

Supreme Court Appeals
Pending Cases
11-17-17

1.	Style	State of Tennessee v. Westley A. Albright
2.	Docket Number	M2016-01217-CCA-R3-CD
3.	Lower Court Decision Link	https://www.tncourts.gov/sites/default/files/westley_albright.pdf
4.	Lower Court Summary	<p>The defendant, Westley A. Albright, pled nolo contendere to one count of soliciting a minor in violation of Tennessee Code Annotated section 39-13-528, a Class E felony, for which he received a one-year suspended sentence and deferred judicial diversion. As a condition of probation, the defendant agreed to participate in therapeutic treatment for the duration of probation or until favorably discharged. Prior to the conclusion of the one year suspended sentence, the defendant's treatment provider discharged him for failure to comply with the goals of his treatment program. Following service of a probation warrant and a hearing, the trial court revoked the defendant's deferred diversion and extended his probation for six months to allow for the completion of treatment. On appeal, the defendant argues: (1) the trial court violated his due process rights by failing to advise him at the time he entered his nolo contendere plea that, as a condition of probation, he would be required to confess to the solicitation of a minor; (2) the trial court violated his due process rights by relying on a probation rule not referenced in the revocation warrant; and (3) the trial court erred when revoking his deferred diversion despite his completion of the objective requirements of the sex offender treatment program. Upon review, we affirm the findings of the trial court.</p>
5.	Status	Application granted 9/20/17; Appellant brief filed 10/24/17; Appellee brief due 11/23/17.

1.	Style	Athlon Sports Communications, Inc. v. Stephen C. Duggan, et al.
2.	Docket Number	M2015-02222-SC-R11-CV
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/athlonsportscommunications.opn_.pdf
4.	Lower Court Summary	<p>This appeal arises from a dispute over the fair value of stock in a dissenting shareholders case. Athlon Sports Communications, Inc. ("Athlon") completed a merger ("the Merger") which converted the minority dissenting shareholders' ("Defendants") shares into cash consideration and terminated their rights as shareholders. Athlon offered cash consideration for the shares at \$0.10 per share. Defendants contend that their shares are worth at least \$6.48 per share. Athlon sued Defendants to determine judicially the fair value of these shares. This case was tried before the Chancery Court for Davidson County ("the Trial Court"). After a trial, the Trial Court, applying the Delaware Block Method¹ for determination of share value, found that the share value was \$0.10 per share as of the date of the Merger. Defendants appeal to this Court, arguing that (1) the Delaware Block Method is ill-suited for a business like Athlon attempting a new venture, and is antiquated, generally; and, (2) that the Trial Court erred in its application of the Delaware Block Method. We find and hold that, under Tennessee law, the Trial Court properly utilized the Delaware Block Method. We find and hold further that the Trial Court considered the competing expert testimony, accredited Athlon's expert, and the</p>

evidence does not preponderate against the Trial Court’s factual findings. We affirm the judgment of the Trial Court.

5. Status Heard 10/11/17 in Nashville.

1. Style In re Bentley D.

2. Docket Number E2016-02299-SC-RDO-PT

3. Lower Court Decision Link N/A

4. Lower Court Summary
On November 7, 2016, the Circuit Court for Washington County terminated the parental rights of the father, David D. (“Father”), to his minor child, Bentley D. Father timely filed a notice of appeal signed by his attorney, but not by Father himself. On July 13, 2017 the Court of Appeals, *sua sponte*, filed an order directing Father to show cause why his appeal should not be dismissed for lack of jurisdiction, citing *In re Gabrielle W.*, No. E2016-02064-COA-R3-PT, 2017 WL 2954684, at * 4 (Tenn. Ct. App. July 11, 2017). In *In re Gabrielle W.*, the Court of Appeals held, as a matter of first impression, that an appellant’s failure to sign the notice of appeal violates the direct language of Tennessee Code Annotated section 36-1-124(d) and is “a jurisdictional default,” requiring dismissal of the appeal. *Id.*

On July 24, 2017, Father filed a response to the show cause order. The response included a challenge to the constitutionality of section 36-1124(d). on August 14, 2017, the Tennessee Attorney General filed a notice of intent to defend the constitutionality of the statute.

5. Status Heard 10/11/17 in Nashville.

1. Style Board of Professional Responsibility v. Robin K. Barry

2. Docket Number M2016-02003-SC-R3-BP

3. Lower Court Decision Link N/A

4. Lower Court Summary N/A

5. Status Heard 6/1/17 in Nashville.

1. Style In re Estate of J. Don Brock

2. Docket Number E2016-00637-SC-R11-CV

3. Lower Court Decision Link <http://www.tsc.state.tn.us/sites/default/files/estateofjdonbrockopn.pdf>

4. Lower Court Summary
This is an appeal of an order dismissing a will contest for lack of standing. The Contestants sought to challenge the testator’s will, alleging that it was the product of fraud and/or undue influence. The Estate introduced multiple prior wills that appeared to be facially valid and properly executed in which all or some of the Contestants were

disinherited. The chancery court found that the Contestants would not benefit if the testator's will was set aside and dismissed the contest for lack of standing. We affirm.

