

Supreme Court Appeals
Pending Cases
10-6-16

1. Style Cassidy Lynne Aragon v. Reynaldo Manuel Aragon
 2. Docket Number M2014-02292-SC-R11-CV
 3. Lower Court Decision Link http://tncourts.gov/sites/default/files/aragon.cassidy.opn_.pdf
http://tncourts.gov/sites/default/files/aragon.cassidy.opn_.pdf
 4. Lower Court Summary
Father and Mother were divorced in April 2010; a parenting plan was entered into providing that the parties would share equal parenting time. In March 2012, pursuant to the parental relocation statute at Tenn. Code Ann. § 36-6-108, Father notified Mother that he intended to relocate to Tucson, Arizona, for an employment opportunity and filed a petition requesting to modify the parenting plan and relocate. Mother filed a petition in opposition to relocation, stating, *inter alia*, that Father's proposed move served no reasonable purpose. The trial court determined that Father's move served no reasonable purpose; the court did not make the best interests determination as required by the relocation statute. Father appealed and this court vacated the judgment and remanded the case for the court to consider the best interests of the child and to make findings in that regard. On remand, the court made findings relative to the factors as designated in the relocation statute and concluded that relocation was not in the best interests of the child. Finding no reversible error, we affirm the decision of the trial court.
 5. Status Heard 10/5/16 in Nashville.
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1. Style Linda Beard v. James William Branson, et al.
2. Docket Number M2014-01770-SC-R11-CV
3. Lower Court Decision Link http://www.tncourts.gov/sites/default/files/linda_beard_v._james_branson_et_al_26april2016_and_31march2016_0.pdf
4. Lower Court Summary
The dispositive issue in this wrongful death action is whether the pro se complaint filed by the decedent's surviving spouse tolled the statute of limitations. The defendants, a hospital and a physician, filed a motion for summary judgment, arguing that the complaint was a nullity because the surviving spouse was asserting claims in a representative capacity and the complaint was not signed by a licensed attorney. It is undisputed that the decedent was survived by three heirs, the surviving spouse and two children of the decedent. The trial court denied the motion concluding that, although the pro se complaint could not assert the claims of the children, the surviving spouse could properly assert his own claims. The trial court also held that the initial complaint was sufficient to toll the statute of limitations and the claims of the children were not time barred because a licensed attorney signed and filed an amended complaint that related back to the original filing pursuant to Tenn. R. Civ. P. 15. Following a jury trial, the defendants were found liable and damages were awarded. The hospital appealed. We conclude the claims asserted by the

surviving spouse were brought in a representative capacity on behalf of the decedent and were not his individual claims. Filing a complaint on behalf of another constitutes the practice of law and “[p]roceedings in a suit by a person not entitled to practice law are a nullity.” *Bivins v. Hosp. Corp. of Am.*, 910 S.W.2d 441, 447 (Tenn. Ct. App. 1995). Because the complaint filed by the surviving spouse was a nullity, it did not toll the statute of limitations and no other complaint was filed within the statute of limitations. Therefore, the trial court erred in denying the hospital’s motion for summary judgment based on the statute of limitations defense. Accordingly, we reverse and remand with instructions to dismiss all claims and vacate all judgments against the hospital.

5. Status Application granted 9/22/16; Appellant brief due 10/22/16.

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 Heard 11/05/15 in Memphis.

1. Style Ms. Bowen, et al. v. William E. Arnold, Jr., et al.

2. Docket Number M2015-00762-SC-R11-CV

3. Lower Court Decision Link N/A

4. Lower Court Summary Denial of Rule 9 Appeal

5. Status Heard 6/2/16 at Girls State SCALES Project in Nashville; Opinion filed 9/29/16.

1.	Style	Deborah Bray v. Radwan R. Khuri, M.D.
2.	Docket Number	W2015-00397-SC-R11-CV
3.	Lower Court Decision Link	http://tncourts.gov/sites/default/files/braydeborahopn.pdf
4.	Lower Court Summary	This is a health care liability action arising from decedent's death. Appellant filed this action against Dr. Radwan Khuri. Dr. Khuri moved to dismiss this action for failure to comply with the notice requirement of Tennessee Code Annotated section 29-26-121 et seq. Specifically, Dr. Khuri challenged whether the medical release provided with the pre-suit notice letter was compliant with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The trial court agreed with Dr. Khuri and dismissed the action with prejudice. Appellant timely appealed. We affirm.
5.	Status	Application granted 6/23/16; Appellant filed notice of election not to file supplemental brief on 7/26/16; Appellee brief filed 8/22/16.

