of summary judgment as to that portion of the complaint pertaining to the teacher's ten-day suspension upon the ground that suit in that regard was barred under the applicable statute of limitations.

5. Status Judgment of the Court of Appeals affirmed in part and reversed in part on 01/28/10.

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1. Style Debra M. Barkes, et al. v. River Park Hospital, et al.

2. Docket Number M2006-01214-SC-R11-CV

3. Lower Court Decision Link [www.tncourts.gov/OPINIONS/TCA/PDF/084/BarkesDOPNCorr.pdf](http://www.tncourts.gov/OPINIONS/TCA/PDF/084/BarkesDOPNCorr.pdf)

4. Lower Court Summary Wife of patient brought medical malpractice action for the wrongful death of her husband who died at home later in the same day that he was examined in the emergency room. The patient had been examined, diagnosed and discharged by a nurse practitioner without being seen by a physician. The only direct claim against the hospital was whether the hospital was liable because a written policy, which required that every patient presented to the emergency room be seen by a physician, was not followed by the health care providers in the Emergency Department. The jury returned a verdict exonerating all of the individual health care providers directly or indirectly involved with the care of the plaintiff's husband; however, the jury found that the hospital was 100% at fault for his death. The hospital appealed contending the jury's verdict must be set aside because it was inconsistent and irreconcilable. Because the jury found that none of the health care providers were at fault, the only basis for upholding the jury's verdict against the Hospital is upon the doctrine of corporate liability. Tennessee has not adopted the doctrine of corporate liability; therefore, the verdict, exonerating all individual health care providers of fault and finding the hospital 100% at fault, constitutes an inconsistent and irreconcilable verdict. We, therefore, reverse and remand the case for a new trial.

5. Status Oral argument heard in Nashville on 02/10/09

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1.	Style	Estate of Joyce Bell, et al. v. Shelby County Health Care Corp.
2.	Docket Number	W2008-02213-SC-S09-CV
3.	Lower Court Decision Link	No intermediate appellate court decision
4.	Lower Court Summary	No intermediate appellate court decision
5.	Status	Oral argument heard on 11/04/09 in Memphis.

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1.	Style	In re: Bernard T., et al.
2.	Docket Number	W2008-02803-SC-R11-PT
3.	Lower Court Decision Link	<a href="http://www.tncourts.gov/OPINIONS/TCA/PDF/094/State%20v%20Tina%20Temple%20OPN.pdf">http://www.tncourts.gov/OPINIONS/TCA/PDF/094/State%20v%20Tina%20Temple%20OPN.pdf</a>
4.	Lower Court Summary	<p>This a termination of parental rights case. The children were removed from Father's custody due to his lack of stable housing as well as his allowing Mother to "be with" the children despite her drug use. Numerous permanency plans were entered, which required Father, among other things, to maintain stable housing and income, legitimate the children, complete parenting classes, identify a support system, and attend family and domestic violence counseling. At various times, Father had employment and housing; however, at other times, he did not. In 2008, DCS petitioned to terminate Father's parental rights. Following a trial, Father's parental rights were terminated on the grounds of failure to comply with the requirements of the permanency plans, persistence of conditions, as well as three additional grounds available under Tennessee Code Annotated section 36-1-113(g)(9) for the termination of a non-legal parent's rights. Although this Court finds that Father failed to obtain and maintain stable housing and income or to legitimate the children, we reverse the termination of Father's parental rights, finding that DCS failed to aid Father in such efforts. The judgment of the trial court is reversed, the petition for termination is dismissed, and the cause is remanded for further proceedings consistent with this opinion.</p>
5.	Status	Application for permission to appeal granted on 02/08/10.

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1.	Style	CAO Holdings, Inc. v. Loren L. Chumley, Commissioner of Revenue
2.	Docket Number	M2008-01679-SC-R11-CV
3.	Lower Court Decision Links	<a href="http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/092/CAO%20Holdings%2">http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/092/CAO%20Holdings%2</a>

[0v%20Revenue%20OPN.pdf](http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/092/CAO%20Holdings%20v%20Revenue%20OPN.pdf)  
<http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/092/CAO%20Holdings%20v%20Revenue%20DISSENT.pdf>

4. **Lower Court Summary** Commissioner of Revenue assessed a tax based on the taxpayer's use of an airplane which had been purchased out of state. Taxpayer sought review from the Department, but was denied relief following an informal hearing. Taxpayer appealed and the Chancery Court reversed, finding that, because (1) taxpayer provided the seller with a certificate of resale, (2) taxpayer immediately leased the airplane such that it transferred possession and control of the plane to the user, and (3) taxpayer was a validly organized business which observed all corporate formalities, the sale-for-resale exemption pursuant to Tenn. Code Ann. § 67-6-102(34)(A) applied to the transaction. Finding no error, we affirm.
5. **Status** Order granting application filed 1/25/10. Appellant's brief due 2/24/10.

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1. **Style** F. Chris Cawood v. Linda Booth, et al.
2. **Docket Number** E2007-02537-SC-R11-CV
3. **Lower Court Decision Link** [www.tncourts.gov/OPINIONS/TCA/PDF/084/CawoodfcOPN.pdf](http://www.tncourts.gov/OPINIONS/TCA/PDF/084/CawoodfcOPN.pdf)
4. **Lower Court Summary** The plaintiff, F. Chris Cawood, is an attorney. He represented Tammy Clark1 ("the Client") in a divorce case. During the post-judgment phase of that representation, the plaintiff and the Client engaged in a sexual relationship. On occasion, while in the plaintiff's office, the plaintiff would masturbate in the presence of the Client, following which he would give her a credit on her bill. After she complained to local authorities, the Roane County Sheriff's Department equipped the Client with concealed audio and video equipment. Thereafter, unbeknownst to the plaintiff, she videotaped him while he was masturbating. During this event, the Client hit him on the buttocks and pinched his nipples. Following this event, the videotape was placed under the control of Linda Booth of the Sheriff's Department. Booth gave the video to another investigator, Dennis Worley, who happens to be the Client's uncle. Worley was not involved in the investigation but wanted to see the videotape to ascertain if his niece had done anything illegal. Worley viewed the videotape in an office shared by officers Randy Scarbrough and Jon French. During the viewing, the door to the office was open. The video was viewed not only by Worley, but also by Scarbrough and French, a bail bondsman who was passing by the office, and others. The plaintiff filed suit against Booth, Worley, Scarbrough and French alleging (1) a violation of the Wiretapping and Electronic Surveillance Act of 1994, (2) invasion of privacy by public disclosure of private facts, and (3) outrageous conduct. The trial court granted all defendants summary judgment as to all claims. Plaintiff appeals. We vacate the grant of summary judgment to Booth and Worley on the plaintiff's outrageous conduct claim. In all other respects, the trial court's judgment is affirmed.

