

Supreme Court Appeals
Pending Cases
3-31-22

1.	Style	Greg Adkisson, et al v. Jacobs Engineering Group, Inc.
2.	Docket Number	M2021-01239-SC-R23-CV
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	Rule 23 certified question accepted 3/24/22; TBH 6/1/22 in Nashville.
6.	Issue(s)	<p>The U.S. District Court for the Eastern District of Tennessee certified the following questions:</p> <ol style="list-style-type: none"> 1. Are the requirements of the TSCPA an affirmative defense that must be pleaded in a responsive pleading, or are they prima facie requirements which can be raised at any stage of litigation? 2. Do the TSCPA's requirements apply to all cases involving exposure to silica or mixed dust, or, if coal ash is silica or mixed dust within the meaning of the TSCPA, are plaintiffs' claims exempted from the TSCPA's requirements because they are raised under the common law? 3. Does coal ash, which contains silica, fibrogenic dusts, and other components that may cause injury, but are not "fibrogenic dusts," constitute "silica" or "mixed dust" such that the requirements of the TSCPA would apply in these cases? 4. If coal ash does qualify as silica or mixed dust, does the TSCPA apply even if plaintiffs' claims are based on injury resulting from exposure to elements of coal ash that are not silica or fibrogenic dusts?

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.	Lower Court Summary	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 Apprendi v. New Jersey, 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.

5. Status Heard 2/24/21 in Nashville (by video); Court ordered supplemental briefing due 7/10/21; Appellee's supplemental brief filed 7/10/21; Appellant's supplemental brief filed 7/12/21; Order filed 12/17/21 setting case for reargument on 2/24/22 and designating Justice Koch to participate in the appeal; Heard 2/24/22 in Nashville.

6. Issue(s) According to the Supreme Court's Order granting the application for permission to appeal:

"[T]he application is granted solely as to the issue of whether the sentence of life imprisonment violates the United States or Tennessee Constitutions. In their supplemental briefs, the parties shall also address what sentencing options may be available under Tennessee law if the sentence of life-imprisonment is improper."

The Appellant stated this issue in its Rule 11 Application as:

"Upon conviction for felony murder, any defendant in Tennessee -- including a juvenile -- is sentenced to life imprisonment, and will not be eligible for release for fifty-one years. Such sentencing occurs without any possibility for a juvenile to argue, based on his unique characteristics or on those common to juveniles, that he has reduced moral culpability or is subject to rehabilitation. The defendant in this case had a compelling argument, based on his personal history and an expert's opinion that he would be responsive to trauma-based therapy, that he was not irredeemable. Does such an automatic life sentence based solely on the offense of conviction, when imposed on a juvenile, violate the Tennessee Constitution or the United States Constitution as interpreted in *Miller v. Alabama*?"

1.	Style	Brittany Borngne ex rel. Miyona Hyter v. Chattanooga-Hamilton County Hospital Authority et al.
2.	Docket Number	E2020-00158-SC-R11-CV
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/e2020-158_bornagne_v_chattanooga.pdf https://www.tncourts.gov/sites/default/files/e2020-158_bornagne_v_chattanooga_sep_opin.pdf
4.	Lower Court Summary	This health care liability action arises from injuries suffered by a minor, Miyona Hyter, during her birth. Miyona Hyter, a minor by and through her next friend and mother, Brittany Borngne ("Plaintiff") sued, among others, Dr. Michael Seeber who delivered the child via cesarean section and certified nurse midwife Jennifer Mercer

who assisted with the birthing process. Plaintiff alleged that Nurse Mercer was negligent by failing to recognize concerning signs on the fetal monitoring strip and by failing to call Dr. Seeber for assistance sooner than she did. The Circuit Court for Hamilton County (“the Trial Court”), by agreed order, granted Dr. Seeber partial summary judgment on all claims of direct negligence against him; he remained in the case as a defendant only upon Plaintiff’s theory that he was vicariously liable for Nurse Mercer’s actions as her supervising physician. During his deposition, Dr. Seeber declined to answer questions that he argued required him to render an expert opinion regarding Nurse Mercer’s care during times that Dr. Seeber was not present and had no involvement in Plaintiff’s care. The Trial Court declined to require Dr. Seeber to answer questions that “call[] for an opinion by Dr. Seeber that asks him to comment on the actions of other healthcare providers and does not involve his own actions, as required by *Lewis v. Brooks*,” 66 S.W.3d 883, 887-88 (Tenn. Ct. App. 2001). After Nurse Mercer’s deposition, she submitted an errata sheet that substantively altered her answers to some of the questions. Plaintiff moved to suppress the errata sheet, arguing that Tenn. R. Civ. P. 30.05 does not allow a witness to make substantive changes to her deposition testimony. The Trial Court denied the motion but allowed Plaintiff the opportunity to reopen Nurse Mercer’s deposition and to fully cross-examine her at trial about the changes. The case proceeded to trial before a jury, which returned a verdict in Defendants’ favor. We hold that the Trial Court erred by refusing to order Dr. Seeber to answer the questions at issue in his deposition. Deeming this case distinguishable from *Lewis v. Brooks*, we reverse the Trial Court in its declining to compel Dr. Seeber to testify concerning the conduct of his supervisee, Nurse Mercer, and remand for a new trial. We also reverse the Trial Court in its decision to exclude proof of Miyona Hyter’s pre-majority medical expenses. We affirm the Trial Court as to the remaining issues.

