

Supreme Court Appeals
Pending Cases
08-03-15

1. Style American Heritage Apartments, Inc. v. The Hamilton County Water and Wastewater Treatment Authority, Hamilton County, Tennessee
2. Docket Number E2014-00302-SC-R11-CV
3. Lower Court Decision Link https://www.tncourts.gov/sites/default/files/american_heritage_opinion_final.pdf
4. Lower Court Summary

The plaintiff, American Heritage Apartments, Inc. (“American Heritage”), commenced this lawsuit to protest a monthly flat charge in the amount of \$8.00 per unit imposed by the defendant, The Hamilton County Water and Wastewater Authority (“the County WWTA”), on all of its sewer customers. The charge was instituted to fund a program designed to repair and refurbish private service laterals, defined as pieces of pipe that connect private property to the sewer lines. American Heritage sought declaratory judgment that the County WWTA, inter alia, had exceeded its authority by imposing an unjust and discriminatory charge. The County WWTA filed a motion to dismiss the complaint, which the trial court initially denied. Upon the County WWTA’s amended motion to dismiss and motion for summary judgment, American Heritage’s motion for partial summary judgment, and supplemental briefs submitted by both parties, the trial court granted summary judgment in favor of the County WWTA. The court found that because the Utility District Law of 1937, Tennessee Code Annotated §§ 7-82-101 to -804, provided an administrative procedure for contesting utility charges, no private right of action was available. The court further ruled that in the alternative, if a private right of action were allowed by this Court on appeal, American Heritage’s complaint could be certified as a class action lawsuit. American Heritage has appealed. Having determined that the trial court erred by applying the Utility District Law of 1937 to a non-utility district water and wastewater treatment authority, we reverse the grant of summary judgment. We affirm the trial court’s ruling regarding the class action certification
5. Status Application granted 05/13/15; Appellant brief filed 06/12/15; Appellee brief filed 07/13/15; Appellant reply brief filed 07/28/15; TBH 09/09/15 in Knoxville.

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1. Style State v. Ricky Alvis Bell, Jr.
 2. Docket Number W2012-02017-SC-DDT-DD
 3. Lower Court Decision Link http://www.tncourts.gov/sites/default/files/bell_ricky_1.pdf
 4. Lower Court Summary

A Lauderdale County jury convicted the defendant, Rickey Alvis Bell, Jr., of felony murder in the perpetration of a kidnapping, felony murder in the perpetration of a rape, aggravated kidnapping, and aggravated sexual battery. Following the penalty phase, the jury sentenced the defendant to death on the

two counts of felony murder. The trial court merged the two felony murder convictions and sentenced the defendant to twenty years each for the aggravated kidnapping and aggravated sexual battery convictions. The trial court ordered the defendant to serve the two twenty-year sentences concurrent to each other but consecutive to the death sentence, for an effective sentence of death plus twenty years. On appeal, the defendant asserts that: (1) the trial court erred in denying his motion to strike the State's notice of its intent to seek the death penalty because he is intellectually disabled; (2) the evidence is insufficient to support the convictions; (3) the trial court erred in denying his two motions for a mistrial; (4) the trial court erred in refusing to allow the defense to question the victim's husband regarding an extramarital affair; (5) the aggravating circumstance codified in Tennessee Code Annotated section 39-13-204(i)(7) is unconstitutional; (6) the absence of an intent to kill renders the death penalty disproportionate; (7) proportionality review should be modified and the pool of cases considered in proportionality review should be broadened; and (8) the sentence of death is arbitrary and disproportionate. We affirm the judgments of the trial court.

5.	Status	Heard 03/04/15 in Jackson.
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1.	Style	Donriel A. Borne v. Celadon Trucking Services, Inc.
2.	Docket Number	W2013-01949-SC-R11-CV
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/bornedonrielaopn.pdf http://www.tncourts.gov/sites/default/files/bornedis.pdf
4.	Lower Court Summary	Plaintiff was injured in an accident involving three tractor-trailer trucks. Plaintiff, who was driving a tractor-trailer, sued the other truck drivers and the trucking company owners of the vehicles. However, prior to trial, Plaintiff entered into an agreement with one of the trucking companies whereby Plaintiff and the agreeing defendant agreed to cooperate regarding the litigation and to work together to expose the defenses asserted by the non-agreeing defendant. The jury returned an itemized verdict of \$3,705,000 for the Plaintiff against the non-agreeing defendant. The trial court denied the non-agreeing defendant's motion for a new trial, but it suggested a remittitur of \$1,605,000, for a total award of \$2,100,000. Plaintiff accepted the remittitur under protest and the non-agreeing defendant appealed to this Court. For the following reasons, we affirm in part and we reverse in part. Specifically, we affirm the physical pain and mental anguish and permanent injury awards as reduced by the trial court; we reverse the trial court's suggested remittitur of the loss of earning capacity award and we instead reinstate the jury verdict of \$1,455,000; and we further reduce the loss of enjoyment of life award to \$50,000. Thus, we approve a total award to Plaintiff of \$2,105,000.
5.	Status	Application granted 12/18/14; Supplemental brief filed by Appellee 02/20/15; Supplemental brief filed by Appellant 02/24/15; Supplemental brief filed by Appellee 03/24/15; Appellee brief filed 06/11/15; Amicus brief filed 07/24/15.

1.	Style	State v. Adrian Brown
2.	Docket Number	E2014-00673-SC-R11-CD
3.	Lower Court Decision Link	http://www.tsc.state.tn.us/sites/default/files/brownaropn2.pdf
4.	Lower Court Summary	The appellant, Adrian R. Brown, was convicted in 1995 of three counts of the sale of less than 0.5 grams of cocaine, a Class C felony, and one count of the sale of more than 0.5 grams of cocaine, a Class B felony. The appellant was given concurrent sentences of eight years' imprisonment for the Class B felony and six years' imprisonment for each Class C felony. The appellant entered the community corrections program, and he was recommended for a transfer to probation one year later. In October 2003, shortly before his eight-year sentence was set to expire, a violation of probation affidavit was completed. However, the petition for revocation of the appellant's probation was dismissed in 2005. The appellant now challenges his sentences as illegal, asserting that he did not receive the pretrial jail credits to which he was entitled. After a thorough review of the record, we conclude that the issue is moot, and accordingly, the trial court properly dismissed the appellant's motion to correct his sentence.
5.	Status	Application granted 05/15/15; Appellant brief filed 07/08/15, after extension; State's brief filed 07/29/15; TBH 09/10/15 in Knoxville.

