

Supreme Court Appeals
Pending Cases
4-12-21

1.	Style	Affordable Construction Services, Inc. et al. v. Auto-Owners Insurance Company et al.
2.	Docket Number	M2020-01417-SC-R23-CV
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	Heard 2/24/21 in Nashville (on briefs).

1.	Style	State of Tennessee v. Tyshon Booker
2.	Docket Number	E2018-01439-SC-R11-CD
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/tyshon_booker_cca_majority_opinion.pdf
4.	Summary	<p>During a botched robbery, sixteen-year-old Tyshon Booker, the Defendant-Appellant, shot and killed the victim, G'Metrick Caldwell. Following extensive hearings in juvenile court, the Defendant was transferred to criminal court to be tried as an adult. At trial, the Defendant admitted that he shot the victim several times in the back while seated in the backseat of the victim's car; however, he claimed self-defense. A Knox County jury convicted the Defendant of two counts of first-degree felony murder and two counts of especially aggravated robbery, for which he received an effective sentence of life imprisonment. In this appeal as of right, the Defendant raises the following issues for our review: (1) whether the process of transferring a juvenile to criminal court after a finding of three statutory factors by the juvenile court judge violates the Defendant's rights under <u>Apprendi v. New Jersey</u>, 530 U.S. 466 (2000); (2) whether the State's suppression of alleged eyewitness identifications prior to the juvenile transfer hearing constitutes a Brady violation, requiring remand for a new juvenile transfer hearing; (3) whether the juvenile court erred in transferring the Defendant to criminal court given defense expert testimony that the Defendant suffered from post-traumatic stress disorder (PTSD) and was amenable to treatment; (4) whether the trial court erred in finding that the Defendant was engaged in unlawful activity at the time of the offense and in instructing the jury that the Defendant had a duty to retreat before engaging in self-defense; (5) whether an improper argument by the State in closing arguments constitutes prosecutorial misconduct requiring a new trial; (6) whether evidence of juror misconduct warrants a new trial and whether the trial court erred in refusing to subpoena an additional juror; (7) whether a sentence of life imprisonment for a Tennessee juvenile violates the United States and Tennessee Constitutions. Discerning no reversible error, we affirm.</p>
5.	Status	Heard 2/24/21 in Nashville (by video).

1.	Style	Donna Cooper, et al. v. Dr. Mason Wesley Mandy, et al.
2.	Docket Number	M2019-01748-SC-R11-CD
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/cooper.donna_.open_.pdf
4.	Lower Court Summary	<p>The principal issue in this interlocutory appeal is whether intentional misrepresentations made by health care providers to induce a prospective patient to engage the health care providers' services are within the purview of the Tennessee Health Care Liability Act ("the Act"), Tenn. Code Ann. § 29-26-101 to -122. The complaint filed by the patient, Donna Cooper ("Mrs. Cooper"), and her husband alleges that Dr. Mason Wesley Mandy ("Dr. Mandy") and Rachelle Norris ("Ms. Norris") with NuBody Concepts, LLC, intentionally misrepresented that Dr. Mandy was a board-certified plastic surgeon and, based on their misrepresentation, Mrs. Cooper gave Dr. Mandy her consent to perform the surgery. Following "painful, disastrous results," the plaintiffs asserted four claims: (1) intentional misrepresentation; (2) medical battery; (3) civil conspiracy; and (4) loss of consortium. Defendants filed a Tenn. R. Civ. P. 12 motion to dismiss for failure to comply with the presuit notice and filing requirements of the Act, specifically Tenn. Code Ann. §§ 29-26-121 and -122. The trial court denied the motion to dismiss, finding the Act did not apply. This interlocutory appeal followed. We hold that Mrs. Cooper is entitled to proceed on her claims of intentional misrepresentation and civil conspiracy because the alleged misrepresentations were inducements made prior to the existence of a patient-physician relationship; thus, the claims were not related to "the provision of . . . health care services." See Tenn. Code Ann. § 29-26-101(a)(1). We also affirm its ruling on the medical battery claim because a physician's misrepresentation of a material fact, if proven, may vitiate consent, and, without consent, the very act of touching Mrs. Cooper may constitute an unlawful and offensive act that is not related to the provision of health care services. See <i>Holt v. Alexander</i>, No. W2003-02541-COA-R3-CV, 2005 WL 94370, at *6 (Tenn. Ct. App. Jan. 13, 2005). Further, we affirm the trial court's ruling on Mr. Cooper's claim for loss of consortium because, as the trial court held, his claims relate to Dr. Mandy's and Ms. Norris's false representations of Dr. Mandy's credentials, not to a provision of, or a failure to provide, a health care service. Accordingly, we affirm the trial court in all respects and remand for further proceedings consistent with this opinion.</p>
5.	Status	Application granted 4/7/21; Appellant brief due 5/7/21.