5. Status Heard on 9/6/17.

1. Style Chuck's Package Store, et al. v. City of Morristown

2. Docket Number E2015-01524-SC-R11-CV

3. Lower Court
Decision Link

http://www.tncourts.gov/sites/default/files/chucks_package_store_et_al_v_city_of_morristown_2.pdf

4. Lower Court
Summary

This case originated when six retail wine and liquor stores filed suit against the City of Morristown seeking a refund of a portion of inspection fees that had been erroneously calculated by the City. The fees were assessed by the City on the purchases at wholesale of alcoholic beverages. The City failed to use the correct percentage mandated by Tenn. Code Ann. § 57-3-501 (2013). It is undisputed that the plaintiffs overpaid the City; since the plaintiffs were understandably unaware of the error, they failed to state that they were paying the fees under protest. The City moved to dismiss the case, citing the plaintiffs' failure to pay "under protest." The trial court held that Tenn. Code Ann. § 67-1-1807 (2013) relieved the plaintiffs of the requirement to pay the inspection fees under protest. Accordingly, the trial court denied the City's motion. The case proceeded to a bench trial where the court resolved all of the issues in the plaintiffs' favor. The City appeals, arguing that Tenn. Code Ann. § 67-1-1801, et seq. (2013) does not apply to challenges involving fees paid to municipalities. The State Attorney General filed an amicus curiae brief supporting the City's position. We affirm the trial court.

5. Status Heard 5/9/17 in Knoxville.

1. Style State v. Sedrick Clayton

2. Docket Number W2015-00158-SC-DDT-DD

3. Lower Court
Decision Link

http://www.tncourts.gov/sites/default/files/claytonsedrickopn_1.pdf

4. Lower Court
Summary

The Defendant, Sedrick Clayton, was convicted by a Shelby County Criminal Court jury of three counts of first degree murder, attempt to commit first degree murder, possession of a firearm with the intent to go armed during the commission of a dangerous felony, employing a firearm during the commission or attempt to commit a dangerous felony, and unauthorized use of a motor vehicle. See T.C.A. §§ 39-12-101 (2014), 39-13-202(a)(1) (2014), 39-14-106, 39-17-1324(a) (2010) (amended 2012). The jury sentenced the Defendant to death for each first degree premeditated murder conviction. The trial court sentenced the Defendant to fifteen years for attempted first degree murder, three years for possession of a firearm with the intent to go armed during the commission of a dangerous felony, six years for employing a firearm during the commission of or attempt to commit a dangerous felony, and eleven months, twenty-nine days for unauthorized use of a motor vehicle. On appeal, the Defendant contends that (1) the evidence is insufficient to support his convictions for first degree premeditated murder and attempted first degree murder; (2) the trial court erred in denying the Defendant's motion to suppress his statements to the police; (3) double jeopardy principles prohibit his dual convictions for

possessing a firearm with the intent to go armed during the commission of a dangerous felony and employing a firearm during the commission or attempt to commit a dangerous felony; (4) the trial court erred in admitting photographs of the victims during the penalty phase; (5) the trial court erred in admitting recordings of two 9-1-1 calls made from the victims' residence around the time of the murders; (6) Lieutenant Goods' testimony during redirect examination was improper in numerous respects; (7) Tennessee's death penalty scheme constitutes cruel and unusual punishment; (8) Tennessee's death penalty scheme is unconstitutional in numerous other respects; and (9) the Defendants sentences of death are disproportionate. Although we affirm the Defendant's convictions and sentences for each first degree premeditated murder and attempted first degree murder, we conclude that the trial court should have merged the convictions for possession of a firearm with the intent to go armed during the commission of a dangerous felony with the employing a firearm during the commission or attempt to commit a dangerous felony. Therefore, we remand for the entry of corrected judgments. We affirm the judgments of the trial court in all other respects.

5. Status Heard 6/1/17 at Girls State SCALES Project in Nashville.

1. Style Rose Coleman v. Bryan Olson

2. Docket Number M2015-00823-SC-R11-CV

3. Lower Court Decision Links <http://www.tncourts.gov/sites/default/files/colemanr opn .pdf>

4. Lower Court Summary This appeal concerns two disputes between the widowed husband and mother of a deceased woman: (1) the proper party to whom the woman's life insurance proceeds are owed; and (2) a request for grandparent visitation. We conclude that the trial court erred in failing to return the life insurance beneficiary to the status quo that existed prior to wife's violation of the automatic injunction pursuant to Tennessee Code Annotated Section 36-4-106(d)(2). The proceeds from the life insurance policy are therefore awarded to husband. We vacate, however, the trial court's seizure of the grandmother's Bank of America account and remand for further proceedings to determine if the funds contained therein represent the remainder of the life insurance proceeds improperly paid to the grandmother. We further conclude that the trial court erred in awarding grandparent visitation, where there was no evidence of opposition to visitation prior to the filing of the grandparent visitation petition. Reversed in part, vacated in part, and remanded.