5.	Status	Oral argument heard in Knoxville on 01/05/10
1.	Style	Melissa Michelle Cox v. M.A. Primary, et al.
2.	Docket Number	M2007-01840-SC-R11-CV
3.	Lower Court Decision Link	Hyperlink not available
4.	Lower Court Summary	Plaintiff in medical malpractice action appeals the trial court's grant of summary judgment in favor of defendant doctor and clinic. The trial court found that the deposition testimony of Plaintiff's expert witness failed to establish genuine issues of material fact with respect to the requirements of Tenn. Code Ann. § 29-26-115(a). Finding error, we reverse and remand the case for further proceedings.
5.	Status	Oral argument scheduled for Nashville on 02/11/10
1.	Style	Joseph Davis, et al. v. Patrick J. McGuigan, et al.
2.	Docket Number	M2007-02242-SC-R11-CV
3.	Lower Court Decision Link	<a href="http://www.tncourts.gov/OPINIONS/TCA/PDF/083/DavisJ-OPN.pdf">www.tncourts.gov/OPINIONS/TCA/PDF/083/DavisJ-OPN.pdf</a>
4.	Lower Court Summary	Homeowners filed suit against Appraiser for intentional and negligent misrepresentation and violation of the Tennessee Consumer Protection Act. Appraiser moved for summary judgment on all claims. The trial court denied Appraiser's motion on the negligent misrepresentation claim, but dismissed the intentional misrepresentation claim and the Tennessee Consumer Act claim. During the course of the proceedings, the trial court also excluded certain witnesses who were tendered as experts. Both parties appeal. We affirm the trial court's grant of summary judgment on both claims, and decline to address the remaining issues for lack of justiciability.
5.	Status	Oral argument heard in Nashville on 10/06/09.
1.	Style	Estate of Mary Reeves Davis
2.	Docket Number	M2009-00660-SC-S09-CV
3.	Lower Court Decision Link	No lower Court Decision
4.	Lower Court Summary	No lower Court Decision

5.	Status	Oral argument heard in Nashville on 02/10/10
1.	Style	Terrance Lavar Davis v. State
2.	Docket Number	M2009-00011-SC-R11-HC
3.	Lower Court Decision Link	<a href="http://www.tncourts.gov/OPINIONS/tcca/PDF/092/DavisTerranceLavarOPNonREMAND.pdf">www.tncourts.gov/OPINIONS/tcca/PDF/092/DavisTerranceLavarOPNonREMAND.pdf</a>
4.	Lower Court Summary	<p>The petitioner, Terrance Lavar Davis, appeals as of right the Hickman County Circuit Court's summary dismissal of his petition for a writ of habeas corpus. The petition alleges that his bargained-for sentences of twenty-two years to be served at one hundred percent for two counts of possession of cocaine for resale in a drug-free school zone is illegal because the release eligibility is in contravention to the 1989 Criminal Sentencing Reform Act. The State argues that release eligibility is non-jurisdictional and can be an element of a plea-bargained sentence. Following our initial review, we reversed the judgment of the trial court and remanded for further proceedings. <i>Terrance Lavar Davis v. State</i>, No. M2007-01729-CCA-R3-HC, 2008WL1958174 (Tenn. Crim. App. May 6, 2008). The State applied for permission to appeal this court's decision with the Tennessee Supreme Court pursuant to Rule 11 of the Rules of Appellate Procedure. On January 5, 2009, the supreme court granted the application for permission to appeal for the purpose of remanding the case to this court for reconsideration in light of the supreme court's opinion in <i>Edwards v. State</i>, 269 S.W.3d 915 (Tenn. 2008). <i>Terrance Lavar Davis v. State</i>, M2007-01729-SCR11- HC (Tenn. Jan. 5, 2009) (Order Granting Perm. App. and Remanding for Reconsideration). Following our reconsideration, we conclude that the judgment of the trial court should be reversed and the case remanded for further proceedings consistent with this opinion.</p>
5.	Status	Oral argument heard in Nashville on 2/11/09
1.	Style	Amanda J. Elliott, et al. v. R. Michael Cobb
2.	Docket Number	W2009-00961-SC-S09-CV
3.	Lower Court Decision Link	No lower court decision
4.	Lower Court Summary	No lower court decision
5.	Status	Appellant's reply brief filed on 02/04/10
1.	Style	Timothy Darnell Flowers v. Board of Professional Responsibility
2.	Docket Number	W2008-02648-SC-R3-CV

