

Supreme Court Appeals
Pending Cases
7-1-16

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 Application granted 3/23/16; Appellant brief filed 5/9/16; Appellee brief due 7/11/16, after extension; TBH 10/5/16 in Nashville.

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1. Style Donriel A. Borne v. Celadon Trucking Services, Inc.
 2. Docket Number W2013-01949-SC-R11-CV
 3. Lower Court Decision Link <http://www.tncourts.gov/sites/default/files/bornedonrielaopn.pdf>
<http://www.tncourts.gov/sites/default/files/bornedis.pdf>
 4. Lower Court Summary
Plaintiff was injured in an accident involving three tractor-trailer trucks. Plaintiff, who was driving a tractor-trailer, sued the other truck drivers and the trucking company owners of the vehicles. However, prior to trial, Plaintiff entered into an agreement with one of the trucking companies whereby Plaintiff and the agreeing defendant agreed to cooperate regarding the litigation and to work together to expose the defenses asserted by the non-agreeing defendant. The jury returned an itemized verdict of \$3,705,000 for the Plaintiff against the non-agreeing defendant. The trial court denied the non-agreeing defendant's motion for a new trial, but it suggested a remittitur of \$1,605,000, for a total award of \$2,100,000. Plaintiff accepted the remittitur under protest and the non-agreeing defendant appealed to this Court. For the following reasons, we affirm in part and we reverse in part. Specifically, we affirm the physical pain and mental anguish and permanent injury awards as reduced by the trial court; we

reverse the trial court's suggested remittitur of the loss of earning capacity award and we instead reinstate the jury verdict of \$1,455,000; and we further reduce the loss of enjoyment of life award to \$50,000. Thus, we approve a total award to Plaintiff of \$2,105,000.

5.	Status	Heard 11/05/15 in Memphis.
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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.
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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 brief due 7/23/16.
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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 Application granted 2/18/16; Appellant brief filed 3/21/16; Appellee brief filed 5/4/16; Reply brief filed 5/18/16; TBH 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/christensenjamesrobertjroprn.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.
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1.	Style	George Larry Clendening v. EAN Holdings, LLC, d/b/a Enterprise Rent-a-car
2.	Docket Number	M2016-00800-SC-R9-WC
3.	Lower Court Decision Link	N/A
4.	Lower Court Summary	N/A
5.	Status	Rule 9 application granted 6/24/16; Record not yet filed.

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

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

5. Status 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	Application granted 4/6/16; Appellant notice of reliance on brief included with R.11 application filed 4/13/16; Appellee brief filed 5/6/16; Reply brief filed 5/27/16; TBH 10/5/16 in Nashville.

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	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 Application granted 2/19/16; Appellant brief filed 3/21/16; Appellee brief filed 5/2/16; TBH 10/5/16 in Nashville.

1. Style Clark Derrick Frazier v. State

2. Docket Number M2014-02374-SC-R11-ECN

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

4. Lower Court Summary
The Petitioner, Clark Derrick Frazier, challenges the denial of his petition for writ of error coram nobis. On appeal, the Petitioner argues that, had he known about the results from the DNA analysis performed on items found at the scene, he would have elected not to plead guilty. After a review of the record and applicable law, we conclude that the Petitioner failed to prove that the results from the DNA analysis were newly discovered evidence or that he was without fault in failing to present the evidence at the proper time. Additionally, we conclude that, even if the evidence was newly discovered, the Petitioner failed to establish that it may have resulted in a different judgment. Accordingly, we affirm the judgment of the coram nobis court.

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

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 not yet filed.

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 Charles Grogan v. Daniel Ugglá, 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 Application granted 2/18/16; Appellant brief filed 4/19/16; Appellee brief filed 6/20/16; TBH 10/6/16 in Nashville.