1.	Style	State of Tennessee v. Craig Dagnan
2.	Docket Number	M2020-00152-SC-R11-CD
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/dagnan.craig_.open_.pdf https://www.tncourts.gov/sites/default/files/dagnan.craig_.openseparate-judge_easter-concur.pdf
4.	Lower Court Summary	<p>Craig Dagnan, Defendant, violated the conditions of probation, and the trial court revoked his probation but ordered his probation reinstated after eleven months and twenty-nine days' incarceration. Defendant was granted a furlough from jail to attend an inpatient drug and alcohol program. After being dismissed from the inpatient program, Defendant failed to report back to jail and absconded. He was charged with escape, and a revocation warrant was issued. He was apprehended in Georgia and returned to Tennessee. Following a hearing, the trial court revoked Defendant's</p>

probation and ordered Defendant to serve the balance of his six-year sentence. Discerning no error, we affirm.

5. Status Application granted 4/7/21; Appellant brief due 5/7/21.

1. Style Mindy Donovan v. Joshua R. Hastings

2. Docket Number M2019-01396-SC-R11-CV

3. Lower Court Decision Links https://www.tncourts.gov/sites/default/files/donovan.mindy_opn.pdf
https://www.tncourts.gov/sites/default/files/donovan.mindy_sep_opn.pdf

4. Lower Court Summary The trial court dismissed a contractor's amended countercomplaint against a homeowner for failure to state a claim upon which relief could be granted. The court then awarded the homeowner her attorney fees in the amount of \$3,600 pursuant to Tenn. Code Ann. § 20-12-119(c). The homeowner appealed arguing that, in limiting her recovery to \$3,600, the trial court interpreted the statute too narrowly. Because the trial court properly interpreted the statute, we affirm the trial court's decision.

5. Status Application granted 4/7/21; Appellant brief due 5/7/21.

1. Style Tyree Harris, IV v. Board of Professional Responsibility of the Supreme Court of Tennessee

2. Docket Number M2020-01113-SC-R3-BP

3. Lower Court Decision Links N/A

4. Lower Court Summary N/A

5. Status Notice of Appeal filed 8/19/20; Appellate record received 12/3/20; Appellate record filed 3/3/21; Appellant's brief due 5/3/21 (by Court Order 3/19/21).

1. Style In re: Loring Edwin Justice

2. Docket Number E2020-01089-SC-R3-BP

3. Lower Court Decision Links N/A

4. Lower Court Summary N/A

5. Status Heard 3/31/21 in Jackson (on briefs).

1. Style Stephen Kampmeyer et al. v. State of Tennessee

2. Docket Number W2019-01196-SC-R11-CV

3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/kampmeyer.steven.opn_.pdf
4.	Lower Court Summary	Appellants, Husband and Wife, filed a complaint for damages, including Wife's loss of consortium claim, with the Tennessee Claims Commission. The State filed a Tennessee Rule of Civil Procedure 12.02(6) motion to dismiss Wife's loss of consortium claim because she did not file notice of her claim with the Division of Claims Administration within the applicable statute of limitations. The Claims Commission dismissed Wife's claim for failure to comply with the notice requirement. See Tenn. Code Ann. § 9-8- 402(b). Discerning no error, we affirm.
5.	Status	Application granted 1/13/21; Appellants' brief filed 2/12/21; Appellee's brief filed 3/11/21; TBH 4/28/21 in Knoxville.
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1.	Style	Metropolitan Government of Nashville and Davidson County et al. v. Tennessee Department of Education, et al.
2.	Docket Number	M2020-00683-SC-R11-CV
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/metropolitangov.ofnash.v.tndepart.ofedu_.opn_.pdf
4.	Lower Court Summary	Davidson and Shelby counties sued the State of Tennessee to challenge the constitutionality of the Tennessee Education Savings Account Pilot Program. The trial court found that both counties had standing and that the act was unconstitutional under paragraph 2 of article XI, section 9 of the Tennessee Constitution. The State and intervening defendants appealed. We affirm.
5.	Status	Application granted 2/4/21; Appellants' brief filed 3/8/21; Appellees' briefs filed 4/7/21.
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1.	Style	Milan Supply Chain Solutions Inc. f/k/a/ Milan Express Inc. v. Navistar Inc. et al.
2.	Docket Number	W2018-00084-SC-R11-CV
3.	Lower Court Decision Links	http://www.tsc.state.tn.us/sites/default/files/milansupplychainopn.pdf
4.	Lower Court Summary	This appeal involves a jury verdict in a commercial dispute pertaining to the quality of trucks purchased by the plaintiff, Milan Supply Chain Solutions, Inc. Contending that the purchased trucks were defective, Milan filed suit against Navistar, Inc. and Volunteer International, Inc., alleging various legal claims, including breach of contract, violation of the Tennessee Consumer Protection Act, and fraud. Although some of Milan's claims were dismissed prior to trial, the remaining fraud and Tennessee Consumer Protection Act claims were tried before a jury. Defendant Volunteer International, Inc. was granted a directed verdict upon the conclusion of Milan's proof and later awarded attorney's fees, but a monetary judgment for both compensatory and punitive damages was entered against Navistar, Inc. The parties now appeal, raising a plethora of issues for our consideration. For the reasons stated herein, including our conclusion that the asserted fraud claims are barred by the economic loss doctrine, we reverse the judgment awarded to Milan. We affirm, however, the trial court's award of attorney's fees in favor of Volunteer International, Inc.