3.	Lower Court Decision Link	No lower court decision
4.	Lower Court Summary	No lower court decision
5.	Status	Oral argument heard in Jackson on 11/05/09
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1.	Style	Torrey Lyonel Frazier v. State of Tennessee
2.	Docket Number	E2007-02518-SC-R11-PC
3.	Lower Court Decision Link	<a href="http://www.tncourts.gov/OPINIONS/tcca/PDF/091/FrazierTorreyLyonelOPN.pdf">www.tncourts.gov/OPINIONS/tcca/PDF/091/FrazierTorreyLyonelOPN.pdf</a>
4.	Lower Court Summary	<p>A Roane County jury convicted Petitioner, Torrey L. Frazier, of second degree murder, and the trial court sentenced him to twenty-two years as a violent offender. Petitioner’s conviction and sentence were affirmed on direct appeal, and the Tennessee Supreme Court denied permission to appeal. <i>State v. Torrey Lyonel Frazier</i>, E2000-01364-CCA-R3-CD, 2001WL 1627601, at *1 (Tenn. Crim. App., at Knoxville, Dec. 19, 2001), <i>perm. app. denied</i> (Tenn. Feb. 21, 2006). Following the filing of Petitioner’s petition for post-conviction relief, an agreed order was entered allowing Petitioner a delayed Rule 11 application for permission to appeal to the Tennessee Supreme Court. Petitioner’s petition for post-conviction relief alleges, inter alia, that he was denied the effective assistance of counsel. The post-conviction court dismissed the petition after a hearing. On appeal, Petitioner contends that his trial counsel was ineffective because he: (1) failed to request a jury instruction on second degree murder as a “result-of-conduct” offense; (2) failed to appeal the issue of the jury instruction on second degree murder; and (3) failed to raise in Petitioner’s motion for new trial an issue involving an allegedly biased juror. After a thorough review of the record and applicable authorities, we conclude that Petitioner has failed to show that his trial counsel rendered ineffective assistance and affirm the judgment of the post-conviction court.</p>
5.	Status	Oral argument heard in Knoxville on 01/05/10
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1.	Style	Estate of Martha S. French v. The Stratford House, et al
2.	Docket Number	E2008-00539-SC-R11-CV
3.	Lower Court Decision Link	<a href="http://www.tncourts.gov/OPINIONS/TCA/PDF/091/FrenchmsOPN.pdf">www.tncourts.gov/OPINIONS/TCA/PDF/091/FrenchmsOPN.pdf</a>
4.	Lower Court Summary	This case involves a complaint for personal injury and wrongful death filed by Kimberly S. French (“the Administratrix”), Administratrix of the Estate

of Martha S. French (“the Deceased”), against the owners and operators of a nursing home (“the Defendants”).<sup>1</sup> The Deceased was a resident of the nursing home – The Stratford House – from April 3, 2003, to July 23, 2003. The Administratrix claims that the Defendants failed to provide the Deceased with basic care such as filling her water pitcher, feeding her, cleaning her after incontinence, bathing her and turning her every two hours to avoid pressure sores. The Administratrix argues that, due to lack of care, the Deceased developed pressure sores that were not properly treated, became infected and ultimately caused her death from sepsis. The Administratrix, who is the daughter of the Deceased, brought suit, alleging claims for ordinary negligence, negligence *per se* under state and federal regulations of nursing homes, violations of the Tennessee Adult Protection Act (“TAPA”), Tenn. Code Ann. § 71-6-101 *et seq.* (2004 & Supp. 2008), and medical malpractice under Tenn. Code Ann. § 29-26-115 *et seq.* (2000 & Supp. 2008). The trial court held that the only cognizable claims against Stratford House were for medical malpractice. The court granted the Defendants summary judgment on all of the Administratrix’s non-medical malpractice claims and on her claim for punitive damages. Two of the defendants sought summary judgment as to all of the claims; the court denied their motion. The Administratrix appeals and both sides raise issues. We affirm in part and vacate in part.

5.	Status	Appellant’s reply brief filed on 02/03/10
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1.	Style	Gary M. Gossett v. Tractor Supply Company, Inc.
2.	Docket Number	M2007-02530-SC-R11-CV
3.	Lower Court Decision Link	<a href="http://www.tncourts.gov/OPINIONS/TCA/PDF/091/GossettGaryMOPN.pdf">www.tncourts.gov/OPINIONS/TCA/PDF/091/GossettGaryMOPN.pdf</a>
4.	Lower Court Summary	This is a common-law retaliatory discharge action. The trial court awarded summary judgment to Defendant employer where Plaintiff, discharged at-will employee, alleged he was discharged for refusing to participate in, but not reporting, Defendant’s allegedly illegal data reporting practices. The trial court awarded summary judgment to Defendant on the grounds that, under <i>Collins v. AmSouth Bank</i> , 241 S.W.3d 879 (Tenn Ct. App. 2007), reporting of the alleged illegal activity is a necessary element of a common-law retaliatory discharge claim. To the extent to which <i>Collins</i> so holds, we disagree with <i>Collins</i> that a common-law retaliatory discharge claim can never be sustained based on an at-will employee’s refusal to participate in an illegal act or an act in contravention of a clearly-established public policy. Summary judgment in favor of Defendant is reversed, and this matter is remanded for further proceedings.
5.	Status	Oral argument heard in Nashville on 02/11/10
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1.	Style	Martha Graham v. Clinton Caples, et al.
2.	Docket Number	W2009-00200-SC-S09-CV

- 3. Lower Court Decision Link No lower court decision
  - 4. Lower Court Summary No lower court decision
  - 5. Status Appellee's brief filed on 11/13/09
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- 1. Style Gray's Disposal Co., Inc. v. Metro Government of Nashville
  - 2. Docket Number M2007-00528-SC-R11-CV
  - 3. Lower Court Decision Link [www.tncourts.gov/OPINIONS/TCA/PDF/091/GraysDisposalOPN.pdf](http://www.tncourts.gov/OPINIONS/TCA/PDF/091/GraysDisposalOPN.pdf)
  - 4. Lower Court Summary
 

This is the second appeal in consolidated cases concerning tipping fees charged for residential waste disposal. Privately-owned garbage haulers ("Appellants") originally sued metropolitan government ("Metro") challenging the constitutionality of the tipping fees; Metro filed a separate action against Appellants for past-due tipping fees. The trial court granted summary judgment in favor of Metro and Appellants appealed. On December 31, 2002, this Court ruled in Metro's favor and remanded the matter instructing the trial court to calculate the amount of tipping fees Appellants owed Metro for the period after November 5, 1997. Pending a hearing on remand, Appellants sought to recover the amount of tipping fees paid Metro before November 5, 1997, by filing a separate action in the same court. The trial court dismissed Appellants' action based on the doctrines of res judicata and collateral estoppel. The final hearing on remand was held June 19, 2007, more than four years after this Court's decision in the first appeal. In April 2007, just prior to the hearing, the Supreme Court of the United States issued an opinion, *United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330 (2007), which Metro alleged abrogated our earlier decision in 2002. Abiding by our limited instructions for remand, the trial court declined to consider *United Haulers* or Appellants' request for a set-off of fees paid prior to November 5, 1997 and determined the amounts owed Metro. Metro's motion to alter or amend the judgment was denied. Both parties appeal. We have determined that Appellants' second attempt to recover the tipping fees paid prior to November 5, 1997, was barred by the doctrines of res judicata and collateral estoppel and affirm the trial court's decision with respect to *United Haulers*.
  - 5. Status Oral argument heard in Nashville on 02/10/10
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- 1. Style Billie Gail Hall v. Douglas B. Haynes, Jr., et al
- 2. Docket Number W2007-02611-SC-R11-CV