1.	Style	Joseph Brennan, et al. v. Bd. of Parole for the State of Tenn.
2.	Docket Number	M2014-01591-SC-R11-CV
3.	Lower Court Decision Link	http://tncourts.gov/sites/default/files/brennanjoseph.opn_.pdf
4.	Lower Court Summary	This appeal arises from a decision by the Tennessee Board of Parole (the "Board") to deny an inmate parole after his initial parole review hearing. In 2009, the inmate pled guilty to two counts of attempted rape of a child and two counts of incest and was sentenced to 20 years in prison with parole eligibility after serving 30% of his sentence. Apparently because of his good behavior, the Board considered the inmate for release on parole after he had served only 20% of his sentence. Without further explanation, the Board denied the inmate parole based solely on its finding that "[t]he release from custody at this time would depreciate the seriousness of the crime of which the offender stands convicted or promote disrespect of the law," and deferred review of his parole application for five years. The inmate filed a petition for common-law writ of certiorari, arguing, among other things, that the Board acted arbitrarily in denying him parole based solely on the seriousness of the crime without providing any support or explanation for its decision. The trial court affirmed the Board's decision and this appeal followed. On appeal, we conclude that the Board acted arbitrarily in deferring further review of the inmate's parole application beyond the time when he would have otherwise been parole eligible—at 30% of his 20-year sentence. Because the inmate has already served more than 30% of his 20-year sentence, we hold that he should immediately be granted a new parole hearing. We therefore vacate the judgment of the trial court and remand this case for further proceedings consistent with this opinion.
5.	Status	Heard 10/5/16 in Nashville.

1.	Style	Darryl F. Bryant, Sr. v. Darryl F. Bryant, Jr.
2.	Docket Number	M2014-02379-SC-R11-CV
3.	Lower Court Decision Link	http://tncourts.gov/sites/default/files/bryantd.opn_.pdf
4.	Lower Court Summary	Owner of real property conveyed, by quitclaim deed, an interest to herself and her son as joint tenants, with the right of survivorship. Owner then conveyed her interest to her grandson by quitclaim deed a year later. In the deed to her grandson, Owner expressly referenced the earlier deed to her son, the grandson's father. After Owner died, the son filed a declaratory judgment in which he asked the court to rule that he owns the property in fee simple. The son filed a motion for summary judgment, which the trial court granted. The grandson appealed the trial court's judgment. We affirm. Owner transferred her right of survivorship to her grandson; but this right would come into play only if her son predeceased her. Because Owner died first, the son exercised his right of survivorship and became the sole owner in fee of the property.
5.	Status	Heard 6/2/16 in Nashville.

1.	Style	State v. James Robert Christensen, Jr.
2.	Docket Number	W2014-00931-SC-R11-CD
3.	Lower Court Decision Link	http://tncourts.gov/sites/default/files/christensenjamesrobertjropn.pdf http://tncourts.gov/sites/default/files/christensen_dissent_0.pdf
4.	Lower Court Summary	Appellant, James Robert Christensen, Jr., stands convicted of resisting arrest, a Class B misdemeanor; promotion of methamphetamine manufacture, a Class D felony; initiation of methamphetamine manufacture, a Class B felony; and two counts of possession of a firearm during the commission of a dangerous felony, Class D felonies. He received an effective sentence of three years' incarceration followed by eight years suspended to supervised probation. On appeal, appellant contends that the trial court erred by denying his motion to suppress evidence and that the evidence was insufficient to sustain his convictions for two counts of possession of a firearm during the commission of a dangerous felony. Following our careful review, we affirm the judgments of the trial court.
5.	Status	Heard 6/2/16 in Nashville.

1.	Style	Church of God in Christ, Inc., et al. v. L.M. Haley Ministries, Inc., et al.
2.	Docket Number	W2015-00509-SC-R11-CV
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/churchofgodopn.pdf http://www.tncourts.gov/sites/default/files/churchofgoddis.pdf
4.	Lower Court	

Summary	A hierarchical church filed a complaint against one of its local churches, seeking an order establishing the hierarchical church's control over the local church's real and personal property. The trial court dismissed the complaint on the basis of the doctrine of ecclesiastical abstention. Discerning no error, we affirm.
5. Status	Rule 11 application granted 8/18/16; Appellant brief filed 10/5/16; Appellee brief due 11/4/16.

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	<p>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 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.</p>
5. Status	Heard 1/27/16 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	Heard 11/04/15 in Jackson.