5. Status Heard 10/11/17 in Nashville.

1. Style In re: James Carl Cope, BPR #3340

2. Docket Number M2016-02144-SC-BAR-BP

3. Lower Court Decision Link N/A

4. Lower Court Summary N/A

5. Status Order proposing to increase punishment filed 8/17/17; Attorney brief filed 9/11/17; BPR brief filed 10/2/17.

1.	Style	State of Tennessee v. Angela Faye Daniel
2.	Docket Number	M2015-01073-SC-R11-CD
3.	Lower Court Decision Links	http://www.tncourts.gov/sites/default/files/danielangelafayeopn.pdf
4.	Lower Court Summary	In this interlocutory appeal, the appellant, State of Tennessee, appeals the Williamson County Circuit Court's order granting a motion to suppress evidence filed by the appellee, Angela Faye Daniel. The appellant claims that the trial court erroneously concluded that a police officer's failure to deliver a copy of a search warrant to the appellee was not a "clerical error" under Tennessee Code Annotated section 40-6-108, the Exclusionary Rule Reform Act. Based upon the oral arguments, the record, and the parties' briefs, we affirm the order of the trial court.
5.	Status	Heard 9/6/17 in Knoxville.
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1.	Style	Board of Professional Responsibility v. Charles Edward Daniel
2.	Docket Number	E2017-01170-SC-R3-BP
3.	Lower Court Decision Link	N/A
4.	Lower Court Summary	N/A
5.	Status	Notice of Appeal received 6/12/17; BPR record filed 9/25/17 after extension by Order; Appellant brief filed 11/1/17 after extension by Order; Appellee brief due 12/1/17; TBH 01/10/18 in Knoxville.
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1.	Style	Jean Dedmon v. Debbie Steelman, et al.
2.	Docket Number	W2015-01462-SC-R11-CV
3.	Lower Court Decision Links	http://www.tncourts.gov/sites/default/files/dedmonjeanopn_0.pdf http://www.tncourts.gov/sites/default/files/dedmonjeancon_0.pdf
4.	Lower Court Summary	This interlocutory appeal requires review of a ruling on a motion in limine in a personal injury case. Prior to trial, the plaintiffs submitted expert testimony from a treating physician to establish the reasonableness of their claimed medical expenses. The defendants filed a motion in limine seeking to exclude evidence of what they deemed "unreasonable" medical expenses. They argued that the Tennessee Supreme Court's decision in West v. Shelby County Healthcare Corporation, 459 S.W.3d 33 (Tenn. 2014), established a new standard in Tennessee for determining the reasonable amount of medical expenses as a matter of law. The trial court granted the defendants' motion in limine, thus excluding the testimony of the treating physician. For the following reasons, the trial court's order is reversed and this matter is remanded for further proceedings.
5.	Status	Heard 4/5/17 in Jackson; Opinion filed 11/17/17.

1.	Style	Embraer Aircraft Maintenance Services, Inc. v. AeroCentury Corp.
2.	Docket Number	M2016-00649-SC-R23-CV
3.	Lower Court Decision Link	N/A
4.	Lower Court Summary	N/A
5.	Status	Heard 2/9/17 in Nashville.

1.	Style	In Re Estate of Calvert Hugh Fletcher
2.	Docket Number	M2015-01297-SC-R11-CV
3.	Lower Court Decision Link	http://www.tsc.state.tn.us/sites/default/files/estateofcalvertfletcher.opn_.pdf
4.	Lower Court Summary	This appeal stems from probate proceedings in the Putnam County Probate Court. During the course of the trial proceedings, an issue arose as to the ownership of a certificate of deposit titled in the decedent's name. Following an evidentiary hearing, the trial court entered an order concluding that the certificate of deposit was, in fact, the property of the decedent's estate. On appeal, the decedent's surviving wife argues that because the funds within the certificate of deposit were derived from a joint marital account, they should have been impressed as entireties property. We agree and conclude that the funds in the certificate of deposit passed to the surviving wife upon the decedent's death. The judgment of the trial court is accordingly reversed.
5.	Status	Heard 4/5/17 in Jackson.

1.	Style	State of Tennessee v. Tabitha Gentry aka Abka Re Bay
2.	Docket Number	W2015-01745-SC-R11-CD
3.	Lower Court Decision Link	http://www.tsc.state.tn.us/sites/default/files/gentrytopn_0.pdf
4.	Lower Court Summary	A Shelby County jury convicted the Defendant, Tabitha Gentry, aka Abka Re Bay, of theft of property valued over \$250,000 and aggravated burglary. The trial court ordered an effective sentence of twenty years in the Tennessee Department of Correction, to be served consecutively to a prior sentence from another Shelby County conviction. The Defendant appeals contending that: (1) the evidence is insufficient to support her convictions, (2) the trial court improperly limited cross-examination of a State witness about adverse possession; (3) the trial court improperly limited the Defendant's closing argument; and (4) consecutive sentencing was inappropriate in this case. After review, we remand the case for resentencing and affirm the trial court's judgments in all other respects.
5.	Status	Heard 6/1/17 at Girls State SCALES Project in Nashville.

1.	Style	Charles Grogan v. Daniel Ugгла, et al.
2.	Docket Number	M2014-01961-SC-R11-CV
3.	Lower Court Decision Link	http://tncourts.gov/sites/default/files/grogancharles.opn_.pdf
4.	Lower Court Summary	This appeal concerns a home inspector's liability for a guest's injury following the collapse of a homeowner's second-story deck railing. The accident occurred just one month after the home inspection was performed. In his report to the homeowner, the inspector noted that the deck flooring was warped but failed to report the improper construction of the deck railing. The injured guest filed suit against the homeowner and the home inspector, among others. The inspector moved for summary judgment. The trial court granted summary judgment, finding that the inspector did not owe a legal duty to the guest. We affirm.
5.	Status	Heard 10/6/16 in Nashville.

1.	Style	C.W.H. v. L.A.S.
2.	Docket Number	E2015-01498-SC-R11-JV
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/c.w.h._v_.l.pdf
4.	Lower Court Summary	This is a custody case involving two children. C.W.H. (Father) and L.A.S. (Mother) modified, by an agreed order, an existing parenting plan for their children, P.H. and V.H. The modification continued Mother as the children's primary residential parent. Soon thereafter, Father learned that Mother worked in Nevada as a prostitute. He filed a motion seeking an emergency temporary custody order and a temporary restraining order. The juvenile court magistrate found that a material change in circumstances had occurred. It changed the identity of the children's primary residential parent from Mother to Father. Mother appealed to the trial court. After a hearing, the trial court (1) confirmed the magistrate's decision and (2) designated Father as the primary residential parent. Mother appealed to this Court. In the first appeal, we held that the trial court's order lacked a "best interest" analysis. As a result, we vacated that order and directed the trial court to (1) make a best interest analysis and thereafter (2) enter a new permanent parenting plan. On remand, the trial court (1) incorporated its past findings, (2) conducted a best interest analysis, and (3) held in Father's favor. Mother again appeals. We reverse because we hold that the evidence preponderates, in part but significantly, against the trial court's factual findings supporting its judgment.
5.	Status	Heard on 9/6/17.