1. Style State v. Gary Hamilton

2. Docket Number E2014-01585-SC-R11-CD

3. Lower Court Decision Link http://tncourts.gov/sites/default/files/hamiltongary.opn_1.pdf

4. Lower Court Summary
Gary Hamilton ("the Defendant") seeks interlocutory review of the district attorney general's denial of his application for pretrial diversion and the trial court's affirmance of that denial. The Defendant, a former teacher's assistant, was charged with assault after engaging in an altercation with a student at the school where he was employed. The district attorney general denied the Defendant's application for pretrial diversion. The Defendant filed a petition for writ of certiorari to the trial court, challenging the denial, and the trial court upheld the district attorney general's decision. On appeal, the Defendant argues that the district attorney general abused his discretion in denying pretrial diversion and that the trial court erred when it found no abuse of discretion. Upon review of the record and applicable law, we hold that the trial court did not properly review the district attorney general's decision to deny pretrial diversion. Additionally, although the district attorney general considered all the relevant pretrial diversion factors and did not consider any irrelevant factors, the record does not contain substantial evidence supporting the denial of pretrial diversion. Accordingly, we reverse the decision of the trial court and remand

with instructions that the Defendant be granted pretrial diversion.

5. Status Heard 4/22/16 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 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.

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

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 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, *see id.* § 39-16-502, a Class D felony; and abuse of a corpse, *see id.* § 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, *see id.* § 39-13-204(i)(2); and that the defendant knowingly mutilated the body of the victim after death, *see id.* § 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 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 due 8/8/16; State's supplemental brief due 9/22/16.

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 <i>State v. John J. Ortega, Jr.</i> , 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</p>

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 Application granted 5/9/16; Briefing schedule stayed pending resolution of motion to consider post-judgment facts.

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](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 Application granted 4/6/16; Appellant brief filed 5/5/16; Appellee Big City Remodeling brief filed 6/3/16; Appellees Ewin B. Jenkins and Janet B. Jenkins brief filed 6/6/16; TBH 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 Application granted 3/24/16; Appellant brief filed 4/22/16; Appellees Roane County Election Commission and Mark Goins brief filed 6/6/16; Appellee Michael Pemberton brief filed 6/7/16; TBH 9/8/16 in Knoxville.

1. Style In re: Estate of Edward Stephen McRedmond

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

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

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

5. Status Heard 10/01/15 in Nashville.

1. Style MLG Enterprises, LLC v. Richard Johnson

2. Docket Number M2014-01205-SC-R11-CV

3. Lower Court

Decision Link http://tncourts.gov/sites/default/files/mlgenterprises.opn_.pdf

4. Lower Court Summary

The lessor of commercial property brought this action for breach of a lease agreement against the tenant, a limited liability company, and the tenant's president/owner, Richard Johnson, whom Plaintiff contends agreed to be personally liable for "all of tenant's obligations" under the lease. Mr. Johnson signed the lease in two places. It is undisputed that his first signature was in a representative capacity on behalf of the tenant; the disputed issue is whether his second signature expresses a clear intent to be personally liable for the tenant's obligations. After a default judgment was entered against the tenant, Mr. Johnson's alleged personal liability was tried without a jury. At the close of Plaintiff's proof, Mr. Johnson made an oral motion for involuntary dismissal. The trial court granted the motion, concluding that Mr. Johnson did not personally agree to be liable for the tenant's obligations. This determination was based on the findings that Mr. Johnson was entitled to the presumption that he signed the lease in a representative capacity because he handwrote the words "for Mobile Master Mfg. L.L.C." after his second signature, and that the sole provision in the lease, which states that he agreed to be personally liable, was not in capital or bold letters, nor was the one-sentence paragraph indented or otherwise emphasized. The court also noted that the signature provision at issue did not bear the title Guarantor. Plaintiff appealed. As the foregoing indicates, our review is benefited by the trial court's Tenn. R. Civ. P. 41.02 findings of facts and conclusions of law, which disclose the reasoned steps by which the trial court reached its ultimate conclusion and enhance the authority of the trial court's decision. Having reviewed the trial court's findings of fact in accordance with Tenn. R. App. P. 13(d), we have concluded that the evidence does not preponderate against the trial court's findings, and that the trial court identified and properly applied the applicable legal principles. For these reasons, we affirm.