5. Status Heard 11/4/20 in Jackson (by video).

1. Style State of Tennessee v. Urshawn Eric Miller

2. Docket Number W2019-00197-SC-DDT-DD

3. Lower Court Decision Links https://www.tncourts.gov/sites/default/files/miller_urshawn_eric_opn.pdf

4. Lower Court Summary Defendant, Urshawn Eric Miller, was convicted by a Madison County jury of premeditated first-degree murder, felony first degree murder, attempted especially aggravated robbery, attempted second degree murder, aggravated assault, employing a firearm during the commission of a dangerous felony, evading arrest, and resisting arrest. The trial court merged the felony murder conviction into the premeditated murder conviction and the aggravated assault conviction into the attempted second-degree murder conviction. The jury sentenced Defendant to death for the first-degree murder conviction. For the remaining convictions, the trial court imposed an effective sentence of thirty years, to be served concurrently with his death sentence. On appeal, Defendant raises the following issues, as renumbered and reorganized by this Court: (1) the evidence was insufficient to sustain his convictions; (2) the trial court erred in ruling on various challenges during jury selection; (3) the trial court erred in admitting a video of his prior aggravated robbery during the penalty phase; (4) the death penalty is unconstitutional; (5) the aggravating factors did not outweigh the mitigating factors beyond a reasonable doubt; and (6) the death penalty is disproportionate in this case. Having carefully reviewed the record before us, we affirm the judgments of the trial court. However, we remand the case to the trial court for the correction of a clerical error.

5. Status Direct Death Penalty Transfer 9/3/20; Appellant's brief filed 10/30/20; Appellant's Motion to Supplement Record Denied 11/3/20; Appellant's Motion to Exceed Page Limitation Granted 11/3/20; Appellee's brief filed 11/30/20; Appellant's Motion to Continue Oral Argument granted 3/16/21; TBH 6/3/21 or 6/4/21 by Order filed 3/16/21.

1. Style Ritchie Phillips et al. v. Mark Hatfield

2. Docket Number E2019-00628-SC-R11-CV

3. Lower Court Decision Links https://www.tncourts.gov/sites/default/files/phillips_v._hatfield_e2019-00628.pdf

4. Lower Court Summary In this declaratory judgment action involving neighboring landowners in a residential development, the trial court determined that the restrictive covenants applicable to the development would prevent the defendant from constructing a commercial business on his property. The trial court accordingly entered an injunction preventing the defendant from constructing a business on his real property. The defendant has appealed. Discerning no reversible error, we affirm.

5. Status Heard 11/4/20 in Jackson (by video).

1.	Style	Regions Bank v. Nathan I. Pager
2.	Docket Number	W2019-00782-SC-R11-CV
3.	Lower Court Decision Links	Majority - https://www.tncourts.gov/sites/default/files/pragernathanopn.pdf Dissent - https://www.tncourts.gov/sites/default/files/pragernathandis.pdf
4.	Lower Court Summary	This appeal arose from a dispute involving an unpaid promissory note. In May 2014, Plaintiff filed its first suit for breach of contract. The trial court dismissed the case under Rule 41.02 for failure to prosecute. Opposing the dismissal, Plaintiff filed a Motion to Reconsider. The trial court denied Plaintiff's motion and stated the dismissal was neither "with nor without prejudice" and that Plaintiff was "welcome to refile." Relying on the trial court's statements, Plaintiff declined to appeal and filed a second action. Defendant filed a Motion to Dismiss the second suit, arguing it is barred by res judicata. The trial court granted Defendant's motion and denied Plaintiff's subsequent Motion to Reconsider. The majority of the Court of Appeals agreed with the trial court's dismissal of this suit and subsequent denial of Plaintiff's Motion to Reconsider. The majority therefore affirmed the circuit court's decision and remand. The dissenting opinion determined that the Defendant had not met its burden to show all the elements of res judicata.
5.	Status	Heard 1/6/20 in Knoxville (by video).