- 3. Lower Court Decision Link No lower court decision
- 4. Lower Court Summary No lower court decision
- 5. Status Appellee’s brief filed on 12/16/09

- 1. Style Home Builders Association of Middle Tennessee v. Williamson County
- 2. Docket Number M2008-00835-SC-R11-CV
- 3. Lower Court Decision Link [www.tsc.state.tn.us/OPINIONS/TCA/PDF/084/HomebuildersOPN.pdf](http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/084/HomebuildersOPN.pdf)
- 4. Lower Court Summary **Appellants, a group of homebuilders, appeal the trial court’s grant of summary judgment in favor of Appellee Williamson County. Homebuilders filed a complaint for declaratory judgment against Williamson County, seeking interpretation of Chapter 118 of the Private Acts of 1987 as amended. Under the alleged authority granted by the Act, Williamson County levied additional adequate facilities taxes on homebuilders based upon its audit of actual square footage built. Builders contend that Williamson County exceeded its authority under the Act by calculating taxes at the time of the issuance of the certificate of occupancy as opposed to the time the building permit was issued. Finding that the Legislature intended to give the County broad authority to levy its tax at the time of the issuance of the building permit or at the time of the issuance of the certificate of occupancy, we affirm.**
- 5. Status Oral argument heard in Nashville on 10/07/09.

- 1. Style Gerry G. Kinsler v. Berkline, LLC
- 2. Docket Number E2007-02602-SC-R11-CV
- 3. Lower Court Decision Link [www.tsc.state.tn.us/OPINIONS/TCA/PDF/084/KinslerggOPN.pdf](http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/084/KinslerggOPN.pdf)
- 4. Lower Court Summary **Gerry G. Kinsler (“Employee”) brought suit for retaliatory discharge after being terminated from his employment with Berkline, LLC, (“Employer”) three days after he backed out of a workers’ compensation settlement. The trial court entered summary judgment for Employer, holding that “timing alone is insufficient to withstand [Employer’s] motion for summary judgment . . .” On appeal, Employee argues that the Supreme Court’s holding in *Allen v. McPhee*, 240 S.W.3d 803 (Tenn. 2007) – that “proof of close temporal proximity alone can establish causation, . . .” – is applicable to the facts of this case. We agree. We also hold that genuine issues of material fact concerning the Employer’s explanation for termination**

preclude summary judgment. Accordingly, we vacate the trial court's judgment and remand for further proceedings.

5. Status Oral argument heard in Knoxville on 09/04/09

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1. Style Jeffery Aaron Lane v. State of Tennessee

2. Docket Number E2007-00032-SC-R11-PC

3. Lower Court Decision Link [www.tncourts.gov/OPINIONS/tcca/PDF/091/LaneJefferyAaronOPN.pdf](http://www.tncourts.gov/OPINIONS/tcca/PDF/091/LaneJefferyAaronOPN.pdf)

4. Lower Court Summary The State appeals the Sullivan County Criminal Court's grant of post-conviction relief to Petitioner, Jeffery Aaron Lane, from his conviction for identity theft, a Class D felony. After a thorough review of the record, we affirm the judgment of the post-conviction court.

5. Status Oral argument heard in Knoxville on 01/05/10

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1. Style Lee Medical, Inc. v. Paula Beecher, et al.

2. Docket Number M2008-02496-SC-S09-CV

3. Lower Court Decision Link No lower court decision

4. Lower Court Summary No lower court decision

5. Status Oral argument heard in Knoxville on 09/03/09

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1. Style Samuel D. Leggett, et al. v. Duke Energy Corp., et al.

2. Docket Number W2007-00788-SC-R11-CV

3. Lower Court Decision Link [www.tsc.state.tn.us/OPINIONS/TCA/PDF/084/LeggettSamuelOPN.pdf](http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/084/LeggettSamuelOPN.pdf)

4. Lower Court Summary Plaintiffs sued natural gas companies under the Tennessee Trade Practices Act, Tenn. Code Ann. § 47-25-101, *et seq.*, alleging that the natural gas companies conspired unlawfully to increase the wholesale price of natural gas. The trial court granted the natural gas companies' motion to dismiss on the basis of federal preemption. We reverse and remand for further proceedings.

5.	Status	Oral Argument heard in Jackson on 11/05/09
1.	Style	Kristen Cox Morrison v. Paul Allen, et al.
2.	Docket Number	M2007-01244-SC-R11-CV
3.	Lower Court Decision Link	<a href="http://www.tncourts.gov/OPINIONS/TCA/PDF/091/MorrisonKOPN.pdf">www.tncourts.gov/OPINIONS/TCA/PDF/091/MorrisonKOPN.pdf</a>
4.	Lower Court Summary	Wife sued the insurance company for failure to pay on Husband's life insurance policy and the insurance brokers for failure to procure an enforceable life insurance policy, various torts and violation of the Tennessee Consumer Protection Act ("TCPA"). Wife settled with the insurance company before trial and won judgments against the brokers based on failure to procure an enforceable life insurance policy (\$1,000,000.00); negligence, negligent misrepresentation, and breach of fiduciary duty (\$300,000.00); and violation of the TCPA (an additional \$300,000.00) Defendants appeal, claiming that they should receive a credit for the amount of the settlement with the insurance company and that the other awards were improper for various reasons. We affirm the \$1,000,000.00 judgment but find that a credit for the settlement is appropriate. We affirm the tort award. We also affirm the finding of a violation of the TCPA and affirm the award of the additional \$300,000.00.
5.	Status	Oral argument continued until June docket.
1.	Style	Candace Mullins v. State
2.	Docket Number	M2008-01674-SC-R11-CV
3.	Lower Court Decision Link	<a href="http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/092/Candace%20Mullins%20v%20State.pdf">http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/092/Candace%20Mullins%20v%20State.pdf</a>
4.	Lower Court Summary	This is a claim filed against the State by a minor-decedent's mother for the wrongful death of her child based on T.C.A. § 9-8-307(a)(1)(E) (Negligent Care, Custody and Control of Person). The child was murdered while in the care of a relative after he had been removed from the mother's home by the Tennessee Department of Children's Services. The mother contended that if the caseworker assigned to her son's case had properly investigated an earlier allegation of abuse at the home in which the child had been placed, the child would have been removed from the placement before the murder occurred. The Claims Commission held that it did not have the subject matter jurisdiction to hear the mother's claims under T.C.A. § 9-8-307(a)(1)(E) because the child was not in the care, custody, or control of the State at the time of the alleged negligence. The mother appeals. We affirm the judgment as modified.
5.	Status	Appellee's brief due on 03/03/10