1.	Style	Elizabeth Eberbach v. Christopher Eberbach
2.	Docket Number	M2014-01811-SC-R11-CV
3.	Lower Court Decision Link	http://tncourts.gov/sites/default/files/eberbache.opn_0.pdf
4.	Lower Court Summary	This post-divorce case involves issues concerning reimbursement for the parties' children's uncovered medical expenses and an award of attorney's fees in favor of Mother. Father/Appellant contends that he is not responsible for the uncovered medical expenses on grounds that Mother/Appellee failed to timely send him copies of the bills as required under the permanent parenting plan. Father also contests the award of attorney's fees and costs. Discerning no error, we affirm and remand.
5.	Status	Heard 10/5/16 in Nashville.

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	Accepted Rule 23 certification order on 8/19/2016; TBH 11/2/16 in Jackson.

1.	Style	Rogelynn Emory v. Memphis City School Bd. of Educ., n/k/a Shelby Cnty. Bd. of Educ.
2.	Docket Number	W2014-01293-SC-R11-CV
3.	Lower Court Decision Link	http://tncourts.gov/sites/default/files/emoryrogelynnopn.pdf
4.	Lower Court Summary	This is an appeal by a tenured teacher seeking relief for the school board's failure to comply with the procedures set forth in the Tennessee Teacher Tenure Act for her termination. After receiving notice of charges pending against her, the teacher demanded a hearing before the school board. Pursuant to the Tenure Act, the school board was required to conduct a hearing on the charges within thirty days of the teacher's demand. The school board failed to do so. The trial court held that because the delay did not affect the outcome of the hearing, the school board's failure to comply with the Tenure Act was harmless and the teacher was not entitled to relief. On appeal, we conclude that Ms. Emory is entitled to an award of back pay for the number of days over thirty that she was suspended without pay and without a hearing following her demand for a hearing. We therefore reverse the judgment of the trial court and remand the case for a calculation of the proper amount of damages to which the teacher is entitled.
5.	Status	Heard 2/10/16 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 Application granted 9/23/16; Appellant brief due 10/23/16.

1. Style State v. Nicole Flowers

2. Docket Number M2014-01744-SC-R11-CD

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

4. Lower Court Summary The Defendant-Appellant, Nicole Flowers, was indicted by the Maury County Grand Jury for one count of stalking, a Class A misdemeanor. See T.C.A. § 39-17-315(b)(2) (Supp. 2012). Following a bench trial, Flowers was found guilty of the charged offense. The same day, the trial court imposed a sentence of eleven months and twenty-nine days to be served on supervised probation. On appeal, Flowers argues that the evidence is insufficient to support her conviction. Upon review, we affirm the judgment of the trial court.

5. Status Heard 9/8/16 in Knoxville.

1. Style Danny C. Garland, II v. BPR

2. Docket Number E2016-01106-SC-R3-BP

3. Lower Court Decision Link N/A

4. Lower Court Summary N/A

5. Status Notice of Appeal filed 6/1/16; Record filed 9/6/16; Appellant brief due 10/6/16.

1. Style State v. Stanley Bernard Gibson

2. Docket Number M2014-00598-SC-R11-CD

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

4. Lower Court Summary The defendant, Stanley Bernard Gibson, was charged with the possession of but convicted of facilitation of possession of .5 grams or more of cocaine with intent to deliver within 1000 feet of a drug-free school zone and sentenced, as a Range II, multiple offender, to twelve years at 100%. On appeal, he argues that the evidence is insufficient to support the verdict and that the court erred in ordering that he serve his sentence at 100%. Following our review, we affirm the

judgment of the trial court.

5. Status Heard 4/22/16 in Nashville.

1. Style Alexis Breanna Gladden v. Cumberland Trust and Investment Company, et al.

2. Docket Number E2015-00941-SC-R11-CV

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

4. Lower Court Summary
We granted an interlocutory appeal pursuant to Tenn. R. App. P. 9 in this case to consider whether the signature of the trustee of the Alexis Breanna Gladden Irrevocable Trust (“the Trust”) on an investment/brokerage account agreement agreeing to arbitration binds the minor beneficiary of the Trust to conduct arbitration of unknown future disputes or claims. We find and hold that while the plain language of the trust agreement does allow the trustee to agree to arbitrate claims and disputes that have arisen, it does not allow the trustee to agree to arbitration of unknown future disputes or claims. Therefore, the signature of the trustee of the Trust on an investment/brokerage account agreement agreeing to arbitration does not bind the minor beneficiary to conduct arbitration of unknown future disputes or claims.

5. Status Rule 11 application granted 8/18/2016; Appellant brief filed 9/19/16; Appellee brief due 10/19/16.

1. Style Charles Grogan v. Daniel Uggla, 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 Kim Hardy v. Tournament Players Club at Southwind, Inc., d/b/a “TPC Southwind,” et al.