1.	Style	State of Tennessee v. David Scott Hall
2.	Docket Number	M2015-02402-SC-R11-CD
3.	Lower Court Decision Link	http://tncourts.gov/sites/default/files/hall_david_scott_opn.pdf

4. Lower Court Summary
The Appellant, David Scott Hall, was convicted in the Davidson County Criminal Court of attempted especially aggravated sexual exploitation of a minor, a Class C felony, and sentenced to four years to be served as one year in confinement and the remainder on supervised probation. On appeal, the Appellant contends that the evidence is insufficient to support the conviction, that the trial court erred by allowing an expert witness to give irrelevant and highly prejudicial testimony, that he is entitled to coram nobis relief, that his right to a speedy trial was violated, that the trial court erred by allowing the State to introduce evidence without showing a proper chain of custody, that the trial court erred by allowing the State to play only a portion of a controlled telephone call to the Appellant, that the trial court erred by allowing the victim to testify about habit, that the trial court erred by allowing the State to introduce into evidence a letter supposedly written by the Appellant, and that the trial court erred by allowing the State to make improper closing arguments. Based upon the oral arguments, the record, and the parties' briefs, we conclude that the evidence is sufficient to support the conviction, that the trial court erred by allowing a witnesses to give irrelevant testimony but that the error was harmless, that the Appellant is not entitled to coram nobis relief, and that his right to a speedy trial was not violated. Finding no plain error as to the remaining issues, we affirm the judgment of the trial court.

5. Status
Application granted 8/16/17; Appellant brief filed 9/14/17; Appellee brief filed 10/16/17; TBH 1/10/18 in Knoxville.

1. Style
State of Tennessee v. Lajuan Harbison

2. Docket Number
E2015-00700-SC-R11-CD

3. Lower Court Decision Link
http://www.tncourts.gov/sites/default/files/harbisonlajuanopn_0.pdf

4. Lower Court Summary
The Defendant, Lajuan Harbison, stands convicted by a Knox County jury of four counts of attempted voluntary manslaughter and four counts of employing a firearm during the commission of a dangerous felony, for which the trial court sentenced him to an effective term of twenty-two years' incarceration. On appeal, the Defendant argues (1) that the trial court erred by refusing to grant his motion for a severance; (2) that the evidence was insufficient to support his convictions, including therein a double jeopardy challenge to his employing a firearm during the commission of a dangerous felony convictions, and (3) that consecutive sentencing was improper. Following our review, we first conclude that a severance of defendants should have been granted and that the failure to do so constitutes reversible error. We also conclude that the evidence was insufficient to support one of the Defendant's convictions for attempted voluntary manslaughter because the doctrine of transferred intent is inapplicable to such a conviction, and therefore, the corresponding count of employing a firearm during the commission of said dangerous felony likewise cannot stand. Additionally, multiple convictions for employing a firearm during the commission of a dangerous felony violate double jeopardy principles because the statute does not authorize separate firearms convictions for each felony committed in a single transaction. Accordingly, we reverse the judgments of the trial court and remand the case for a new trial.

5. Status
Heard 5/24/17 at Boys State SCALES Project in Cookeville.

1. Style
Individual Healthcare Specialists, Inc. v. BlueCross BlueShield of Tennessee, Inc.

2.	Docket Number	M2015-02524-SC-R11-CV
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/indiv.healthv.bluecro.blushi.opn_.pdf
4.	Lower Court Summary	<p>This is a breach of contract action in which the issues hinge on the meaning of several provisions in the agreement. In 1999 and again in 2009, BlueCross BlueShield of Tennessee, Inc. (“BlueCross”) and Individual Healthcare Specialists, Inc. (“IHS”) entered into a general agency agreement that authorized IHS to solicit applications for individual insurance policies through IHS’s in-house agents and outside “subagents.” The commission rates to be paid were stated in a schedule, which was subject to modification by BlueCross. During the first eleven years, BlueCross modified the commission schedule several times and each modification was prospective only. In 2011, BlueCross modified the commission schedule and, for the first time, applied the commission schedule retrospectively. At the same time, IHS determined that BlueCross had been underpaying commissions since 1999. As a consequence, it commenced this action asserting claims for, inter alia, breach of contract and damages, while also claiming it was entitled to recover its attorney’s fees based on the contract’s indemnification provision. BlueCross denied any breach of contract. It also asserted the statute of limitations defense as a bar to recovering any commissions that accrued more than six years earlier, and asserted that IHS was not entitled to recover its attorney’s fees because the indemnification provision did not apply to disputes between the contracting parties. Shortly thereafter, BlueCross terminated the general agency agreement and began paying renewal commissions directly to IHS’s subagents instead of paying them to IHS as it had done since 1999. IHS then amended its complaint to assert a claim that BlueCross also breached the agreement by failing to pay commissions directly to IHS. Following a bench trial, the court denied BlueCross’s statute of limitations defense on the ground that IHS’s claims were “inherently undiscoverable.” The court also determined that BlueCross breached the contract by underpaying commissions, by applying the 2011 commission rates for renewals to existing policies, and by failing to pay all renewal commissions to IHS after termination of the general agency agreement. As for damages, the court awarded IHS some of the damages it claimed but denied others on the ground the evidence was speculative. As for IHS’s attorney’s fees, the trial court considered parol evidence to ascertain the intent of the parties and held that the indemnification provision authorized the recovery of attorney’s fees in a dispute between the contracting parties.</p>
5.	Status	Application granted 10/3/17; Amicus brief filed 9/26/17; Appellant brief filed 11/03/17; Appellee brief due 12/3/17.