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1.	Style	Music City RV, LLC, et al. v. Jennie Adams, et al.
2.	Docket Number	M2009-00051-SC-R23-CQ
3.	Lower Court Decision Link	No intermediate appellate court decision
4.	Lower Court Summary	No intermediate appellate court decision
5.	Status	On 08/06/09, the Court entered order accepting certification of the following question of law: "Whether the consignment of an R.V. by a consumer (not another business) to a Tennessee R.V. dealer, for the purpose of selling that R.V. to a third person, is a transaction covered under § 47-2-326 of the Uniform Commercial Code, as adopted in Tennessee." Certified question answered in the negative in an opinion dated 02/12/10.

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1.	Style	Ana R. Padilla v. Twin City Fire Insurance Co.
2.	Docket Number	M2008-02489-SC-WCM-WC
3.	Lower Court Decision Link	Not available
4.	Lower Court Summary	Not available
5.	Status	Appellant's brief filed on 01/28/10

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1.	Style	Kimberly Powell v. National Healthcare of Cleveland, Inc.
2.	Docket Number	E2008-00535-SC-R11-CV
3.	Lower Court Decision Link	<a href="http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/091/powellkopn.pdf">www.tsc.state.tn.us/OPINIONS/TCA/PDF/091/powellkopn.pdf</a>
4.	Lower Court Summary	We granted an appeal pursuant to Rule 9, Tenn. R. App. P., to determine the extent of discovery that would be allowed of an infection control nurse who had investigated the infectious rates at the hospital, because the investigation was prompted by the hospital's Quality Control Committee. Defendants argued that the investigation was confidential and privileged, pursuant to Tenn. Code Ann. 63-6-219. The Trial Court allowed discovery and we affirm, setting forth parameters of the discovery.
5.	Status	Oral argument heard in Knoxville on 09/03/09

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1.	Style	<b>Pugh's Lawn Landscaping Company, Incorporated v. Jaycon Development Corporation</b>
2.	Docket Number	<b>W2008-01366-SC-R11-CV</b>
3.	Lower Court Decision Link	<a href="http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/092/pughOPN.pdf">http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/092/pughOPN.pdf</a>
4.	Lower Court Summary	<b>This is an appeal of the trial court's order confirming an arbitration award entered in favor of Appellee. The arbitration agreement entered between Appellant and Appellee permitted either party to appeal the arbitrator's decision directly to this Court. The agreement specified that this Court would conduct a de novo review of the arbitrator's decision as if it had been reached by the trial court. We find that Tennessee's arbitration statutes do not permit the parties to expand the scope of judicial review. Accordingly, we apply the standard of review specified in the statute and affirm the trial court's order confirming the arbitration award.</b>
5.	Status	<b>Appellee's brief filed on 02/12/10</b>

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1.	Style	<b>Derrick Quintero and William Eugene Hall, Jr. v. State</b>
2.	Docket Number	<b>M2005-02959-SC-R1-PD</b>
3.	Lower Court Decision Link	<a href="http://www.tncourts.gov/OPINIONS/tcca/PDF/083/QuinteroDandHallWilliamEOPN.pdf">www.tncourts.gov/OPINIONS/tcca/PDF/083/QuinteroDandHallWilliamEOPN.pdf</a>
4.	Lower Court Summary	<b>The appellants, Derrick Quintero and William Eugene Hall, Jr., were each convicted on two counts of murder during the perpetration of first degree burglary, three counts of grand larceny, one count of petit larceny and three counts of first degree burglary. They both received the death penalty for the murder of one of the victims, a life sentence for the other murder conviction, and an effective eighty year sentence for the remaining convictions. The appellants were unsuccessful in their direct appeals. See State v. Hall and Quintero, 976 S.W. 2d 121 (Tenn. 1998). Appellants filed individual pro se post-conviction petitions and simultaneously joint petitions for writ of error coram nobis. Appellants alleged various constitutional violations, including the ineffective assistance of counsel and the existence of newly discovered evidence. Following a joint hearing on the petitions the trial court denied relief. We affirm the judgments.</b>
5.	Status	<b>Oral argument heard in Nashville on 10/06/09; Court order entered on 10/29/09: The Petitioner should be granted a delayed appeal. The post-conviction proceedings shall be stayed in this Court pending the final disposition of the delayed appeal. The Petitioner shall file his motion for new trial in the Circuit Court for Humphreys County within thirty days from the issuance of this order.</b>

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1. **Style** In re: S.E.J.
  2. **Docket Number** W2008-01354-SC-R11-PT
  3. **Lower Court Decision Link** <http://www.tncourts.gov/OPINIONS/TCA/PDF/093/In%20re%20SEJ%20-%20Jordan%20v%20Roberson%20OPN.pdf>
  4. **Lower Court Summary**