1.	Style	In re Carrington H., et al.
2.	Docket Number	M2014-00453-SC-R11-PT
3.	Lower Court Decision Link	http://tncourts.gov/sites/default/files/inrecarringtonh.opn_.pdf
4.	Lower Court Summary	This appeal arises from the termination of Mother's parental rights. After a five-year cycle of removal and failed reunification attempts, the juvenile court awarded temporary custody of the child to the State in 2009, and shortly thereafter, ordered that Mother have no visitation or contact with her child. The court later ratified a permanency plan, but nearly two years later, the Tennessee Department of Children's Services petitioned to terminate Mother's parental rights. Following a trial, the juvenile court entered an order terminating Mother's parental rights on the grounds of: (1) substantial noncompliance with the permanency plan; (2) persistence of the conditions that led to the child's removal; and (3) incompetency to adequately provide for the further care and supervision of the child. Mother appeals two of the three grounds for termination and the court's determination that termination was in the best interest of the child. We affirm.
5.	Status	Heard 05/28/15 at Girls State SCALES Project in Nashville.

1.	Style	Chartis Casualty Company, et al. v. State of Tennessee
2.	Docket Number	M2013-00885-SC-R11-CV
3.	Lower Court Decision Link	http://tncourts.gov/sites/default/files/chartiscasualtycompanyopn.pdf http://tncourts.gov/sites/default/files/chartiscasualtyco.opn_0.pdf
4.	Lower Court Summary	Five separate groups of Pennsylvania-domiciled insurance companies filed five separate tax refund claims in which each challenges the imposition of retaliatory insurance premium taxes by the Tennessee Department of Commerce and Insurance pursuant to Tenn. Code Ann. § 56-4-218. The central issue presented is whether Pennsylvania's surcharges or assessments for three Workmen's Compensation funds are imposed upon Tennessee-domiciled insurance companies doing business in Pennsylvania and, therefore, fall within Tennessee's retaliatory insurance premium tax statute. The Tennessee Claims Commission ruled in favor of the state and all of the Pennsylvania insurance companies appealed. Finding no error, we affirm.
5.	Status	Heard 06/03/15 in Nashville.

1.	Style	The Chattanooga-Hamilton Co. Hospital Authority d/b/a Erlanger Health Systems v. United Healthcare Plan of the River Valley, Inc. d/b/a Americhoice and TN Attorney General
2.	Docket Number	M2013-00942-SC-R11-CV
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/erlangerhealthsystem.opn_.pdf
4.	Lower Court Summary	Hospital filed an action against TennCare managed care organization ("MCO") for breach of contract and unjust enrichment when MCO refused to pay Hospital's standard charges for emergency services and follow-up care. Hospital was not part of MCO's "provider network" under the TennCare regulations and therefore was "non-contract" provider. MCO alleged Hospital was required to accept as payment the rate TennCare specified in its regulations. MCO filed motion for summary judgment, and the trial court dismissed the portion of the complaint to which the TennCare regulations may apply due to lack of subject matter jurisdiction. The trial court determined the Uniform Administrative Procedures Act ("UAPA") divested it of jurisdiction because Hospital did not first seek a declaratory order from the Bureau of TennCare regarding the applicability of its regulations to Hospital's dispute with MCO. Hospital appealed the dismissal of its claims, and we reverse. Because Hospital is not challenging applicability or validity of TennCare regulations, UAPA does not divest trial court of jurisdiction.
5.	Status	Heard 02/04/15 in Nashville.

1.	Style	Circle C Construction, LLC v. D. Sean Nilsen, et al.
2.	Docket Number	M2013-02330-SC-R11-CV
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/circlec.const_.opn_.pdf
4.	Lower Court Summary	The issue in this case is whether a tolling agreement between the parties precludes the application of the savings statute set forth in Tenn. Code Ann. § 28-1-105(a). The Court of Appeals agreed with the trial court that the tolling agreement does preclude application of the savings statute and that the plaintiff's legal malpractice action is barred by the termination date established in the agreement.
5.	Status	Application granted 11/20/14; Appellant brief filed 12/17/14; Appellee brief filed 01/30/15; Appellant reply brief filed 02/13/15; TBH 09/09/15 in Knoxville.

1.	Style	State v. Lemaricus Devall Davidson
2.	Docket Number	E2013-00394-SC-DDT-DD
3.	Lower Court Decision Link	http://www.tsc.state.tn.us/sites/default/files/davidsonlemaricusdevallopn.pdf
4.	Lower Court Summary	The defendant, Lemaricus Devall Davidson, appealed the Knox County Criminal Court jury convictions of two counts of first degree murder, two counts of especially aggravated robbery, two counts of especially aggravated kidnapping, three counts of aggravated rape, and one count of facilitation of aggravated rape that he received for his role in the January 2007 deaths of C.N. and C.C. The defendant claimed that: the trial court erred by refusing 2 to suppress evidence obtained during the searches of his residence, his statements to the police following his arrest, and evidence obtained during searches of his person; the trial court erred by admitting into evidence postmortem photographs of the victims; the trial court should have excluded testimony and evidence regarding fingerprint examination and ballistics testing; the trial court erred by permitting courtroom spectators to wear buttons emblazoned with photographs of the victims during the guilt phase; the State violated his constitutional rights by intercepting and examining privileged communications to and from his attorneys; structural constitutional error occasioned by the out-of-court behavior of the trial judge entitles him to a new trial; the second successor trial judge erred by concluding that he could fulfill the statutory duty of thirteenth-juror review; the evidence was insufficient to support his convictions; errors related to the presentment require dismissal of the charges; the trial court erred by permitting jurors to submit questions for the witnesses; the trial court erred by allowing spectators to remain in the courtroom while jurors reviewed the defendant's videotaped statement as part of their deliberations; the trial court should have dismissed the presentment due to constitutional deficiencies in the jury venire; the trial court erred by refusing to allow him to present evidence of the economic costs associated with the implementation of the death penalty; and

the trial court erred by excusing those jurors who were not “death qualified.” The defendant also raised a number of challenges to the death penalty in general and its application in this case specifically. Because the Criminal Court of Appeals concluded that no reversible error attended the convictions or sentences in this case and because, after a mandatory review, it believed that the sentences of death imposed in this case were not disproportionate, the court affirmed the judgments of the trial court. The court did detect, however, clerical errors that required the case be remanded for entry of corrected judgment forms.