1.	Style	State of Tennessee v. Jerome Antonio McElrath
2.	Docket Number	W2015-01794-SC-R11-CD
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/mcelrathj_opinion.pdf
4.	Lower Court Summary	<p>The State appeals the suppression of evidence by the Obion County Circuit Court. The defendant, Jerome Antonio McElrath, was arrested on two separate occasions for criminal trespass. The searches of the defendant’s person incident to those arrests produced marijuana in the amounts of 10.1 grams and 4.0 grams, respectively. After an evidentiary hearing, the trial court granted the defendant’s motion to suppress the evidence seized incident to his arrests and dismissed the charges. The State argues that</p>

the arresting officer had probable cause to arrest the defendant and, therefore, the search incident to each arrest was lawful. Furthermore, the State contends that the evidence was legally obtained because the officer acted in good-faith reliance on information provided by dispatch. After review, we affirm the decision of the trial court.

5. Status Application granted 10/3/17; Appellant brief filed 11/06/17; Appellee brief due 12/6/17.

1. Style Sean K. Hornbeck v. Board of Professional Responsibility

2. Docket Number M2016-01793-SC-R3-BP

3. Lower Court Decision Link N/A

4. Lower Court Summary N/A

5. Status Heard 6/1/17 in Nashville.

1. Style Derrick Hussey, et al. v. Michael Woods, et al.

2. Docket Number W2014-01235-SC-R11-CV

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

4. Lower Court Summary This is an appeal from the denial of Appellant’s Tennessee Rule of Civil Procedure 60.02 motion to set aside a settlement reached by Appellee, the decedent’s mother, in the underlying wrongful death lawsuit. Appellant brought the Rule 60.02 motion on behalf of her minor child, who was born out of wedlock. The decedent had executed a voluntary acknowledgment of paternity of the minor child in Mississippi; Appellant argued that the acknowledgment was entitled to full faith and credit in Tennessee such that the child would be the rightful plaintiff in the wrongful death lawsuit. Appellee filed a challenge to paternity, arguing that the decedent was incarcerated at the time of the child’s conception. The Circuit Court stayed all proceedings and transferred the question of paternity to the Probate Court, which had no authority to enroll the foreign acknowledgment of paternity under the Uniform Enforcement of Foreign Judgments Act. Furthermore, because the child’s paternity was challenged, there was a question as to whether the mere filing of the VAP in a Tennessee Court, pursuant to Tennessee Code Annotated Section 24-7-113(b)(3), was sufficient to establish paternity for purposes of the Wrongful Death Statute. If there is a challenge to the VAP, Tennessee Code Annotated Section 24-7-113(e) requires the trial court to first find that there is a substantial likelihood that fraud, duress, or material mistake of fact existed in the execution of the VAP. If the court so finds, then, under Tennessee Code Annotated Section 24-7-113(e)(2), DNA testing is required to establish paternity. Alternatively, the trial court could find that there is not a substantial likelihood of fraud, duress, or material mistake, deny the challenge to the VAP, and enroll the VAP as conclusive proof of paternity. Here, the trial court made no finding concerning fraud, duress, or material mistake under Section 24-7-113(e). Despite the fact that the court never resolved the paternity question, it, nonetheless, denied Appellant’s Rule 60.02 motion and granted attorney’s fees to the defendant in the underlying wrongful death action and to the Appellee/mother for Appellant’s alleged violation of the order staying all proceedings in the Circuit Court. We conclude that the Rule 60.02 motion was not ripe for adjudication until such time as the trial court conclusively established the child’s paternity under either Tennessee Code Annotated

Section 24-7-113 or 24-7-112. Accordingly, we vacate the trial court's order denying Rule 60.02 relief and remand the case for further proceedings, including, but not limited to, entry of an order that complies with Section 24-7-113(e). We reverse the award of attorney's fees and the order staying proceedings in the Circuit Court.

5. Status Heard 2/8/17 in Nashville.

1. Style State of Tennessee v. Henry Lee Jones

2. Docket Number W2015-02210-SC-DDT-DD

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

4. Lower Court Summary Defendant, Henry Lee Jones, was convicted of two counts of premeditated first degree murder and two counts of felony murder for his role in the 2003 murders of two Shelby County citizens. The jury sentenced Defendant to death for each murder. Defendant now appeals from these convictions and sentences. Defendant argues that the trial court erred by allowing Defendant to represent himself and committed other errors with regard to the provision of elbow counsel; the trial court erred by declaring a witness unavailable and allowing testimony from that witness regarding a prior bad act; the trial court erred by admitting photographs of the victims' bodies and wounds; the State utilized improper closing argument; the evidence was insufficient to support the convictions; the trial court erred in denying Defendant a mitigation expert or investigator in preparation for sentencing; and the death sentence is arbitrary and disproportionate.