This case involves competing adoption petitions filed by a child’s maternal and paternal grandparents after the child’s father was sentenced to death for killing the child’s mother. The trial court simply compared the relative fitness of the two sets of grandparents and granted the adoption petition of the paternal grandparents. We conclude that the trial court erred in giving equal weight to both petitions because the paternal grandparents did not meet the requirements set forth in Tennessee’s adoption statutes. We also conclude that the maternal grandparents were fit persons to have the care and custody of the child, that they are financially able to provide for the child, and that adoption is in the best interest of the child. Accordingly, we reverse the decision of the chancery court and remand for entry of an order granting the adoption petition filed by the maternal grandparents.
  5. **Status** Scheduled for oral argument in Nashville on 02/11/10
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1. **Style** Shelby County Health Care Corp. v. Nationwide Mutual Ins. Co.
  2. **Docket Number** W2008-01922-SC-R11-CV
  3. **Lower Court Decision Link** <http://www.tncourts.gov/OPINIONS/TCA/PDF/091/ShelbyCountyHealthcareOPN.pdf>
  4. **Lower Court Summary**

Appellant hospital filed suit against Appellee insurance company for damages arising from Appellee’s alleged impairment of the Appellant’s hospital lien. The trial court granted summary judgment in favor of Appellant hospital, finding that Appellant had perfected its lien under Tenn. Code Ann. §29-22-101, and that the Appellee had impaired that lien pursuant to Tenn. Code Ann. §29-22-104. The trial court, however, limited Appellant’s recovery to the amount of coverage under the insurance policy. We affirm as modified herein.
  5. **Status** Appellee’s brief filed on 01/27/10
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1. **Style** Lou Ella Sherrill, et al. v. Bob T. Souder, et al.
2. **Docket Number** W2008-00741-SC-R11-CV
3. **Lower Court Decision Link** [www.tncourts.gov/OPINIONS/TCA/PDF/091/sherillOPN.pdf](http://www.tncourts.gov/OPINIONS/TCA/PDF/091/sherillOPN.pdf)

4. **Lower Court Summary**                    **This is a medical malpractice case. The trial court granted summary judgment in favor of Appellee doctor finding that, based upon the discovery rule, the one year statute of limitations for a medical malpractice claim had expired prior to the filing of the Appellants' complaint. Finding no error, we affirm.**
5. **Status**                                    **Appellant's reply brief filed 10/16/09.**
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1. **Style**                                    **Smith County Regional Planning Commission v. Hiwassee Village Mobile Home Park, LLC**
2. **Docket Number**                    **M2007-02048-SC-R11-CV**
3. **Lower Court Decision Link**                    **[www.tsc.state.tn.us/OPINIONS/TCA/PDF/083/SmithCoOPN.pdf](http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/083/SmithCoOPN.pdf)**
4. **Lower Court Summary**                    **County regional planning commission brought suit seeking civil penalties and injunctive relief against a mobile home park alleged to be in violation of a private act regulating mobile home parks in the county. The trial court found that the mobile home park was not protected by a grandfather provision and ordered injunctive relief to bring the mobile home park into compliance with the private act. We affirm the result reached by the trial court.**
5. **Status**                                    **Judgment filed on 01/22/10 affirming the Court of Appeals' decision on different grounds**
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1. **Style**                                    **State v. Brotherton**
2. **Docket Number**                    **W2007-02016-SC-R11-CD**
3. **Lower Court Decision Link**                    **[www.tncourts.gov/OPINIONS/tcca/PDF/092/brothertonmOPN.pdf](http://www.tncourts.gov/OPINIONS/tcca/PDF/092/brothertonmOPN.pdf)**
4. **Lower Court Summary**                    **The defendant, Mike Brotherton, pled guilty to the offense of driving under the influence, first offense, and reserved a certified question of law regarding the validity of the traffic stop that resulted in his arrest. After careful review, we conclude that the trooper lacked reasonable suspicion to make the traffic stop and dismiss the charge against the defendant.**
5. **Status**                                    **Appellee's brief filed on 02/03/10.**
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1. **Style** **State v. Benjamin Brown**
  2. **Docket Number** **W2006-02762-SC-R11-CD**
  3. **Lower Court Decision Link** [www.tncourts.gov/OPINIONS/tcca/PDF/083/brownbenjaminOPN.pdf](http://www.tncourts.gov/OPINIONS/tcca/PDF/083/brownbenjaminOPN.pdf)
  4. **Lower Court Summary**

The defendant, Benjamin Brown, was convicted by a Shelby County Criminal Court jury of first degree felony murder in the perpetration of aggravated child abuse and aggravated child abuse. For the felony murder conviction, he was sentenced as a violent offender to life in the Department of Correction, and for the aggravated child abuse conviction he was sentenced to twenty-five years, to be served concurrently. In this direct appeal, he claims (1) that the trial court improperly allowed evidence of the defendant's bad acts without conducting a hearing as required by Tennessee Rule of Evidence 404(b), (2) that the trial court committed plain error in allowing a state's expert witness to testify about the victim's cause of death without establishing a proper foundation, (3) that the court erred in failing to replace a juror who indicated she had some knowledge of one of the state's witnesses, (4) that the trial court failed to give instructions on lesser offenses, and (5) that he is entitled to a new trial based upon prosecutorial misconduct during closing argument. We hold that although the state made an improper rebuttal argument, the error was harmless, and the remaining issues are without merit. We affirm the judgments of the trial court.
  5. **Status** **Oral argument heard in Jackson on 11/05/09**
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1. **Style** **State v. Ralph Byrd Cooper, Jr.**
2. **Docket Number** **E2008-02044-SC-R11-CD**
3. **Lower Court Decision Link** <http://www.tncourts.gov/OPINIONS/tcca/PDF/093/State%20v%20Ralph%20Byrd%20Cooper%20Jr.pdf>
4. **Lower Court Summary**

The defendant, Ralph Byrd Cooper, Jr., was convicted by an Anderson County Criminal Court jury of aggravated rape. The trial court determined that the defendant was a repeat violent offender pursuant to Tennessee Code Annotated section 40-35-120 and ordered the defendant to serve a sentence of imprisonment for life without the possibility of parole. *See* T.C.A. § 40-35-120(g) (2003). The defendant appeals, arguing that the convicting evidence was legally insufficient and that the State did not meet its burden in proving that he was a repeat violent offender under the statute. Further, we review under our authority to determine plain error pursuant to Tennessee Rule of Appellate Procedure 36(b) whether the trial court erred in sentencing the defendant as a repeat violent offender when the State filed its notice of such enhancement after the jury's verdict. After

a review of these issues, we affirm the trial court's judgment.