5. Status Appeal initiated 04/01/15; Appellant brief filed 06/15/15; State’s brief due 08/31/15, after extension; TBH 10/01/15 in Nashville.

1. Style State v. William Whitlow Davis, Jr.

2. Docket Number E2013-02073-SC-R11-CD

3. Lower Court Decision Link <https://www.tncourts.gov/sites/default/files/daviswilliamwopn.pdf>

4. Lower Court Summary The defendant, William Whitlow Davis, Jr., pleaded guilty to first offense driving under the influence of an intoxicant with a blood alcohol level of .08 percent or more and reserved as a certified question the propriety of the vehicle stop leading to his arrest. Determining that the evidence does not preponderate against the trial court’s findings in its order denying the motion to suppress, we affirm the judgment of the trial court.

5. Status Application granted 05/14/15; Appellant brief filed 06/23/15; Supplemental authority filed 07/13/15; Appellee brief filed 07/27/15; TBH 09/09/15 in Knoxville.

1. Style State v. Willie Duncan

2. Docket Number W2013-02554-SC-R11-CD

3. Lower Court Decision Link <http://www.tncourts.gov/sites/default/files/duncanwillieopn.pdf>

4. Lower Court Summary Appellant, Willie Duncan, was convicted by a Shelby County jury of especially aggravated kidnapping, especially aggravated robbery, aggravated robbery, aggravated burglary, and employing a firearm during the commission of a dangerous felony. On appeal, Appellant raises several issues: 1) the indictment for the charge of employing a firearm during the commission of a dangerous felony is defective for failing to name the underlying felony; 2) the jury instructions on the charge of employing a firearm during the commission of a dangerous felony were improper; 3) the evidence presented at trial was insufficient to support the convictions; 4) a statement about Appellant’s juvenile record requires a new trial under plain error review; 5) the trial court abused its discretion by imposing excessive sentences; and 6) the trial court abused its discretion by imposing partially consecutive sentences. Upon review of the record, we find that the evidence is sufficient to support Appellant’s convictions,

that the statement about Appellant’s juvenile record does not constitute plain error, and that the trial court did not abuse its discretion in sentencing Appellant. However, we find that the indictment for employing a firearm during the commission of a dangerous felony is fatally flawed for failing to name the predicate felony. We also note a clerical error on the judgment form for the charge of aggravated robbery which requires remand for the entry of a corrected judgment. Therefore, we affirm the trial court’s judgments in part, reverse and dismiss in part, and affirm and remand in part.

5. Status Application granted 02/13/15; Appellant brief filed 03/16/15; Appellee brief filed 05/12/15, after extension.

1. Style Adam Ellithorpe, et al. v. Janet Weismark

2. Docket Number M2014-00279-SC-R11-CV

3. Lower Court Decision Link http://www.tncourts.gov/sites/default/files/ellithorpea.opn_.pdf

4. Lower Court Summary Parents and minor child brought this action against a licensed clinical social worker, alleging that the social worker provided counseling to the minor child in violation of a court order. The social worker moved to dismiss the complaint for failure to comply with the Tennessee Health Care Liability Act’s procedural requirements. The trial court found that the complaint sounded in health care liability and accordingly dismissed it in its entirety. The Court of Appeals concluded that the trial court applied an improper standard in dismissing the complaint, vacated the judgment, and remanded for further proceedings.

5. Status Heard 06/03/15 in Nashville.

1. Style First Community Bank, N.A. v. First Tennessee Bank, N.A., et al.

2. Docket Number E2012-01422-SC-R11-CV

3. Lower Court Decision Link <http://tncourts.gov/sites/default/files/firstcommbankopn.pdf>
<http://tncourts.gov/sites/default/files/communitybankopn.pdf>

4. Lower Court Summary Plaintiff brought this action against Defendants for fraud, constructive fraud, negligent misrepresentation, civil conspiracy, unjust enrichment, and violation of the Tennessee Securities Act, codified at Tennessee Code Annotated section 48-1-101, et seq. The claims arose out of the purchase of asset-backed securities that were later deemed unmarketable, causing a significant financial loss to Plaintiff. Defendants filed motions to dismiss pursuant to Rule 12.02(6), arguing that the claims were untimely, that Plaintiff failed to plead its claims with particularity, and that the losses were caused by general market conditions. Nonresident Defendants also objected to the court’s personal jurisdiction. The trial court dismissed the complaint. Plaintiff appealed the dismissal to this court, and we affirmed the dismissal against Nonresident Defendants for lack of personal jurisdiction but reversed the dismissal for failure to state a claim as to

the remaining defendants. In so holding, this court found that consideration of matters outside the pleadings pertaining to the running of the statute of limitations converted the motions to dismiss into one for summary judgment, thereby requiring remand of the entire case for further discovery. The remaining defendants filed an application for permission to appeal. The Tennessee Supreme Court granted the application and remanded the case for “consideration of the trial court’s alternative basis of dismissal of [the] complaint, i.e., the failure to state a cause of action or state a claim for which relief can be granted (other than on the basis of the running of the applicable statutes of limitations or repose).” Upon remand, we reverse the decision of the trial court.