5. Status Notice of Appeal filed 10/3/17; Appellant brief due 12/17/17, after extension.

1. Style Loring Edwin Justice v. Board of Professional Responsibility

2. Docket Number E2017-01334-SC-R3-BP

3. Lower Court Decision Link N/A

4. Lower Court Summary N/A

5. Status Notice of Appeal received 6/30/17; Motion for extension to file record granted on 10/23/17.

1. Style State of Tennessee v. Lindsey Brooke Lowe

2. Docket Number M2014-00472-SC-R11-CD

3. Lower Court Decision Link http://www.tncourts.gov/sites/default/files/lowelb.opn6_.pdf

4. Lower Court Summary The parents of the defendant, Lindsey Brooke Lowe, discovered the body of one of her newborn twins in a laundry basket in her bedroom. A second deceased newborn was also found in the basket, and the defendant gave an incriminating statement to police. A jury convicted the defendant of two counts of first degree (felony) murder, two counts of first

degree (premeditated) murder, and two counts of aggravated child abuse, a Class A felony. The trial court merged the first degree murder convictions for each victim. The defendant received a life sentence for each first degree murder conviction and a twenty-five year sentence for each aggravated child abuse conviction, all to be served concurrently. On appeal she asserts that the evidence was insufficient to support the verdicts; that the trial court erred in not suppressing her statement; that the trial court was biased; that the trial court denied her the right to testify in her defense; that the burden of proof was shifted to the defense; that her motion for a change of venue should have been granted; that the physical evidence obtained through a search warrant should have been suppressed; that the trial court erred in excluding expert testimony regarding her ability to waive her right to remain silent; that the trial court erred in various other evidentiary decisions; and that she is entitled to relief under the theory of cumulative error. After a thorough review of the record and the applicable law, we affirm the judgments of the trial court.

5. Status Heard 9/6/17 in Knoxville.

1. Style State of Tennessee v. Anthony Jerome Miller

2. Docket Number E2016-01779-SC-R11-CD

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

4. Lower Court Summary Anthony Jerome Miller, the Defendant, pled guilty to sexual exploitation of a minor and reserved a certified question for appeal regarding the trial court’s denial of his motion to suppress evidence. He asserts that the trial court erred in denying his motion to suppress the evidence obtained by the State during a search of his residence because the District Attorney General’s Office did not apply for the search warrant, as required by Tennessee Code Annotated section 39-17-1007. The State responds that: (1) a search warrant is not “process” as intended by the meaning of section 39-17-1007; (2) the search warrant is valid under section 39-17-1007 because Investigator O’Keefe’s application falls under the “except as otherwise provided” clause because law enforcement are authorized to apply for search warrants under Tennessee Rule of Criminal Procedure 41(a); and (3) if a search warrant is considered process under section 39-17-1007, then Investigator O’Keefe fulfilled the requirements of the statute by seeking verbal consent from an Assistant District Attorney. After a thorough review of the record and applicable law, we affirm.

5. Status Application granted 11/16/17; Appellant brief due 12/16/17.

1. Style State of Tennessee v. Christopher Minor

2. Docket Number W2016-00348-SC-R11-CD

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

4. Lower Court Summary In a bifurcated trial, a Madison County jury convicted the defendant, Christopher Minor, of two counts of first degree murder, two counts of aggravated burglary, one count of aggravated assault, one count of convicted felon in possession of a firearm, one count of employing a firearm during the commission of a dangerous felony, one count of employing a firearm during the commission of a dangerous felony having been

previously been convicted of a felony, and six counts of violating Tennessee Code Annotated section 40-35-121, the criminal gang offenses enhancement statute. The trial court imposed an effective sentence of life plus twenty years. The defendant appeals his conviction, challenging the sufficiency of the evidence and the constitutionality of Tennessee Code Annotated section 40-35-121. The State argues the evidence was sufficient to support the defendant's convictions, and the defendant waived his constitutional challenge by raising his argument for the first time on appeal. We agree with the State and affirm the judgments of the trial court.

5. Status Heard 10/11/17 in Nashville

1. Style Brittany Noel Nelson, et al. v. Charles W. Myres, et al.

2. Docket Number M2015-01857-SC-R11-CV

3. Lower Court Decision Link https://www.tncourts.gov/sites/default/files/nelson.brittany.correction.opn_.pdf

4. Lower Court Summary
A woman died in a multi-vehicle accident. Two wrongful death actions were filed, one by the woman's daughter, the other by the woman's husband. The daughter's suit named the husband and others as defendants. The husband's suit named one of the other drivers as the only defendant. The trial court dismissed the daughter's complaint, holding that Tennessee's wrongful death statute creates only one cause of action and that the husband, as the surviving spouse, was granted priority to prosecute the action under the statute. The daughter appeals the dismissal of her complaint. Because the husband is unable to name himself as a defendant in the suit he has filed, he is not able to prosecute the wrongful death action in a manner consistent with the right of the decedent to sue all wrongdoers whose actions are alleged to have led to her death; accordingly, we reverse the judgment of the trial court dismissing the daughter's complaint, reinstate the complaint, and remand the case for further proceedings.

5. Status Heard 10/11/17 in Nashville.

1. Style Tommy Nunley v. State of Tennessee

2. Docket Number W2016-01487-SC-R11-ECN

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

4. Lower Court Summary
The petitioner, Tommy Nunley, appeals the summary denial of his petition for writ of error coram nobis, which petition challenged his 1998 Shelby County Criminal Court jury conviction of aggravated rape, claiming that the trial court erred by treating his petition for writ of error coram nobis as a petition for DNA testing and by summarily dismissing the petition. Discerning no error, we affirm.

5. Status Application granted 6/9/17; Appellant brief filed 8/3/17 after extension; Appellee brief filed 9/5/17; Appellant reply brief filed 9/19/17; TBH 11/30/17 at SCALES docket at Lane College.

1.	Style	Board of Professional Responsibility v. Larry Edward Parrish
2.	Docket Number	W2017-00889-SC-R3-BP
3.	Lower Court Decision Link	N/A
4.	Lower Court Summary	N/A
5.	Status	Notice of Appeal filed 5/5/17; Appellate Record filed 8/28/17; Appellant Brief filed 10/18/17; Appellate amended brief filed 11/09/17; Appellee brief due 12/11/17.