2. Docket Number W2014-02286-SC-R11-CV

3. Lower Court

Decision Link	http://tncourts.gov/sites/default/files/hardykim.opn_.pdf http://tncourts.gov/sites/default/files/hardykimdis.pdf
4. Lower Court Summary	<p>This is an interlocutory appeal pursuant to Rule 9 of the Tennessee Rules of Appellate Procedure. In March 2014, Plaintiff food server/bartender filed an action alleging, in relevant part, that Defendants violated Tennessee Code Annotated § 50-2-107 by failing to pay her and other similarly situated employees all of the gratuities that they earned. Plaintiff further alleged that Defendants caused the gratuities to be shared with non-tipped employees. The trial court dismissed Plaintiff's claim under § 50-2-107 upon determining that the section does not permit a private cause of action in light of amendments to § 50-2-101 in 2013. We reverse and remand for further proceedings.</p>
5. Status	<p>Heard 5/25/16 at Boys State SCALES Project in Cookeville.</p>

1. Style	State v. James Hawkins
2. Docket Number	W2012-00412-SC-DDT-DD
3. Lower Court Decision Link	http://tncourts.gov/sites/default/files/hawkinsjamesdpopn.pdf
4. Lower Court Summary	<p>Defendant, James Hawkins, appeals from his Shelby County Criminal Court jury convictions of premeditated first degree murder, see T.C.A. ' 39-13-202(a)(1); initiating a false report, <i>see id.</i> § 39-16-502, a Class D felony; and abuse of a corpse, <i>see id.</i> § 39-17-312, a Class E felony. The jury sentenced Defendant to death for the first degree murder conviction based upon its findings that the defendant was previously convicted of one (1) or more felonies whose statutory elements involve the use of violence to the person, <i>see id.</i> § 39-13-204(i)(2); and that the defendant knowingly mutilated the body of the victim after death, <i>see id.</i> § 39-13-204(i)(13); and that these aggravating circumstances outweighed any mitigating circumstances beyond a reasonable doubt. For the remaining felonies, the trial court imposed an effective sentence of 18 years' incarceration to be served consecutively to the death sentence. On appeal, Defendant alleges that (1) the trial court erred by denying Defendant's motion to suppress his statements given to the police; (2) the trial court erred by refusing to accept Defendant's guilty pleas to counts two and three of the indictment; (3) the trial court erred by admitting statements made by the victim through the victim's children, through Melvin Gaither, and through an application for order of protection; (4) the trial court erred by admitting evidence of other acts in violation of Tennessee Rule of Evidence 404(b); (5) the trial court erred by admitting photographs of bone fragments taken from the victim;(6) the trial court erred by admitting crime scene photographs that had not been provided during pretrial discovery; (7) the trial court erred by permitting improper closing argument by the State; (8) the evidence is insufficient to support Defendant's conviction of first degree murder; (9) the trial court erred by not requiring the State to provide discovery concerning an ongoing investigation of sexual abuse committed by Defendant's father against Defendant's sisters for use in the penalty phase of the trial; (10) the trial court erred by denying Defendant's special jury instruction request to charge the jury on the presumption that any sentence imposed for the first degree murder conviction would be carried out according to the laws of this State; (11) myriad aspects of Tennessee's death penalty statutes and procedure are unconstitutional in general and as applied to</p>

Defendant; (12) the trial court imposed an excessive sentence in both length and manner of service relative to the sentences for filing a false report and abuse of a corpse; and (13) the cumulative effect of these errors violated Defendant's right to due process. As an additional issue, Defendant alleges that the trial court erred by denying his petition for writ of error coram nobis. Following oral argument at the Cecil C. Humphreys School of Law at the University of Memphis and this court's full consideration, we affirm the judgments of the trial court.

5. Status Appeal initiated 9/25/15; Appellant brief filed 1/11/16; State's brief filed 3/14/16; Order for supplemental briefing entered 6/24/16; Appellant supplemental brief filed 8/8/16; State's supplemental brief filed 9/14/16; TBH 11/2/16 in Jackson.

1. Style State v. Glen Howard

2. Docket Number E2014-01510-SC-R11-CD

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

4. Lower Court Summary Defendant, Glen B. Howard, was indicted by the Hamilton County Grand Jury with five counts of rape of a child and one count of aggravated sexual battery. After a jury trial, Defendant was found guilty of four counts of rape of a child and one count of aggravated sexual battery as charged and one count of aggravated sexual battery as a lesser included offense of rape of a child. He was sentenced to an effective sentence of fifty years in incarceration. After a thorough review of the record, and in light of *State v. John J. Ortega, Jr.*, No. M2014-01042-CCA-R3-CD, 2015 WL 1870095 (Tenn. Crim. App. Apr.23, 2015), we determine that Defendant's conviction for aggravated sexual battery as a lesser included offense of rape of a child was improper. We are unable to determine from the record whether the evidence supports a conviction for the next properly charged lesser included offense, child abuse. Consequently, we vacate the conviction for aggravated sexual battery. The remaining convictions and fifty year sentence are affirmed. Accordingly, the judgments of the trial court are affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion.