5. Status Heard 05/06/15 in Knoxville.

1. Style Guy Hawkins v. Diana Le-Hawkins

2. Docket Number M2013-02068-SC-R11-CV

3. Lower Court Decision Link http://www.tncourts.gov/sites/default/files/hawkinsg.opn_.pdf

4. Lower Court Summary

The principal issue in this appeal is whether a marital dissolution agreement the parties entered into while Wife’s complaint for a legal separation was pending was enforceable in an action husband commenced for an absolute divorce six days after Wife voluntarily dismissed her complaint. In Husband’s subsequent action, from which this appeal arises, Wife contested the divorce and challenged the validity of the MDA claiming it was not entered into in contemplation of Husband filing this action; she also contended it was invalid because Husband did not disclose all of his assets. The trial court found the MDA was valid because it was entered into without fraud or duress and with full knowledge of all the parties’ assets, granted a divorce, and divided the marital estate pursuant to the MDA. Wife appeals, contending that the MDA does not comply with Tenn. Code Ann. § 36-4-103, which expressly directs that “a divorce may be granted on the grounds of irreconcilable differences where there has been a contest or denial, if a properly executed marital dissolution agreement is presented to the court.” To constitute a properly executed marital dissolution agreement, an MDA must be entered into in compliance with Tenn. Code Ann. § 36-4-103(a)(2), which expressly requires, inter alia, that an MDA be entered into in regards to a pending divorce or in contemplation of one being filed. Wife claims that the MDA was entered into in regards to a legal separation, and not in contemplation of divorce. The language of the MDA clearly reveals that the parties expressly contemplated a divorce and that the agreement would be incorporated in any decree of divorce that may ensue. Moreover, the evidence does not preponderate against the trial court’s finding that the parties entered into the MDA without fraud or duress and with full knowledge of the parties’ assets; therefore, the MDA constitutes a properly executed marital dissolution agreement for purposes of this action and is a valid and binding agreement upon the parties. Accordingly, we affirm.

5. Status Application granted 02/13/15; Appellant brief filed 03/16/15; Appellee brief filed 04/21/15; Appellant reply brief filed 05/07/15; TBH 10/01/15 in Nashville.

1.	Style	State v. Thomas Lee Hutchison
2.	Docket Number	E2012-02671-SC-R11-CD
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/hutchisonthomasleeopn_0.pdf http://www.tncourts.gov/sites/default/files/hutchinsonthomasleecon.pdf
4.	Lower Court Summary	This case concerns the February 19, 2002 murder and robbery of the victim, Gary Lindsey. The victim was killed in appellant's home, and the police arrested appellant for the crime. On December 11, 2007, a Knox County grand jury indicted appellant for premeditated murder, murder in the perpetration of robbery, murder in the perpetration of theft, and especially aggravated robbery. Prior to trial, appellant moved the court, in separate pleadings, to suppress blood evidence taken from appellant without a warrant and to suppress all evidence seized from appellant's house during a warrantless search. The trial court denied both motions. On or around November 19, 2010, the State notified appellant that physical evidence in his case had been inadvertently destroyed by the Knoxville Police Department ("KPD"). Consequently, appellant moved the court to dismiss the indictment based on the destruction of evidence. The trial court heard appellant's motion to dismiss the indictment on February 25, 2011, and subsequently denied the motion. On May 27, 2011, appellant filed a motion requesting that the trial court reconsider the previously filed motions to suppress evidence. The trial court granted the motion to reconsider but ultimately denied the motions to suppress by written order filed July 13, 2011. The matter proceeded to trial on August 8, 2011, and the jury found appellant guilty of three counts of the lesser included offense of facilitation of first degree murder and one count of the lesser included offense of facilitation of especially aggravated robbery.
5.	Status	Heard 05/27/15 at Boys State SCALES Project in Cookeville.

1.	Style	State v. Rhakim Martin
2.	Docket Number	W2013-02013-SC-R11-CD
3.	Lower Court Decision Link	https://www.tncourts.gov/sites/default/files/martinrhakimopn.pdf
4.	Lower Court Summary	The defendant, Rhakim Martin, was convicted by a Shelby County Criminal Court jury of carjacking, a Class B felony, and employment of a firearm during the commission of a dangerous felony, a Class C felony, and was sentenced to an effective term of sixteen years in the Tennessee Department of Correction. On appeal, he argues that: (1) his conviction for employing a firearm during a dangerous felony violates the terms of Tennessee Code Annotated section 39-17-1324(c) and the prohibitions against double jeopardy; (2) the failure to name the predicate felony in the indictment for employment of a firearm during the commission of a dangerous felony voids the conviction; (3) the trial court erred in denying his motion to suppress the victim's identification of him; (4) the evidence is insufficient to sustain his convictions; and (5) the trial court

committed plain error by failing to charge the jury on possession of a firearm during the commission of a dangerous felony as a lesser included offense of employing a firearm during the commission of a dangerous felony. After review, we affirm the judgments of the trial court.

5. Status Application granted 05/15/15; Appellant brief filed 06/16/15; Appellee's brief filed 07/14/15; Supplemental record due 08/26/15.

1. Style In re: Estate of Edward Stephen McRedmond

2. Docket Number M2013-02582-SC-R11-CV

3. Lower Court Decision Link <https://www.tncourts.gov/sites/default/files/mcredmoneedwardstephenopn.pdf>

4. Lower Court Summary
This appeal involves a longstanding dispute among ten siblings with respect to a family business. After years of litigation, the parties agreed to dissolve the corporation that operated the family business and sell its assets. A receiver was appointed and authorized to sell the assets. The three defendant-siblings in this case placed the highest bid for the assets, and the trial court approved the sale to those three siblings. Prior to the closing of the sale, the three siblings formed a new corporation and assigned their right to purchase the assets to the newly formed corporation. Accordingly, at closing, the receiver conveyed the assets directly to the new corporation. The new corporation began conducting business just as the family business had done in the past. One of the plaintiff siblings formed another corporation and went into direct competition with the corporation that purchased the assets of the family business. The three individual siblings filed a counterclaim against the competing sibling, alleging intentional interference with business relations, breach of fiduciary duty, and that they lost the benefit of their bargain. They also sought injunctive relief against the competing sibling. Neither of the newly formed corporations was made a party to the proceedings. Following a three-day bench trial, the trial court awarded compensatory damages to each of the three siblings and entered a permanent injunction against the competing sibling. The competing sibling appeals the trial court's order on numerous grounds. For the following reasons, we reverse the trial court's order, vacate the injunction, and dismiss the counterclaim.

5. Status Application granted 05/14/15; Appellant brief filed 06/15/15; Appellee brief filed 07/15/15; Appellant reply brief filed 07/28/15; TBH 10/01/15 in Nashville.