1.	Style	State v. Kevin Patterson aka John O'Keefe Varner aka John O'Keefe Kitchen
2.	Docket Number	M2015-02375-SC-R11-CD
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/pattersonkevinopn.pdf http://www.tncourts.gov/sites/default/files/concurring_patterson_1.pdf http://www.tncourts.gov/sites/default/files/pattersoncon.pdf
4.	Lower Court Summary	The defendant, Kevin Patterson aka John O'Keefe Varner aka John O'Keefe Kitchen, appeals his Coffee County Circuit Court jury convictions of attempted second degree murder, aggravated assault, and possession of a firearm by a convicted felon, claiming that the trial court erred by refusing to sequester the jury, that the trial court should not have seated potential jurors who had served on the petit jury in a recent criminal trial, that the prosecutor's closing argument was improper, and that the evidence was insufficient to support his conviction of attempted second degree murder. Although we detect no error with regard to the defendant's convictions, we find that the defendant's sentence of life without the possibility of parole constitutes plain error because the State failed to comply with the notice requirements of Code section 40-35-120. Accordingly, we affirm all of the defendant's convictions as well as the five-year sentences imposed for the defendant's convictions of aggravated assault and possession of a firearm by a convicted felon. We reverse the trial court's finding that the defendant was a repeat violent offender, vacate the sentence of life without the possibility of parole, and remand the case for resentencing within the appropriate sentencing range on the defendant's conviction of attempted second degree murder.
5.	Status	Heard 10/11/17 in Nashville.

1.	Style	State v. Antoine Perrier
2.	Docket Number	W2015-01642-SC-R11-CD
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/perrierantoineopn_0.pdf
4.	Lower Court Summary	The Defendant-Appellant, Antoine Perrier, was convicted in the Shelby County Criminal Court of attempted voluntary manslaughter in Count 1, employment of a firearm during the attempt to commit a dangerous felony in Count 2, aggravated assault in Counts 3

through 7, and assault in Count 8. The trial court merged Count 3 with Count 1 before sentencing Perrier to an effective sentence of thirty years. In this delayed appeal, Perrier argues: (1) the trial court erroneously instructed the jury on self-defense; (2) the trial court committed plain error in failing to instruct the jury on possession of a firearm during the attempt to commit a dangerous felony as a lesser included offense of employment of a firearm during the attempt to commit a dangerous felony; (3) the employment of a firearm count is void because it fails to name the predicate felony for the firearm offense; (4) the trial court erred in declining to instruct the jury on the defense of necessity; and (5) the evidence is insufficient to sustain his conviction for assault. We conclude that although the self-defense instruction was erroneous, the error was harmless. Therefore, we affirm the judgments of the trial court.

5.	Status	Heard 4/6/17 in Jackson.
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1.	Style	Tiffinne Wendalyn Gail Runions, et al. v. Jackson-Madison County General Hospital District, et al.
2.	Docket Number	W2016-00901-SC-R11-CV
3.	Lower Court Decision Link	https://www.tncourts.gov/sites/default/files/runionstopn.pdf
4.	Lower Court Summary	<p>This is an interlocutory appeal pursuant to Rule 9 of the Tennessee Rules of Appellate Procedure. In this health care liability action, we must determine whether the plaintiff properly complied with the pre-suit notice requirement found in Tennessee Code Annotated section 29-26-121(a)(1). The original defendants in this matter all filed a motion to dismiss and/or for summary judgment alleging that they did not provide medical treatment to the plaintiff/appellee. Subsequently, the plaintiff filed a response to the defendants' motion acknowledging that she had mistakenly identified a proper defendant in this suit. The plaintiff also filed a motion to amend her complaint attempting to remedy that mistake by substituting in the proper defendant. After both motions were heard, the trial court denied the original defendants' motion to dismiss and/or for summary judgment and granted the plaintiff/appellee's motion to amend her complaint. For the following reasons, we affirm the decision of the trial court and remand for further proceedings.</p>
5.	Status	Application granted 6/27/17; Appellant brief filed 7/21/17; After extension, Appellee brief filed 9/19/17; Appellant reply brief filed 9/27/17; TBH 11/30/17 at SCALES docket at Lane College.

1.	Style	Board of Professional Responsibility v. Michael Gibbs Sheppard
2.	Docket Number	M2017-00804-SC-R3-BP
3.	Lower Court Decision Link	N/A
4.	Lower Court Summary	N/A
5.	Status	Notice of Appeal filed 4/20/17; Appellate record filed 7/17/17; After extension, Appellant brief filed 9/15/17; Appellee brief due 11/15/17 after extension by Order; TBH 01/10/18 in Knoxville.

1.	Style	David R. Smith v. The Tennessee National Guard
2.	Docket Number	M2016-01109-SC-R11-CV
3.	Lower Court Decision Link	http://tncourts.gov/sites/default/files/smith.david_opn.pdf http://tncourts.gov/sites/default/files/smith.david_diss_opn.pdf
4.	Lower Court Summary	This case involves a military service member's claim against the Tennessee National Guard pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 et seq., and Tennessee Code Annotated section 29-20-208. The trial court dismissed the complaint for failure to state a claim. We reverse and remand for further proceedings.
5.	Status	Application granted 8/17/17; Appellant filed 9/15/17; Appellee brief due 11/15/17 after extension by Order.

1.	Style	Drayton Beecher Smith II v. Board of Professional Responsibility
2.	Docket Number	W2017-00247-SC-R3-BP
3.	Lower Court Decision Link	N/A
4.	Lower Court Summary	N/A
5.	Status	Heard 11/8/17 in Jackson.