5. Status Heard 4/22/16 in Nashville.

1. Style Reginald Dion Hughes v. Tenn. Bd. of Probation and Parole

2. Docket Number M2015-00722-SC-R11-CV

3. Lower Court Decision Link N/A

4. Lower Court Summary Dismissed for failure to comply with Tennessee Code Annotated section 41-21-812.

5. Status Heard 6/2/16 at Girls State SCALES Project 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	<p>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.</p>
5.	Status	Application granted 5/9/16; Appellant brief filed 8/11/16; Appellee Family Dollar Stores of Tennessee, Inc. brief filed 9/12/16; Appellee Estate of Mae L. Chearis brief filed 9/13/16; Oral argument continued from 11/2/16.

1.	Style	State of Tennessee v. Christopher Scottie Itzol-Deleon
2.	Docket Number	M2014-02380-SC-R11-CD
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/itzoldeleonchristopherscottieopn.pdf http://www.tncourts.gov/sites/default/files/itzol-deleonchristopherscottie.dissent.pdf
4.	Lower Court Summary	The Defendant, Christopher Scottie Itzol-Deleon, was found guilty by a Davidson County Criminal Court jury of attempted aggravated sexual battery, a Class C felony, four counts of aggravated sexual battery, a Class B felony, and three counts of rape of a child, a Class A felony. See T.C.A. §§ 39-13-504 (2014) (aggravated sexual battery), 39-13-522 (2010, 2014) (rape of a child), 39-12-101 (2014) (criminal attempt). He received an effective forty-year sentence. On appeal, the Defendant contends that (1) the evidence is insufficient to establish the element of penetration for rape of a child in Counts 3 and 4, (2) the trial court erred in allowing separate convictions for attempted aggravated sexual battery and rape of a child in Counts 1 and 3 and for rape of a child in Counts 4 and 5, (3) the court erred in permitting testimony regarding the Defendant's excessive drinking, (4) the court erred in admitting a letter written by the victim to her mother, (5) the court erred in not redacting a portion of the Defendant's statement to the police, (6) the court erred in admitting the victim's school photograph, (7) the court erred in sentencing the Defendant as a Range II offender relative to his rape of a child convictions, and (8) the judgment in Count 6 contains a clerical error. We merge Count 1, attempted aggravated sexual battery, with Count 3, rape of a child. Although we affirm the convictions, we remand the judgments for Counts 1 and 3 for entry of amended judgments reflecting merger of the offenses. We also modify the Defendant's sentences relative to Counts 3, 4, and 5 to twenty-five years in each count at 100% service. Finally, we remand the judgment in Count 6 for the correction of clerical errors.
5.	Status	State's Rule 11 application granted 8/18/2016; Appellant brief filed 9/23/16; Appellee brief due 10/23/16.

1.	Style	Ewin B. Jenkins et al. v. Big City Remodeling et al.
2.	Docket Number	E2014-01612-SC-R11-CV
3.	Lower Court Decision Link	http://tncourts.gov/sites/default/files/jenkins.opinion.final2_.pdf http://tncourts.gov/sites/default/files/jenkins_v._big_city_remodeling_s_usano_concurring_in_part_.pdf
4.	Lower Court Summary	The plaintiffs filed this action to recover damages they incurred when, during construction, their home was completely destroyed by fire. The plaintiffs sued the project's general contractor as well as various subcontractors employed by the general contractor. The complaint included allegations of negligence, based in part on the doctrine of res ipsa loquitur, and breach of contract. The trial court granted summary judgment in favor of all defendants. The plaintiffs have appealed. We affirm the trial court's grant of summary judgment to the general contractor regarding claims based upon the general contractor's own negligence

and res ipsa loquitur, but we reverse the trial court’s grant of summary judgment regarding the negligence of the flooring subcontractors. We also reverse the trial court’s grant of summary judgment in favor of the general contractor regarding the plaintiffs’ breach of contract claim. Finally, we remand the case to the trial court for further proceedings consistent with this opinion.