1. Style The Metropolitan Government of Nashville-Davidson County, TN v. The Board of Zoning Appeals of Nashville and Davidson County, TN, et al.

2. Docket Number M2013-01283-SC-R11-CV

3. Lower Court Decision Link http://tncourts.gov/sites/default/files/metrov_cbs.opn_.pdf

4. Lower Court Summary

Company which builds and manages billboards applied to the Metropolitan Department of Codes and Building Safety for permits to convert two static billboards to digital billboards. When the applications were denied by the Zoning Administrator, the company appealed to the Metropolitan Board of Zoning Appeals, which reversed the administrator's decision and granted the permits. The Metropolitan Government of Nashville and Davidson County then filed a petition for a writ of certiorari seeking review of the Board's decision; the trial court dismissed the petition on the ground that the Metropolitan Government did not have standing to bring the proceeding. We reverse the decision and remand for further proceedings.

5. Status Heard 06/03/15 in Nashville.

1. Style Mortgage Electronic Registration Systems, Inc. v. Carlton J. Ditto, et al.

2. Docket Number E2012-02292-SC-R11-CV

3. Lower Court Decision Link <http://www.tncourts.gov/sites/default/files/dittoopn.pdf>

4. Lower Court Summary

This appeal involves the purchase of property at a tax sale. MERS filed suit against Purchaser to invalidate his purchase of property because it had not received notice of the sale even though it was listed as a beneficiary or nominee on the deed of trust. Purchaser claimed that MERS was not entitled to notice because MERS did not have an interest in the property. Purchaser also alleged that MERS failed to properly commence its lawsuit because it did not remit the proper funds pursuant to Tennessee Code Annotated section 67-5-2504(c). The trial court refused to set aside the tax sale, holding that the applicable notice requirements were met and that Purchaser was the holder of legal title to the property. MERS appeals. We affirm the decision of the trial court.

5. Status Heard 05/05/15 in Knoxville.

1. Style Richard Moreno v. City of Clarksville

2. Docket Number M2013-01465-SC-R11-CV

3. Lower Court Decision Link http://www.tncourts.gov/sites/default/files/morenor.opn_.pdf

4. Lower Court Summary

Plaintiff filed a timely claim with the Division of Claims Administration, which did not resolve the claim within the statutory period. The claim was transferred to the Claims Commission, and Plaintiff filed a complaint pursuant to the Claims Commission Rules. Much later, the State amended its answer to allege fault by the City of Clarksville. Plaintiff filed suit against the City. The suit was dismissed because the trial court found that the "original complaint" under Tenn. Code Ann. § 20-1-119 was not filed within a year of the alleged injury. Plaintiff appealed. We reverse.

5. Status Heard 02/05/15 in Nashville.

1.	Style	Rashe Moore v. State
2.	Docket Number	W2013-00674-SC-R11-PC
3.	Lower Court Decision Link	http://www.tsc.state.tn.us/sites/default/files/moorerasheopn.pdf
4.	Lower Court Summary	In this post-conviction appeal, the Petitioner contends that he received the ineffective assistance of counsel at trial because trial counsel was deficient in failing to file a written motion requesting jury instructions on lesser-included offenses and that this failure resulted in prejudice because it precluded appellate review of the trial court's refusal to instruct the jury on any lesser-included offenses. After a review of the record and the applicable authorities, we reverse the judgment of the post-conviction court with respect to trial counsel's failure to file a written motion requesting an instruction on lesser-included offenses of especially aggravated kidnapping. We affirm the judgment in all other respects.
5.	Status	Application granted 04/13/15; Appellant brief filed 05/21/15; Appellee brief filed 07/30/15, after extension.

1.	Style	Pervis Tyrone Payne v. State
2.	Docket Number	W2013-01248-SC-R11-PD
3.	Lower Court Decision Link	http://www.tsc.state.tn.us/sites/default/files/paynepervisopn.pdf http://www.tsc.state.tn.us/sites/default/files/paynepervisopndissent.pdf
4.	Lower Court Summary	The Petitioner, Pervis Tyrone Payne, appeals from the Shelby County Criminal Court's denial of his petition for writ of error coram nobis in which he challenged his death sentence resulting from his 1988 convictions for first degree murder. On appeal, the Petitioner contends that he is entitled to coram nobis relief because he is intellectually disabled and, therefore, ineligible for the death penalty. We affirm the judgment of the trial court.
5.	Status	Application granted 02/13/15; Appellant brief filed 03/16/15; Appellee brief filed 04/14/15; Appellant reply brief filed 04/28/15; TBH 09/30/15 at SCALES Project in Lebanon.

1.	Style	State of Tennessee v. Jimmy Dale Qualls
2.	Docket Number	W2013-01440-SC-R11-CD
3.	Lower Court Decision Link	http://www.tsc.state.tn.us/sites/default/files/quallsjimmydaleopn.pdf
4.	Lower Court Summary	

The Defendant, Jimmy Dale Qualls, was convicted by a Hardeman County Circuit Court jury of thirty-seven counts of sexual battery by an authority figure, Class C felonies. See T.C.A. § 39-13-527 (2010). The trial court sentenced the Defendant as a Range I, standard offender to five years for each conviction and ordered partial consecutive sentences. The thirty-seven counts were separated into seven groups for sentencing purposes. Group A contained Counts 1 through 6, Group B contained Counts 7 and 8, Group C contained Counts 9 through 14, Group D contained Counts 15 through 20, Group E contained Counts 21 through 26, Group F contained Counts 27 through 32, and Group G contained Counts 33 to 37. The court ordered each group to run consecutively to each other, for an effective thirty-five-year sentence. The court further ordered the effective thirty-five-year sentence. On appeal, he contends that the State failed to make a proper election of the offenses and that the evidence is insufficient to support his convictions. We conclude that the State failed to make an adequate election of the offenses, and we reverse the judgments of the trial court and remand the case for a new trial.

5. Status Application granted 01/15/15; Appellant brief filed 02/23/15; Appellee brief filed 03/25/15.

1. Style Board of Professional Responsibility v. Connie Reguli

2. Docket Number M2015-00406-SC-R3-BP

3. Lower Court Decision Link N/A

4. Lower Court Summary N/A

5. Status Notice of Appeal filed 03/02/15; Appellate record filed 05/04/15; Appellant brief filed 07/06/15, after extension; Supplemental record filed 07/28/15; TBH 10/01/15 in Nashville.