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

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 due 7/16/16.

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/pruittjhpn.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 due 7/25/16, after two extensions.
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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/stephensrodneypn.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 due 7/23/16.
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1. Style
State v. Susan Gail Stephens
2. Docket Number
M2014-01270-SC-R11-CD
3. Lower Court Decision Link
http://www.tsc.state.tn.us/sites/default/files/stephenssusangail.opn_.pdf
4. Lower Court Summary
In this interlocutory appeal, Susan Gail Stephens (“the Defendant”) challenges the prosecutor’s denial of her application for pretrial diversion. She asks this court to remand the case to the prosecutor with instructions that the Defendant be granted pretrial diversion. She also asks us to instruct the prosecutor to grant pretrial diversion nunc pro tunc to the Defendant’s 2012 update to her application for pretrial diversion. Upon review, we find that there is no substantial evidence in the record to support the denial of pretrial diversion. Accordingly, we reverse the order of the trial court and remand the case to the trial court with instructions that the Defendant be granted pretrial diversion upon the terms and conditions of the diversion to be established by the trial court. However, we decline to instruct that pretrial diversion be granted nunc pro tunc

to 2012.

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

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 Application granted 2/18/16; Appellant brief filed 3/18/16; Amicus brief filed 4/1/16; Appellee brief filed 4/19/16; Reply brief filed 5/6/16; TBH 10/5/16 in Nashville.

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 Application granted 2/19/16; Record filed 3/18/16; Appellant brief filed 4/19/16; Appellees Brainerd Baptist Church and David Manual Rojas brief filed 6/20/16; Appellee Sandra Wallis brief filed 6/21/16; TBH 9/8/16 in Knoxville.

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 due 7/13/16, after two extensions.

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 Reach-down motion granted 3/2/16; Appellant brief filed 5/11/16; Appellee brief filed 6/17/16; TBH 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.

1. Style State v. Howard Hawk Willis
2. Docket Number E2012-01313-SC-DDT-DD
3. Lower Court Decision Link <http://www.tsc.state.tn.us/sites/default/files/willishowardhawkopn.pdf>
4. Lower Court Summary A Washington County jury convicted appellant, Howard Hawk Willis, of two counts of premeditated first degree murder and one count of felony murder in the perpetration of a kidnapping. Following the penalty phase, the jury sentenced appellant to death on each conviction. The trial court merged the felony murder conviction into one of the convictions for premeditated first degree murder. On appeal, appellant asserts that: (1) the trial court erred in finding that appellant implicitly waived and forfeited his right to counsel and requiring him to proceed pro se at trial; (2) the trial court erred in denying appellant’s motion to suppress his statements; (3) the searches of the residence and the storage unit were unconstitutional; (4) the trial court erred in denying

appellant's multiple motions to continue the trial; (5) the trial court erred in staying appellant's funding and other privileges used in preparation for trial after this court granted an interlocutory appeal; (6) the evidence is insufficient to support the convictions; (7) the trial court erred in denying appellant's ex parte motions for expert services for a crime scene expert and a false confession expert; (8) the trial court failed to apply a higher standard of due process in all aspects of the case; (9) the trial court erred in admitting certain photographs; (10) the prosecutor made improper statements during closing arguments in both phases of the trial; (11) the trial court erred in instructing the jury during the guilt phase; (12) the aggravating circumstances upon which the State relied were not stated in the indictment; (13) the trial court erred in denying appellant's motion to preclude for-cause removal of jurors who were not death qualified; (14) Tennessee's death penalty statute is unconstitutional; (15) the trial court erred in failing to advise appellant with respect to his testimony during the penalty phase; (16) the trial court failed to make an adequate inquiry into appellant's competency to waive his right to present mitigating evidence; (17) the trial court erred in instructing the jury during the penalty phase; (18) the trial court erred in admitting victim impact evidence; (19) the proportionality review is unconstitutional; and (20) cumulative error warrants reversal. Following our thorough review, we affirm the judgments of the trial court.

5. Status

Heard 10/01/15 in Nashville.