5. Status Heard 9/8/16 in Knoxville.

1. Style Edward Martin v. Gregory Powers, et al.

2. Docket Number M2014-00647-SC-R11-CV

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

4. Lower Court Summary
Holder of an automobile liability insurance policy brought suit to recover for injuries sustained after being struck by a driver in a rental vehicle. The policy holder also sought coverage under the uninsured motorist coverage provision of his policy. Insurance carrier filed answer denying coverage and moved for summary judgment, contending that the policyholder was not entitled to coverage because the vehicle involved in the incident was owned by a rental car agency and, consequently, his damages did not arise out of the ownership, maintenance or use of an uninsured motor vehicle as required by the policy. The trial court held that the rental car agency was a self-insurer under Tennessee law and, consequently, the vehicle was not an “uninsured motor vehicle,” and granted the carrier’s motion. Policyholder appeals; finding no error, we affirm the judgment.

5. Status Heard 2/10/16 in Nashville.

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 Heard 11/04/15 in Jackson.

1. Style William Thomas McFarland v. Michael S. Pemberton, et al.

2. Docket Number E2014-02176-SC-R11-CV

3. Lower Court
Decision Link

http://tncourts.gov/sites/default/files/mcfarland_v_roane_co_election_commn.pdf

4. Lower Court
Summary

This case involves a challenge by a candidate for circuit judge to the qualifications of the winning candidate. William Thomas McFarland and Michael S. Pemberton were the only candidates in the August 7, 2014 election for Ninth Judicial District Circuit Judge. In March 2014, an eligible voter in the Ninth District, who is not a party to this suit, filed a complaint with the local election commission challenging Pemberton's eligibility to run for circuit judge, alleging he did not meet the residency requirement. The local election commission held a public hearing, and ultimately determined that Pemberton was eligible. Accordingly, his name was reflected on the ballot. He won the election. McFarland, who had knowledge of the March 2014 complaint and subsequent actions by the local election commission, then filed this election challenge, seeking to void the election results on the ground that Pemberton failed to satisfy the residency requirement. The trial court dismissed McFarland's claim as an untimely review of a quasi-judicial determination under Tenn. Code Ann. § 27-9-102 (Supp. 2015). McFarland appeals. We affirm.

5. Status Heard 9/8/16 in Knoxville.

1. Style Judith Moore-Pennoyer v. State of Tennessee, et al.

2. Docket Number E2015-01701-SC-R11-CV

3. Lower Court
Decision Link

<http://www.tncourts.gov/sites/default/files/pennoyeropn.pdf>

4. Lower Court
Summary

This is a Rule 9 interlocutory appeal for a determination as to whether a person who has prevailed in a judicial election, but not yet assumed the office of judge, acts as a "state officer or employee" for purposes of the waiver provision set forth in Tennessee Code Annotated section 9-8-307(b), when making administrative staffing provisions. The plaintiff filed this action alleging tortious interference with an employment relationship by the defendant, a newly elected circuit court judge. The defendant filed a motion to dismiss, alleging that he was entitled to immunity based upon his position as a state officer. Following a hearing, the trial court found that the defendant did not enjoy any form of immunity and that the waiver provision did not apply because he was not yet a state officer or employee when the actions at issue took place before he took the

oath of office and assumed his position. The court denied the motion to dismiss but granted permission to file an interlocutory appeal pursuant to Rule 9. We granted permission to appeal and now affirm the decision of the trial court.

5. Status Rule 11 application granted 8/18/16; Appellant brief filed 9/21/16; Appellee brief due 10/21/16.

1. Style Peter M. Napolitano v. BPR

2. Docket Number M2016-00869-SC-R3-BP

3. Lower Court Decision Link N/A

4. Lower Court Summary N/A

5. Status Notice of Appeal filed 4/20/16; Record filed 6/16/16; Appellant brief filed 9/6/16; Appellee brief filed 10/5/16; TBH 11/2/16 in Jackson.

1. Style State v. John Henry Pruitt

2. Docket Number M2013-02393-SC-R11-CD

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

4. Lower Court Summary A Hickman County jury found the Defendant, John Henry Pruitt, guilty of two counts of first degree murder, one count of attempted first degree murder, and three counts of aggravated assault. Thereafter, the jury sentenced the Defendant to life imprisonment without the possibility of parole for both the first degree murder convictions. The trial court imposed a consecutive sentence of twenty-five years for his attempted first degree murder conviction and concurrent six-year sentences for each of the three aggravated assault convictions. On appeal, the Defendant contends that the trial court erred when it denied his motion to suppress the evidence obtained during the execution of a search warrant. The Defendant also contends that the evidence is insufficient to sustain his convictions for first degree murder and attempted first degree murder, and that the evidence is insufficient to sustain his sentence of life without the possibility of parole. After a thorough review of the record and relevant law, we affirm the judgments of the trial court.