1. Style State of Tennessee v. Corrin Kathleen Reynolds

2. Docket Number E2013-02309-SC-R11-CD

3. Lower Court Decision Link <http://tncourts.gov/sites/default/files/reynoldscorrinopn2.pdf>
<http://tncourts.gov/sites/default/files/reynoldscorrinkathleencon.pdf>

4. Lower Court Summary Defendant, Corrin Kathleen Reynolds, was charged with several criminal offenses, including driving under the influence, after she was involved in a fatal car accident in Knox County. While Defendant was at the hospital being treated for her injuries, a blood sample was taken for law enforcement purposes. Defendant filed motions seeking to suppress the results of the blood analysis. After two hearings, the trial court granted Defendant's motion. The trial court and this Court granted the State's request to pursue an interlocutory appeal. After a thorough review of the record and applicable law, we determine that the record supports the trial court's conclusion that Defendant did not give actual consent to the contested blood draw. However, the record preponderates against

the trial court's conclusion that Officer Strzelecki lacked probable cause to believe that Defendant had consumed alcohol. Therefore, we determine that the warrantless blood draw was proper under subsection (f)(1) of the implied consent statute because Defendant did not refuse the blood draw. Accordingly, Defendant's blood test results are not subject to suppression on the grounds argued; we reverse the trial court's grant of Defendant's motion to suppress and remand this matter for further proceedings.

5. Status Application granted 12/18/14; Appellant brief filed 05/22/15; Appellee brief filed 07/07/15, after extension; Appellant reply brief due 8/04/15, after extension; TBH 09/30/15 at SCALES Project in Lebanon.

1. Style Michelle Rye, et al. v. Women's Care Center of Memphis, M PLLC, et al.

2. Docket Number W2013-00804-SC-R11-CV

3. Lower Court Decision Link <http://tncourts.gov/sites/default/files/ryemopn.pdf>

4. Lower Court Summary This interlocutory appeal concerns the trial court's grant of partial summary judgment to the Defendant/Appellee medical providers on various issues. The Plaintiff/Appellant couple filed a complaint for damages stemming from the medical providers' failure to administer a RhoGAM injection during wife's pregnancy. The couple alleged causes of action for compensatory damages associated with medical malpractice, negligent infliction of emotional distress, and disruption of family planning. The trial court granted summary judgment to the medical providers on the wife's claim for future medical expenses, husband's claim for negligent infliction of emotional distress, and the couple's claim for disruption of family planning. The trial court declined to grant summary judgment on wife's physical injury claim, her negligent infliction of emotional distress claim, and the claim that wife could present evidence of the disruption of her family planning as evidence in her negligent infliction of emotional distress claim. We reverse the trial court's grant of summary judgment on wife's claim for future medical expenses associated with future pregnancy and husband's claim for negligent infliction of emotional distress, which he may support with evidence concerning the disruption of the couple's family planning. The trial court's ruling is affirmed in all other respects. Affirmed in part, reversed in part, and remanded.

5. Status Heard 03/04/15 in Jackson.

1. Style State v. Linzey Danielle Smith

2. Docket Number M2013-02818-SC-R11-CD

3. Lower Court Decision Link <https://www.tncourts.gov/sites/default/files/smithlinzeydanielleopn.pdf>
<https://www.tncourts.gov/sites/default/files/smithlinzeydis.pdf>

4. Lower Court Summary Defendant, Linzey Danielle Smith, entered a plea of guilty to the offense of driving while her blood or breath alcohol concentration was 0.08% or more

(DUI) in violation of T.C.A. § 55- 10-401(2), but explicitly reserved the right to appeal a certified question of law pursuant to Tenn. R. Crim. P. 37(b)(2)(A). The certified question of law limits this court to the following narrow issue: whether probable cause that Defendant had committed the Class C misdemeanor offense described in T.C.A. § 55-8-123(1) (a driver must maintain a vehicle entirely within a single lane “as nearly as practicable”) authorized a stop of Defendant’s vehicle by a state trooper or, alternatively, whether the trooper had reasonable suspicion, based on specific and articulable facts, that Defendant had committed or was about to commit the Class C misdemeanor offense set forth in T.C.A. § 55-8-123(1). Based upon the General Assembly’s classification as a criminal offense the failure of a driver to maintain her vehicle totally within a single lane of traffic “as nearly as practicable” and guidance from our supreme court’s decision in *State v. Brotherton*, 323 S.W.3d 866 (Tenn. 2010), we affirm the judgment of the trial court.

5. Status Application granted 05/14/15; Appellant brief filed 06/15/15; State’s brief filed 07/29/15, after extension; TBH 09/30/15 at SCALES Project in Lebanon.

1. Style State v. Michael Smith

2. Docket Number W2013-01190-SC-R11-CD

3. Lower Court Decision Link <http://www.tncourts.gov/sites/default/files/smithmopn.pdf>

4. Lower Court Summary A Shelby County jury found the Defendant, Michael Smith, guilty of aggravated assault and evading arrest. The trial court sentenced the Defendant to ten years for the aggravated assault conviction and eleven months and twenty-nine days for the evading arrest conviction. The trial court ordered the sentences to run consecutively. The Defendant asserts that: (1) the trial court committed plain error by failing to compel an election in count one; (2) the indictment for aggravated assault fails to state an offense; (3) the trial court improperly allowed the victim to testify about the Defendant’s prior bad acts; (4) the trial court improperly denied the Defendant’s request for a mistrial after the State explored the Defendant’s conviction and defense in an unrelated case; (5) the trial court committed plain error when it failed to compel the State to provide the trial court an audio recording of the victim’s statement; (6) the trial court improperly instructed the jury on flight; (7) the trial court improperly ruled that the Defendant’s prior convictions could be used for impeachment purposes should he testify at trial; (8) the evidence is insufficient to sustain his conviction for evading arrest; (9) the trial court abused its discretion when it denied the Defendant’s request to sit at counsel table; and (10) his sentence is excessive. After a thorough review of the record and the applicable law, we affirm the trial court’s judgments.