5. Status Application for permission to appeal granted on 02/01/10

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1. Style State v. Darrell Franklin

2. Docket Number W2007-02772-SC-R11-CD

3. Lower Court Decision Link [www.tncourts.gov/OPINIONS/tcca/PDF/091/FRanklinDarrellOPN.pdf](http://www.tncourts.gov/OPINIONS/tcca/PDF/091/FRanklinDarrellOPN.pdf)

4. Lower Court Summary

The Defendant, Darrell Franklin, was convicted of one count of robbery, a Class C felony, and sentenced as a Range III, persistent offender to twelve years in the Department of Correction. In this direct appeal, he argues that (1) the trial court erred in admitting certain testimony over his hearsay objection and in violation of his rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution; (2) the State presented evidence insufficient to support the Defendant's conviction; (3) he received an excessive sentence; and (4) the cumulative effect of the trial court's errors deprived him of his constitutional rights to due process and trial by jury. We conclude that the State presented evidence sufficient to support the Defendant's conviction and that the trial court did not err in sentencing him. We also conclude, however, that the trial committed plain error by admitting certain testimony in violation of the Defendant's right to confront the witnesses against him. We accordingly vacate his conviction and remand this case for a new trial.

5. Status Oral argument as a SCALES case heard in Murfreesboro on 02/12/10

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1. Style State v. Shawn Hatcher

2. Docket Number W2006-01853-SC-R11-CD

3. Lower Court Decision Link [www.tncourts.gov/OPINIONS/tcca/PDF/083/hatchersopn.pdf](http://www.tncourts.gov/OPINIONS/tcca/PDF/083/hatchersopn.pdf)

4. Lower Court Summary

Appellant, Shawn Hatcher, was involved in a shooting which resulted in the death of one victim and the serious injury of two other victims. As a result of the incident, Appellant was convicted by a Shelby County jury of first degree felony murder, first degree premeditated murder and two counts of attempted first degree murder. The trial court sentenced Appellant immediately to a mandatory life sentence for the first degree murder convictions. Appellant filed a motion for new trial. The trial court held a joint sentencing hearing and hearing on the motion for new trial. The trial court merged the two convictions for first degree murder and sentenced

Appellant to fifteen years for each attempted murder conviction to be served concurrently with each other. The trial court ordered the life sentence to be served consecutively to the fifteen-year sentence. The trial court also denied the motion for new trial and appointed new counsel at the conclusion of the hearing for sentencing and the motion for new trial. Newly-appointed counsel filed an amended motion for new trial more than thirty days after the trial court denied the original motion for new trial. The trial court held a hearing on the amended motion for new trial and denied the motion. Appellant appealed. On appeal, the State argues that this appeal is not properly before this Court. We have determined that the issues presented in the amended motion for new trial are not properly before this Court because it was not filed with thirty days from the trial court's denial of the original motion for new trial. We have waived the timely-filing of the notice of appeal with regard to the original motion for new trial and address those issues on appeal. Therefore, the issues presented on appeal are that the evidence was insufficient to support the Appellant's convictions, the trial court erred in allowing in photographs of the murder victim into evidence, the trial court erred in not allowing Appellant to present medical evidence of his injuries to support his theory of defense, and the trial court erred in instructing the jury on the special instructions Appellant presented. After a thorough review of the record, we affirm the judgments of the trial court.

5. Status Oral argument heard in Memphis on 11/04/09

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1. Style State v. H.R. Hester

2. Docket Number E2006-01904-SC-DDT-DD

3. Lower Court Decision Link <http://www.tncourts.gov/OPINIONS/tcca/PDF/091/HesterHROPN.pdf>

4. Lower Court Summary  
 The McMinn County Grand Jury indicted the defendant, H.R. Hester, on one count each of premeditated first degree murder, attempted premeditated first degree murder, and aggravated arson. Following a jury trial, the defendant was convicted on all three counts. The jury found two aggravating circumstances: (1) the murder was especially heinous, atrocious, or cruel, in that it involved torture or serious physical abuse beyond that necessary to produce death, see Tenn. Code Ann. § 39-13-203(i)(5); and (2) the victim of the murder was seventy years old or older, see Tenn. Code Ann. § 39-13-203(i)(14). The jury imposed the death sentence for the first degree murder conviction, and the trial court imposed sentences of twenty-five years and twenty years, respectively, for the attempted murder and aggravated arson convictions. All sentences were ordered to run consecutively to each other and to an earlier, two-year probationary sentence, for an effective sentence of death plus forty-seven years.

5. Status Order filed on 01/25/10 designating issues

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1. **Style** State v. Ralphelle James
  2. **Docket Number** E2008-01493-SC-R11-PC
  3. **Lower Court Decision Link** <http://www.tncourts.gov/OPINIONS/tcca/PDF/092/State%20v%20Ralphelle%20James%20OPN.pdf>
  4. **Lower Court Summary**

The defendant, Ralphelle James, appeals from his Hamilton County Criminal Court convictions of theft of property valued at \$1,000 or more and aggravated burglary.<sup>1</sup> The defendant challenges a jury instruction permitting the petit jury to infer guilt of theft and burglary from his possession of stolen property. He also argues that the convicting evidence for his aggravated burglary conviction was legally insufficient. Lastly, the defendant challenges the trial court's procedure of "permitting jurors to submit questions to the witnesses and by permitting answers to such questions to reopen direct and cross examination of the witnesses so questioned." Discerning no error, we affirm the judgments of the trial court.
  5. **Status** Appellant's brief filed on 01/19/10
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1. **Style** State v. Doris Nell Jones
  2. **Docket Number** M2007-00791-SC-R11-CD
  3. **Lower Court Decision Link** [www.tncourts.gov/OPINIONS/tcca/PDF/081/JonesDorisNellOPN.pdf](http://www.tncourts.gov/OPINIONS/tcca/PDF/081/JonesDorisNellOPN.pdf)
  4. **Lower Court Summary**