5. Status Heard 5/25/16 at Boys State SCALES Project in Cookeville.

1. Style State 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 Heard 09/30/15 at SCALES Project in Lebanon.

1. Style State v. Ray Rowland

2. Docket Number W2014-02311-SC-R11-CD

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

4. Lower Court Summary Ray Rowland ("the Defendant") filed a Motion for Return of Property pursuant to Rule 41(g) of the Tennessee Rules of Criminal Procedure. The trial court found that it did not have jurisdiction to hear the case and dismissed the Defendant's motion. On appeal, we conclude that the trial court does have jurisdiction. We reverse the judgment of the trial court and remand the case for a hearing.

5. Status Application granted 3/23/16; Appellant brief filed 4/25/16; Appellee brief filed 7/26/16; TBH 11/2/16 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	Application granted 9/22/16; Appellant brief due 10/22/16.
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1.	Style	State v. Rodney Stephens
2.	Docket Number	E2014-02514-SC-R11-CD
3.	Lower Court Decision Link	http://tncourts.gov/sites/default/files/stephensrodneyopn.pdf http://tncourts.gov/sites/default/files/stephensrodneydis.pdf
4.	Lower Court Summary	The Defendant, Rodney Stephens, was convicted by a Campbell County Criminal Court jury of aggravated stalking. T.C.A. § 39-17-315(c)(1)(E) (2010) (amended 2012). The court sentenced the Defendant to three years, with sixty days’ confinement and the remainder to be served on probation. On appeal, the Defendant contends that (1) the trial court erred in allowing the trial to proceed despite the absence of a police officer and (2) the evidence is insufficient to support the conviction. We modify the judgment of conviction for aggravated stalking to one for misdemeanor stalking, and we remand the case for sentencing and entry of a judgment of conviction for misdemeanor stalking.
5.	Status	Application granted 6/23/16; Appellant brief filed 8/8/16; Appellee brief filed 9/19/16.

1.	Style	Tennessee Department of Correction v. David Pressley
2.	Docket Number	M2015-00902-SC-R11-CV
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/pressleyd.opn_.pdf
4.	Lower Court Summary	Employee of the Tennessee Department of Correction filed an administrative appeal challenging the termination of his employment. The board of appeals reduced the termination to a fourteen-day suspension. On appeal to the trial court, the chancery court ruled that the burden of proof was improperly allocated to the Tennessee Department of Correction in the hearing before the board of appeals. We reverse the decision of the chancery court and conclude that the board of appeals properly allocated the burden to the Tennessee Department of Correction. We further conclude that no substantial and material evidence in the record exists to support the board of appeals' finding that the employee committed negligence in the performance of his duties. We also reverse the board of appeals' decision denying the employee's request for attorney's fees in the prosecution of his appeal to the board of appeals and remand to the board of appeals for a determination of those fees.
5.	Status	Application granted 9/23/16; Appellant brief due 10/23/16.

1.	Style	State v. Jerry Lewis Tuttle
2.	Docket Number	M2014-00566-SC-R11-CD
3.	Lower Court Decision Link	http://tncourts.gov/sites/default/files/tuttlejerryopnfinal.pdf http://tncourts.gov/sites/default/files/tuttlejerrydis.pdf
4.	Lower Court Summary	Following the execution of a search warrant for his property and residence, the Defendant-Appellant, Jerry Lewis Tuttle, was indicted by the Maury County Grand Jury in case number 21695 for possession of .5 grams or more of cocaine with intent to sell, possession of not less than one-half ounce nor more than ten pounds of marijuana with intent to sell, and being a felon in possession of a firearm. He was also indicted by the Maury County Grand Jury in case number 22091 for conspiracy to possess marijuana in an amount over 300 pounds with intent to sell or deliver within 1000 feet of a school, conspiracy to commit money laundering, money laundering, possession of a firearm with the intent to go armed during the commission of a dangerous felony, and acquiring or receiving property subject to judicial forfeiture pursuant to Tennessee Code Annotated section 39-11-703. The Defendant-Appellant filed motions to suppress the evidence seized and to dismiss the forfeiture count, which were denied by the trial court following a hearing. At trial, the Defendant-Appellant was convicted in case number 21695 of the lesser included offense of simple possession of cocaine and the charged offense of possession of marijuana with intent to sell; the count charging him with being a felon in possession of a firearm was dismissed. In case number 22091, the Defendant-Appellant was convicted of the lesser included offense of conspiracy to possess marijuana in an amount over 300 pounds with intent to sell or deliver as well as the charged offenses of conspiracy to commit money laundering, money laundering, and possession of a firearm with the intent to go armed during the commission of a