5. Status Application granted 12/18/14; Appellant brief filed 01/26/15; Appellee brief filed 02/27/15.

1. Style Lea Ann Tatham v. Bridgestone Americas Holding, Inc. et al. (Kirby, J. n.p.)

2. Docket Number W2013-02604-SC-R11-CV

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| 3. | Lower Court Decision Link | n/a |
| 4. | Lower Court Summary | Now pending before the Court is the application for an interlocutory appeal filed in this matter by Applicants Bridgestone Retail Operations, LLC and GITI Tire (USA) Ltd. on November 27, 2013, pursuant to Rule 9 of the Tennessee Rules of Appellate Procedure. Respondent Lea Ann Tatham filed a response in opposition to the application on December 9, 2013. Upon due consideration, the Court hereby denies the application. Costs of this matter are assessed to Applicants Bridgestone Retail Operations, LLC and Gill Tire (USA) Ltd. and their surety for which execution may issue, if necessary. |
| 5. | Status | Heard 01/08/15 in Knoxville. |
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| 1. | Style | The Tennessean, et al. v. Metro Gov't of Nashville and Davidson Co., et al. |
| 2. | Docket Number | M2014-00524-SC-R11-CV |
| 3. | Lower Court Decision Link | http://tncourts.gov/sites/default/files/thetennesseanv.metropolitangov.opn_.pdf
http://tncourts.gov/sites/default/files/thetennesseanv.metropolitangov.dissent.opn_.pdf |

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| 4. | Lower Court Summary | Various media outlets made request under the Tennessee Public Records Act for access to records accumulated and maintained by the Metropolitan Nashville Police Department in the course of its investigation and prosecution of an alleged rape in a campus dormitory. When the request was refused, the outlets a filed petition in Chancery Court in accordance with Tennessee Code Annotated § 10-7-505; the State of Tennessee, District Attorney General and alleged victim were permitted to intervene. The court held the required show cause hearing and, following an in camera inspection, granted petitioners access to four categories of records and documents. Petitioners, as well as the Metropolitan Government and Intervenors appeal, raising numerous and various statutory and constitutional issues. We have determined that the records sought are currently exempt from disclosure due to the continuing police investigation and pending prosecution; accordingly, we reverse the judgment of the Chancery Court and dismiss the petition. |
| 5. | Status | Heard 05/28/15 at Girls State SCALES Project in Nashville. |
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| 1. | Style | Stephanie D. Turner v. Kevin Turner |
| 2. | Docket Number | W2013-01833-SC-R11-CV |
| 3. | Lower Court Decision Link | http://www.tncourts.gov/sites/default/files/turnerkopn.pdf
http://www.tncourts.gov/sites/default/files/turnerkcur.pdf |
| 4. | Lower Court | |

	Summary	Father appealed the trial court’s order setting aside its prior judgment terminating Mother’s parental rights. After a hearing, the trial court ruled that Father’s failure to comply with the statutory notice requirements rendered the termination judgment void. Discerning no error, Court of Appeals affirmed
5.	Status	Heard 06/02/15 in Nashville.
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1.	Style	Vodafone Americas Holdings, Inc. v. Richard H. Roberts
2.	Docket Number	M2013-00947-SC-R11-CV
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/vodafoneopn.pdf http://www.tncourts.gov/sites/default/files/vodafoneidissent.opn_.pdf
4.	Lower Court Summary	At issue in this case is the methodology by which multi-state taxpayers are to compute their liability for franchise and excise taxes to Tennessee and, specifically, the authority of the Commissioner of Revenue to require the taxpayers to use an apportionment methodology other than the standard cost of performance methodology codified in Tenn. Code Ann. §§ 67-4-2012 and 67-4-2110. Plaintiffs, taxpayers that provide wireless communication and data services within and without Tennessee, contend they are entitled to apportion their receipts (income) based upon Tennessee’s standard apportionment formulas because the majority of their “earnings producing activities” occurred in a state other than Tennessee. The Commissioner of Revenue disagreed, insisting that Plaintiffs’ approach, even if statistically correct and derived from the language of Tenn. Code Ann. § 67-4-2012(i)(2), fails to meet the higher goal of fairly representing the business Plaintiffs derive from Tennessee. For this reason the Commissioner, acting pursuant to Tenn. Code Ann. § 67-4-2014(a), varied the standard formula requiring Plaintiffs to include “as Tennessee sales” its receipts from service provided to customers with Tennessee billing addresses. The trial court affirmed the decision. In this appeal, Plaintiffs contend the Commissioner does not have authority to impose a variance unless “unusual fact situations,” which are unique to the particular taxpayers, produce “incongruous results” unintended by Tenn. Code Ann. § 67-4-2012; they also insist that no unusual fact situations exist and that no incongruous results occurred when the statutorily-mandated cost of performance methodology was applied. We have determined that the Commissioner acted within the scope of the discretion granted to him by the statutes and rules. Therefore, Court of Appeals affirmed the trial court’s decision.
5.	Status	Heard 06/02/15 in Nashville.
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1.	Style	In re: Robert Lee Vogel, BPR #23374 (Lee, C.J. n.p.)
2.	Docket Number	M2015-00350-SC-BAR-BP
3.	Lower Court Decision Link	n/a