1.	Style	State of Tennessee v. Terrell Lamont Reid
2.	Docket Number	W2019-00636-SC-R11-CD
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/reid_terrell_lamont_opn.pdf
4.	Lower Court Summary	The Defendant, Terrell Lamont Reid, pursuant to a plea agreement, pleaded guilty to possession of cocaine with intent to sell and to possession of a firearm by a convicted felon and received an effective seventeen-year sentence. He filed a motion pursuant to Tennessee Rule of Criminal Procedure 36.1 alleging that his sentence was illegal because his firearm offense sentence was enhanced under the criminal gang enhancement statute. The trial court summarily dismissed the motion after determining that the sentence was not illegal. On appeal, he contends that the trial court erred by denying relief because the enhanced sentence for his firearm conviction was unconstitutional and illegal. We reverse the judgment of the trial court.
5.	Status	Opinion filed 3/26/21.

1.	Style	State of Tennessee v. Jeremy Reynolds
2.	Docket Number	E2018-01732-SC-R11-CD
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/jeremy_reynolds_corrected_opinion.pdf
4.	Lower Court Summary	The Defendant, Jeremy Reynolds, appeals his Hamilton County Criminal Court jury conviction for first degree premeditated murder. See Tenn. Code Ann. § 39-13-202. On appeal, the Defendant argues that (1) the evidence was insufficient to support his conviction; (2) the trial court erred by admitting evidence that the Defendant and other

individuals were gang members in violation of Tennessee Rules of Evidence 403 and 404(b); (3) exculpatory evidence, namely the victim's gunshot residue test and a photograph referenced by the gang report, were improperly withheld by the State; (4) the trial court erred by failing to compel the State to produce the above-referenced gunshot residue test and photograph; and (5) the cumulative effect of these errors deprived the Defendant of a fair trial. After a thorough review of the record and applicable law, we conclude that the evidence is insufficient relevant to premeditation and that some of the evidence relative to gangs was improperly admitted. We remand for a new trial on one count of second degree murder, in which some gang evidence shall be excluded.

5. Status Heard 3/31/21 in Jackson (by video).

1. Style State of Tennessee v. Michael Rimmer

2. Docket Number W2017-00504-SC-DDT-DD

3. Lower Court Decision Links https://www.tncourts.gov/sites/default/files/rimmer_michael_opn.pdf

4. Lower Court Summary The Defendant, Michael Rimmer, was convicted by a Shelby County jury of first-degree premeditated murder, first degree felony murder, and aggravated robbery. T.C.A. §39- 13-202(1), (2) (Supp. 1998) (first degree murder), §39-13-402 (1997) (aggravated robbery). The trial court merged the felony murder conviction into the premeditated murder conviction. The jury sentenced the Defendant to death for the first-degree murder conviction, and the trial court sentenced him to eighteen years for the aggravated robbery conviction and ordered it to be served consecutively to the sentence for the murder conviction. On appeal, the Defendant contends that: (1) the evidence is insufficient to support his convictions for first degree murder and aggravated robbery; (2) the trial court erred in denying his motion to dismiss the felony murder charge; (3) the trial court erred in denying his motion to suppress DNA evidence; (4) the trial court erred in not striking the State's opening statement or declaring a mistrial based on a comment made by the State; (5) the trial court erred in admitting evidence of the Defendant's prior convictions; (6) the trial court erred in limiting the testimony of William Baldwin; (7) the trial court erred in admitting a drawing of the backseat of the Honda the Defendant was driving when he was arrested; (8) the trial court erred in finding James Allard was unavailable and allowing his testimony from the previous trial to be entered into evidence; (9) the trial court erred in admitting hearsay testimony through witness Rhonda Bell; (10) the trial court erred in allowing Chris Ellsworth to display his scars to the jury; (11) the trial court erred in allowing hearsay testimony through witness Tim Helldorfer; (12) the trial court erred in limiting the testimony of Tim Helldorfer regarding a photograph identification and the release of the Honda from police custody; (13) the trial court erred in allowing Joyce Carmichael to testify about Tommy Voyles; (14) the trial court erred in admitting previous testimony of deceased or otherwise unavailable witnesses; (15) the trial court erred in admitting Richard Rimmer's prior statement and related exhibits as substantive evidence; (16) the trial court erred in limiting the testimony of Kenneth Falk; (17) the trial court erred in limiting the testimony of Marilyn Miller; (18) the trial court erred in excluding documents relating to a lawsuit involving the Shelby County Jail; and 05/21/2019 - 2 - (19) the trial court erred in applying an aggravating factor and imposing a consecutive sentence for the aggravated robbery conviction. Following our review, we affirm the judgments of the trial court.