1.	Style	Kenneth M. Spires, et al. v. Haley Reece Simpson, et al.
2.	Docket Number	E2015-00697-SC-R11-CV
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/spires_opinion_final_corrected.pdf
4.	Lower Court Summary	The surviving spouse in this wrongful death action appeals the trial court's dismissal of him as a plaintiff. The decedent and surviving spouse had one child together, who was eighteen months old at the time of the decedent's fatal automobile accident in October 2010. The decedent and surviving spouse were living apart, and the child had been residing solely with the decedent. On November 18, 2010, the surviving spouse, acting on behalf of the decedent, the child, and himself, filed the instant action in the Monroe County Circuit Court ("trial court") against the seventeen-year-old driver of the other vehicle involved in the accident and her parents, who were the owners of the vehicle. Also in November 2010, the Monroe County Juvenile Court granted custody of the child to the maternal grandmother. Upon a subsequent petition filed by the maternal grandmother and maternal uncle in the Blount County Chancery Court, the surviving spouse's parental rights to the child were terminated and a decree of adoption was granted to the maternal uncle on August 8, 2012. The child's maternal grandmother and adoptive father subsequently filed successive motions to intervene in this action on behalf

of the child. Upon announcement of an agreement as to the settlement amount offered by the defendants' insurance company, the trial court entered an agreed order awarding a \$100,000.00 judgment against the defendants.¹ Following a bench trial regarding the remaining issues, the court found that pursuant to Tennessee Code Annotated § 20-5-107(b), the surviving spouse was statutorily disqualified from commencing and maintaining this action or collecting any portion of a settlement because he owed outstanding child support arrearages on behalf of children born to four women other than the decedent. We determine that although Tennessee Code Annotated § 20-5-107(b) operates to prohibit the surviving spouse's recovery of his one-half of the settlement until his child support obligations are paid, it does not operate to disqualify him from commencing and maintaining this wrongful death action. We therefore reverse the trial court's dismissal of the surviving spouse as a plaintiff and the court's substitution of the adoptive father as an intervening plaintiff. We remand for distribution of the wrongful death settlement proceeds, one-half toward payment of the surviving spouse's child support arrearages with interest, pursuant to Tennessee Code Annotated § 20-5-107(b), and one-half to the minor child in trust with the adoptive father as trustee. We affirm the trial court's judgment in all other respects.

5. Status Heard 5/9/17 in Knoxville.

1. Style State of Tennessee v. Janet Michelle Stanfield, Tony Alan Winsett and Justin Bradley Stanfield

2. Docket Number W2015-02503-SC-R11-CD

3. Lower Court Decision Link <https://www.tncourts.gov/sites/default/files/stanfield-winsett-stanfieldopn.pdf>

4. Lower Court Summary The Defendants, Janet Michelle Stanfield, Tony Alan Winsett, and Justin Bradley Stanfield, were indicted by the Obion County Grand Jury for various drug and firearm offenses following a warrantless search of their house. The Defendants filed motions to suppress the evidence seized, and the trial court granted the motions and dismissed the case. The State appeals, asserting that the warrantless search was valid and the evidence was admissible. Upon review, we affirm the judgment of the trial court.

5. Status Heard 11/8/17 in Jackson.

1. Style John Howard Story, et al. v. Nicholas D. Bunstine, et al.

2. Docket Number E2015-02211-SC-R11-CV

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

4. Lower Court Summary This is a legal malpractice case. Appellees, who are licensed attorneys, represented Appellants in the underlying lender's liability lawsuit. Following dismissal of all defendants in the underlying litigation, Appellants' filed a complaint for legal malpractice against Appellees. The trial court dismissed the legal malpractice case, inter alia, on the ground that the one-year statute of limitations for legal malpractice claims had expired. Tenn. Code Ann. §28-3-104(c)(1). Affirmed and remanded.

5. Status Heard 5/9/17 in Knoxville.

1.	Style	State of Tennessee v. Susan Jo Walls
2.	Docket Number	M2014-01972-SC-R11-CD
3.	Lower Court Decision Link	http://tncourts.gov/sites/default/files/wallssusanjoopn.pdf
4.	Lower Court Summary	The Defendant, Susan Jo Walls, was convicted by a jury of being criminally responsible for the first-degree premeditated murder of her husband and of conspiring with others to commit said murder. The trial court imposed an effective sentence of life imprisonment for these convictions. In this direct appeal, the Defendant argues that (1) the evidence was insufficient to support her convictions; (2) the trial court erred in allowing late-night jury deliberations; (3) the trial court erred by denying her motion to suppress an involuntary statement made to law enforcement; (4) the trial court failed to properly sanction the State for its untimely disclosure of certain phone records; (5) the trial court abused its discretion by denying her motion for a mistrial or to strike a witness's testimony based on an alleged <u>Jencks</u> Act violation; and (6) the trial court erred by modifying the jury instructions in response to a jury question that was presented after deliberations had commenced. Because we conclude that the trial court erred by allowing jury deliberations to continue into the late-night hours, we reverse the judgments of the trial court and remand this case for a new trial.
5.	Status	Heard 2/8/17 in Nashville; Opinion filed 11/09/17.

1.	Style	Rhonda Willeford, et al. v. Timothy P. Klepper, M.D., et al. v. State of Tennessee
2.	Docket Number	M2016-01491-SC-R11-CV
3.	Lower Court Decision Link	N/A
4.	Lower Court Summary	N/A
5.	Status	Application granted 1/18/17; Appellate record filed 3/24/17; Appellant brief filed 4/24/17; Appellee brief filed 6/14/17 after extension. Appellant reply brief filed 7/19/17 after extension; Tennessee Trial Lawyers Association Amicus Brief filed 8/29/17; Oral argument continued 8/14/17; TBH 01/10/18 in Knoxville.