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| 4. | Lower Court Summary | n/a |
| 5. | Status | Supplemental brief filed 04/09/15; Reply brief filed 04/23/15; Supplemental brief filed 06/30/15; Supplemental brief filed 07/28/15; TBH 09/09/15 in Knoxville. |
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| 1. | Style | Paul J. Walwyn v. Russell Parks ex rel. BPR |
| 2. | Docket Number | M2015-00565-SC-R3-BP |
| 3. | Lower Court Decision Link | n/a |
| 4. | Lower Court Summary | n/a |
| 5. | Status | Notice of Appeal filed 03/27/15; Order to Show Cause filed 06/02/15; TBH 10/01/15 in Nashville. |
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| 1. | Style | State v. Howard Hawk Willis |
| 2. | Docket Number | E2012-01313-SC-DDT-DD |
| 3. | Lower Court Decision Link | http://www.tsc.state.tn.us/sites/default/files/willishowardhawkopn.pdf |
| 4. | Lower Court Summary | <p>A Washington County jury convicted appellant, Howard Hawk Willis, of two counts of premeditated first degree murder and one count of felony murder in the perpetration of a kidnapping. Following the penalty phase, the jury sentenced appellant to death on each conviction. The trial court merged the felony murder conviction into one of the convictions for premeditated first degree murder. On appeal, appellant asserts that: (1) the trial court erred in finding that appellant implicitly waived and forfeited his right to counsel and requiring him to proceed pro se at trial; (2) the trial court erred in denying appellant's motion to suppress his statements; (3) the searches of the residence and the storage unit were unconstitutional; (4) the trial court erred in denying appellant's multiple motions to continue the trial; (5) the trial court erred in staying appellant's funding and other privileges used in preparation for trial after this court granted an interlocutory appeal; (6) the evidence is insufficient to support the convictions; (7) the trial court erred in denying appellant's ex parte motions for expert services for a crime scene expert and a false confession expert; (8) the trial court failed to apply a higher standard of due process in all aspects of the case; (9) the trial court erred in admitting certain photographs; (10) the prosecutor made improper statements during closing arguments in both phases of the trial; (11) the trial court erred in instructing the jury during the guilt phase; (12) the aggravating circumstances upon which the State relied were not stated in the indictment; (13) the trial court erred in denying appellant's motion to preclude for-cause removal of jurors who were not death qualified; (14) Tennessee's death penalty statute is unconstitutional; (15) the trial court erred in failing to advise appellant with respect to his testimony during the</p> |

penalty phase; (16) the trial court failed to make an adequate inquiry into appellant’s competency to waive his right to present mitigating evidence; (17) the trial court erred in instructing the jury during the penalty phase; (18) the trial court erred in admitting victim impact evidence; (19) the proportionality review is unconstitutional; and (20) cumulative error warrants reversal. Following our thorough review, we affirm the judgments of the trial court..

5. Status Appeal initiated 04/01/15; Appellant brief filed 06/04/15; State’s brief due 08/05/15, after extension; TBH 10/01/15 in Nashville.

1. Style State v. James D. Wooden

2. Docket Number E2014-01069-SC-R11-CD

3. Lower Court Decision Link <https://www.tncourts.gov/sites/default/files/woodenjamesopn.pdf>

4. Lower Court Summary Appellant, James D. Wooden, appeals the trial court’s summary denial of his motion to correct an illegal sentence, as permitted by Tennessee Rule of Criminal Procedure 36.1, for lack of jurisdiction because the sentences have already expired. Although the trial court had jurisdiction to consider the motion, we determine Appellant has failed to state a colorable claim entitling him to relief and, therefore, affirm the denial of the motion.

5. Status Application granted 05/15/15; Appellant brief filed 06/29/15; Appellee brief filed 07/27/15; TBH 09/10/15 in Knoxville.

1. Style Kighwaunda M. Yardley v. Hospital Housekeeping Systems, LLC

2. Docket Number M2014-01723-SC-R23-CV

3. Lower Court Decision Link n/a

4. Lower Court Summary Yardley worked for the University Medical Center Hospital (“UMC”) as a housekeeping aide from 1998 to 2012. She suffered work-related injuries for which she received treatment and underwent surgery between 2010 and 2012. She filed a workers compensation claim against UMC for these injuries, pursuant to the Tennessee Workers’ Compensation Law, Tenn. Code Ann. § 50-6-101 et seq. Hospital Housekeeping Systems, LLC (“HHS”) provides housekeeping services for hospitals. On January 1, 2012, UMC and HHS entered into a Management Services Agreement (the “Agreement”) under which HHS contracted to perform housekeeping services at UMC beginning July 1, 2012. As a part of the Agreement, HHS agreed to interview existing UMC housekeeping employees and, at HHS’s discretion, to hire those employees, subject to UMC’s approval. As of July 1, 2012, Yardley was performing light duty work for UMC in its materials management department, with the expectation that she would return to full duty work as a housekeeper once released by her doctor. HHS interviewed and hired the vast majority of UMC’s

housekeeping staff pursuant to the Agreement. However, because Yardley was working in the materials management department at the time, she was not transitioned to HHS. On August 7, 2012, Yardley was released by her doctor to return to full duty work. She sought to resume her housekeeping position at UMC but was terminated by UMC for lack of work. UMC referred Yardley to HHS to pursue a position. Yardley spoke to HHS Division Vice President Michael Cox about transitioning to work for HHS. The parties dispute the content of that conversation. Yardley asserts that Cox told her that HHS did not hire anyone receiving workers' compensation, while Cox denies making that statement. Cox did, however, send an e-mail to HHS stating that Yardley "had been out on Workers Comp with the hospital long before our [HHS's] arrival," that Yardley indicated that her shoulder was hurting again, and that "[b]ringing her on board with HHS would seem to be a Workers' Comp claim waiting to happen and I would advise against it IF we have that option." HHS did not hire Yardley. Yardley alleges in her complaint that HHS illegally refused to hire her because of her workers' compensation claim against UMC.

5. Status Heard 05/27/15 at Boys State SCALES Project in Cookeville.

1. Style David G. Young v. City of LaFollette, et al.

2. Docket Number E2013-00441-SC-R11-CV

3. Lower Court Decision Link http://www.tncourts.gov/sites/default/files/young_opinion_final.pdf

4. Lower Court Summary

In this retaliatory discharge action brought by a former city administrator of the City of LaFollette, Tennessee ("LaFollette"), the trial court, following a bench hearing, denied LaFollette's motion to strike the city administrator's demand for a jury trial. The trial court, however, granted LaFollette permission for interlocutory appeal on the question of whether the city administrator's request for a jury trial properly may be granted pursuant to the Tennessee Public Protection Act ("TPPA"), see Tenn. Code Ann. § 50-1-304 (Supp. 2013), despite the non-jury provision of the Tennessee Governmental Tort Liability Act ("GTLA"), see Tenn. Code Ann. §§ 29-20-307 (Supp. 2013). We conclude that the non-jury requirement of the GTLA applies to this TPPA claim. We therefore reverse the trial court's denial of LaFollette's motion to strike the city administrator's jury demand, and we remand to the trial court for further proceedings without a jury

5. Status Heard 05/06/15 in Knoxville.