5. Status Heard 11/4/20 in Jackson (by video).

1.	Style	Snake Steel, Inc. v. Holladay Construction Group, LLC.
2.	Docket Number	M2019-00322-SC-R11-CV
3.	Lower Court Decision Links	http://tncourts.gov/sites/default/files/snakesteel.opn_.pdf
4.	Lower Court Summary	A subcontractor sought statutory penalties against a prime contractor based on the contractor's failure to comply with the Prompt Pay Act's requirement that any retainage withheld be deposited into an interest-bearing escrow account as set forth in Tenn. Code Ann. § 66-34-104(a). The prime contractor moved to dismiss the complaint, asserting that the claim was barred by the one-year statute of limitations applicable to statutory penalties, Tenn. Code Ann. § 28-3-104(a)(1)(C). The trial court granted the prime contractor's motion and dismissed the complaint. On appeal, we hold that the discovery rule applies to this type of claim for statutory penalties under the Prompt Pay Act and remand for further proceedings.
5.	Status	Heard 9/30/20 in Nashville (by video).

1.	Style	Board of Professional Responsibility of the Supreme Court of Tennessee v. Charles Edward Walker
2.	Docket Number	M2021-00099-SC-R3-BP
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	Notice of Appeal filed in Court of Appeals 1/27/21; Appellate record received 3/22/21; Case transferred to Supreme Court 4/1/21.

1.	Style	State of Tennessee v. Edward Walsh
2.	Docket Number	M2019-00989-SC-R11-CD
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/walsh_edward_-_correction.pdf
4.	Lower Court Summary	In October of 2015, Defendant, Edward Walsh, was indicted by the Clay County Grand Jury for first degree murder, abuse of a corpse, tampering with evidence, and theft of property. The theft of property charge was severed, and the tampering with evidence charge was nolle before trial. After a jury trial, Defendant was found guilty of first-degree murder and abuse of a corpse. The trial court sentenced Defendant to life imprisonment for the murder conviction and a concurrent two-year sentence for the abuse of a corpse conviction. On appeal, Defendant argues that the trial court erred in not severing the offenses of first-degree murder and abuse of a corpse, that the trial court erred in admitting hearsay, that the trial court was not impartial, that the State's closing argument was based on inferences from facts not in evidence, and that

evidence was insufficient to prove first degree murder. After a thorough review of the record, we affirm the judgments of the trial court.

5. Status Application granted 1/15/21; Appellant's brief filed 3/18/21 (extension granted 2/18/21); Appellee's Motion to Dismiss and Stay Briefing filed 4/9/21.
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1. Style Cynthia E. Yebuah et al. v. Center for Urological Treatment, PLC
2. Docket Number M2018-01652-SC-R11-CV
3. Lower Court Decision Links http://www.tncourts.gov/sites/default/files/yebuah.maj_.opn_0.pdf
4. Lower Court Summary Following surgery to remove a cancerous kidney, part of a gelport device was left inside the patient. The patient and her husband brought this health care liability action against multiple defendants, including the surgeon who removed the kidney and the radiologist who initially failed to detect the foreign object. The defendants admitted fault, so the trial focused solely on causation and damages. The jury returned a verdict in favor of the plaintiffs and awarded \$4 million in noneconomic damages to the patient for pain and suffering and loss of enjoyment of life and \$500,000 in noneconomic damages to her husband for loss of consortium. The trial court initially applied the statutory cap on noneconomic damages to the total damages award and entered a judgment of \$750,000 in favor of both plaintiffs. In response to the plaintiffs' motion to alter or amend, the trial court issued a revised judgment of \$750,000 in favor of the patient and \$500,000 in favor of the husband. But the court refused to address the plaintiffs' arguments premised on the constitutionality of the statutory cap, ruling that the issue had been waived. The court also denied the defendant's motion for a new trial or for a remittitur. Upon review, we conclude that the trial court erred in refusing to consider the plaintiffs' constitutional issue. But because we also conclude that the statutory cap on noneconomic damages is constitutional and was applied properly and that the defendant is not entitled to a new trial or a remittitur, we affirm.
5. Status Heard 1/6/20 in Knoxville (by video).