dangerous felony. Following a bench trial on the judicial forfeiture count, the trial court denied the forfeiture of several items seized but ordered the forfeiture of other items, including the \$1,098,050 that is at issue on appeal. After a sentencing hearing on the other counts, the trial court imposed an effective sentence of fifty years with a release eligibility of thirty-five percent. On appeal, the Defendant-Appellant argues: (1) that the search of his property violated his constitutional right against unreasonable searches and seizures because the affidavit in support of the search warrant did not provide probable cause for the issuing judge to believe that evidence of a crime would be found on his property and in his home; (2) the evidence is insufficient to sustain his conspiracy convictions; and (3) he is entitled to the return of the \$1,098,050 because the cash seized was obtained by him more than five years prior to the seizure and because the seizing agent failed to deliver a notice of seizure to him at the time the cash was seized. Upon review, we reverse the Defendant Appellant's convictions. However, we affirm the trial court's judgment in regard to the forfeiture proceedings.

5.	Status	Heard 10/5/16 in Nashville.
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1.	Style	Sandra L. Wallis v. Brainerd Baptist Church, et al.
2.	Docket Number	E2015-01827-SC-R11-CV
3.	Lower Court Decision Link	N/A
4.	Lower Court Summary	Denial of Rule 9 Appeal.
5.	Status	Heard 9/8/16 in Knoxville.
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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 Rule 11 application granted 8/18/16; Appellant brief filed 9/19/16; Appellee brief due 10/19/16.

1. Style In re: Paul Julius Walwyn, BPR #18263

2. Docket Number M2016-01507-SC-BAR-BP

3. Lower Court Decision Link N/A

4. Lower Court Summary N/A

5. Status Record filed 8/30/16; Appellant brief filed 9/28/16; Appellee brief due 10/28/16.

1. Style State v. Walter H. Webb

2. Docket Number M2014-01929-SC-R11-CD

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

4. Lower Court Summary Defendant, Walter H. Webb, was convicted by a Wilson County jury of one count of aggravated burglary, one count of aggravated assault, four counts of aggravated domestic assault, one count of employing a firearm during the commission of a dangerous felony, and one count of aggravated cruelty to animals. The trial court sentenced Defendant to a total effective sentence of twenty years' incarceration. On appeal, Defendant argues that the trial court erred by failing to dismiss the charge of employing a firearm during the commission of a dangerous felony on the ground that it violated the protection against double jeopardy, that the State failed to prove the requisite mens rea for aggravated assault, and that the trial court erred in determining the length of Defendant's sentences and ordering that some of the sentences run consecutively. Upon our review of the record, we conclude that Defendant's convictions do not violate double jeopardy principles, that the evidence is sufficient to sustain Defendant's convictions, and that the trial court did not err in determining the length of Defendant's sentences. After de novo review of Defendant's consecutive sentences, we affirm the alignment of the sentences imposed by the trial court.

5. Status Application granted 4/13/16; Appellant brief filed 7/13/16, after two extensions; Appellee brief filed 8/12/16; TBH February 2017.

1.	Style	Stephen West, et al. v. Derrick Schofield, et al.
2.	Docket Number	M2015-01952-SC-RDM-CV
3.	Lower Court Decision Link	N/A
4.	Lower Court Summary	Supreme Court assumed jurisdiction pursuant to Tennessee Code Annotated section 16-3-201(d)(1).
5.	Status	Heard 10/6/16 in Nashville.

1.	Style	State v. Thomas William Whited
2.	Docket Number	E2013-02523-SC-R11-CD
3.	Lower Court Decision Link	http://tncourts.gov/sites/default/files/whitedopn_0.pdf http://tncourts.gov/sites/default/files/whitedthomasdis.pdf
4.	Lower Court Summary	The defendant, Thomas William Whited, was convicted of nine counts of especially aggravated sexual exploitation of a minor, a Class B felony; one count of attempted especially aggravated sexual exploitation of a minor, a Class C felony; thirteen counts of observation without consent, a Class A misdemeanor; and one count of attempted observation without consent, a Class B misdemeanor. The defendant received an effective sentence of twenty-two years. On appeal, the defendant argues that: (1) the evidence is insufficient to support a finding that the defendant used a minor in the production of material that included the minor engaging in “sexual activity”; (2) the trial court erred in refusing to provide the jury with his proposed special instructions; (3) the trial court erred in refusing to permit cross-examination of the victims at the sentencing hearing; and (4) the trial court erred in imposing consecutive sentencing. After a thorough review of the record, the briefs of the parties, and the applicable law, we affirm the judgment of the criminal court.
5.	Status	Heard 1/27/16 in Knoxville.