A Lawrence County jury convicted the defendant, Doris Nell Jones, of one count of second degree murder. The trial court sentenced the defendant to eighteen years in the Department of Correction. On appeal, the defendant argues that the trial court erred by allowing certain out of court statements into evidence, and that the state engaged in prosecutorial misconduct based on certain statements made during closing argument. Because the notice of appeal was not timely filed and the record does not support a waiver of the timeliness of the notice, we conclude that we are without jurisdiction to consider the defendant's appeal. Accordingly, the appeal is dismissed.
  5. **Status** On 06/01/09, application for permission to appeal granted and case remanded to Court of Criminal Appeals in light of the Court's opinion in *State v. Byington*, 2009 WL 1211379, at \*2 (Tenn. 2009).
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1. **Style** State v. James Rae Lewter
2. **Docket Number** M2007-02723-SC-R11-CD
3. **Lower Court Decision Link** [www.tncourts.gov/OPINIONS/tcca/PDF/092/LewterJamesOPN.pdf](http://www.tncourts.gov/OPINIONS/tcca/PDF/092/LewterJamesOPN.pdf)





the aggravated robbery conviction and nine years as a Range II, multiple offender on the aggravated assault conviction. The trial court ordered these sentences to be served consecutively. The defendant appeals, asserting that: (1) the evidence produced at trial was insufficient to support his aggravated robbery conviction; (2) the sentences imposed for both sentences were excessive in that they were enhanced based on factors not found by the jury beyond a reasonable doubt; and (3) the trial court improperly imposed consecutive sentences. After reviewing the record, we affirm the judgments of the trial court.

5. Status Oral argument heard in Memphis on 11/04/09

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1. Style State v. William Glenn Talley

2. Docket Number M2007-01905-SC-R11-CD

3. Lower Court Decision Link <http://www.tncourts.gov/OPINIONS/tcca/PDF/092/State%20v%20Wm%20Glenn%20Talley.pdf>

4. Lower Court Summary The appellant, William Glenn Talley, was charged in the Davidson County Criminal Court with two counts of sexual exploitation of a minor and four counts of possessing a controlled substance with intent to sell or deliver. He filed pretrial motions to suppress the evidence linking him to the crimes and his statement to police, and the trial court denied the motions. From the trial court's order, the appellant brings this interlocutory appeal, arguing that the evidence and his statement were obtained in violation of his right to be free from unreasonable searches and seizures as provided by the Fourth Amendment of the United States Constitution and article I, section 7 of the Tennessee Constitution. Upon review of the record and the parties' briefs, we affirm the judgment of the trial court.

5. Status Oral argument heard in Nashville on 02/11/09

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1. Style State of Tennessee v. Thomas L. Turner

2. Docket Number M2008-00482-SC-R11-CO

3. Lower Court Decision Link Hyper-link unavailable

4. Lower Court Summary The defendant, Thomas Lewis Turner, II (hereinafter "Turner"), was indicted for murder in the perpetration of a robbery, premeditated murder, especially aggravated robbery, conspiracy to commit robbery, possession of ecstasy, and possession of marijuana. The trial court granted Turner's motion to suppress his statement to police. Pursuant to Rule 9 of the Tennessee Rules of Appellate Procedure, the State was granted this

interlocutory appeal challenging the trial court's suppression of the statement made by Turner during a custodial interrogation. Because Turner did not make an unequivocal request for an attorney during the interrogation, the order of suppression is reversed, and the case is remanded for further proceedings consistent with this opinion.

5.	Status	Oral argument heard in Jackson on 11/05/09.
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1.	Style	Elizabeth Sams Tuetken v. Lance Edward Tuetken
2.	Docket Number	W2008-0274-SC-R11-CV
3.	Lower Court Decision Link	<a href="http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/093/Elizabeth%20S%20Tuetken%20v%20Lance%20E%20Tuetken%20OPN.pdf">http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/093/Elizabeth%20S%20Tuetken%20v%20Lance%20E%20Tuetken%20OPN.pdf</a>
4.	Lower Court Summary	This appeal involves the trial court's decision to modify an arbitrator's award in a dispute concerning the parties' parenting plan and their child support obligations. Appellant contends that the trial court erred because modification of the arbitrator's award was not permissible under the Uniform Arbitration Act. We have reviewed the trial court's order referring this dispute to the arbitrator and concluded that the Uniform Arbitration Act is inapplicable. Instead, we find that this was a nonbinding dispute resolution proceeding governed by Tennessee Supreme Court Rule 31. Accordingly, we affirm the trial court's decision to modify the arbitrator's award.
5.	Status	Order filed 1/15/10 requiring supplemental briefing by 2/15/10 on the issue of whether binding arbitration of child custody disputes is inconsistent with Tennessee statutes requiring trial judges to resolve custody issues in the best interests of children. Appellant's supplemental brief filed on 02/16/10
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1.	Style	Marcus Ward v. State of Tennessee
2.	Docket Number	W2007-01632-SC-R11-PC
3.	Lower Court Decision Link	<a href="http://www.tsc.state.tn.us/OPINIONS/tcca/PDF/091/WardMarcusOPN.pdf">www.tsc.state.tn.us/OPINIONS/tcca/PDF/091/WardMarcusOPN.pdf</a>
4.	Lower Court Summary	In 2005, the petitioner, Marcus Ward, pled guilty to three counts of aggravated assault and one count each of especially aggravated kidnapping, intentionally evading arrest in a motor vehicle, and aggravated sexual battery and received an effective sentence of thirteen and one-half years. No direct appeal was taken. Subsequently, he filed a petition for post-conviction relief, alleging that his guilty pleas were not knowingly, intelligently, and voluntarily made and that he received the ineffective assistance of counsel. Following an evidentiary hearing, the post-conviction court denied the petition. This appeal is only as to his conviction for

**aggravated sexual battery, with the petitioner asserting that trial counsel rendered ineffective assistance by not informing him that registration as a sexual offender was a consequence of his guilty pleas, the trial court committed plain error by not informing him of this registration requirement, and the post-conviction court erred in finding that the registration requirement was a “collateral,” rather than direct, consequence of his pleas. Following our review, we affirm the judgment of the post-conviction court.**

**5. Status**

**Oral argument heard in Jackson on 11/05/09.**

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1. **Style**
  2. **Docket Number**
  3. **Lower Court  
Decision Link**
  4. **Lower Court  
Summary**
  5. **Status**
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