5. Status Application granted 10/13/21; Appellant’s brief filed 12/10/21 (by Court order 10/27/21); Appellee’s brief filed 2/11/22; Appellant’s reply brief filed 3/14/22; TBH 5/3/22 in Knoxville.
6. Issue(s) As stated in the Appellants’ Rule 11 Application:
1. Whether a jury verdict reversed by the Court of Appeals on a single issue should be remanded for a new trial as to *all* defendants when the sole reversible error was attributed to one defendant?
 2. Did the Trial Court abuse its discretion and commit reversible error in ruling that, under *Lewis v. Brooks*, 66 S.W. 3d 883 (Tenn. Ct. App. 2001), Dr. Seeber could not be compelled to provide expert opinions regarding the care of another health care practitioner – the care provided by Certified Nurse Midwife (CNM) Mercer – given that Dr. Seeber was only an expert by virtue of his chosen field?
 3. Did the Trial Court commit error in holding that Plaintiff had no claim for pre-majority medical expenses under *Calaway ex rel. Calaway v. Schucker*, 193 S.W.3d 509 (Tenn. 2005) and *Blackwell v. Sky High Sports Nashville Operations, LLC*, 523 S.W.3d 624 (Tenn. Ct. App. 2017)?

1. Style State of Tennessee v. Lynn Frank Bristol
2. Docket Number M2019-00531-SC-R11-CD
3. Lower Court Decision Links https://www.tncourts.gov/sites/default/files/bristol.lynn_opn.pdf

4.	Lower Court Summary	Lynn Frank Bristol, Defendant, was indicted by the Coffee County Grand Jury for “sexual battery and rape of a child” for incidents involving his step-daughter. Nearly three years later, and three days prior to trial, the State moved to amend the indictment to reflect a charge of aggravated sexual battery in Count One and to amend the dates encompassed in the indictment in both Count One and Count Two. Defendant objected to the amendment and asked for a continuance. The trial court allowed the State to amend the indictment and denied a continuance. After a jury trial, Defendant was convicted of aggravated sexual battery in Count One and the lesser-included offense of aggravated sexual battery in Count Two. Defendant was sentenced to ten years for each conviction and the trial court ordered the sentences to run consecutively, for a total effective sentence of twenty years to be served at 100 percent. Defendant appeals, arguing: (1) that the trial court erred in allowing the State to amend the indictment; (2) that the trial court erred by denying a continuance; (3) that the trial court improperly relied on <i>State v. Qualls</i> , 482 S.W.3d 1 (Tenn. 2016), for a variety of reasons, including failing to give an enhanced unanimity instruction; (4) that the evidence is insufficient to support the convictions; and (5) that the sentence is excessive. Because we determine that the trial court erred by failing to submit the complete written charge to the jury, in violation of Tennessee Rule of Criminal Procedure 30(c), the judgments of the trial court are reversed and the matter is remanded for a new trial.
5.	Status	Application granted 11/19/21; Appellant’s brief filed 1/6/22; Appellee’s brief filed 2/22/22 (by Court order 2/10/22); Reply brief filed 3/8/22; TBH 4/6/22 in Nashville.
6.	Issue(s)	As stated in the Appellant’s Rule 11 Application: <ul style="list-style-type: none"> <li style="margin-bottom: 10px;">I. Whether an appellate court may—without fair notice and an opportunity for the parties to be heard—grant relief on a dispositive issue that neither party raised. II. Whether the Court of Criminal Appeals erroneously granted plain-error relief on an unpreserved and unraised issue by impermissibly shifting the burden to the State to demonstrate the absence of prejudice.

1.	Style	State of Tennessee v. Johnny Summers Cavin
2.	Docket Number	E2020-01333-SC-R11-CD
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/johnny_cavin_cca_opinion.pdf
4.	Lower Court Summary	The Defendant-Appellant, Johnny Summers Cavin, entered guilty pleas to burglary and theft of property valued more than \$2,500 but less than \$10,000. He also entered guilty pleas to unrelated charges from a separate case. Pursuant to a plea agreement, the Defendant received concurrent sentences of two years and six months each on supervised probation, to be served consecutively to the sentences he received in an unrelated probation violation case. In a subsequent restitution hearing, the trial court ordered him to pay a total of \$5,500 in restitution. On appeal, the Defendant contends that the trial court did not have jurisdiction to impose restitution and that, alternatively, the trial court erred in setting the restitution amount at \$5,500, asserting that the victim’s pecuniary loss was not substantiated by evidence and that the amount is unreasonable based on the Defendant’s income. Upon review, we conclude that we

are without jurisdiction to address the merits of the instant case, and the appeal is dismissed.

5. Status Application granted 3/24/22; TBH 9/22 in Knoxville.

6. Issue(s) As stated in the Appellant's Rule 11 Application:

This case presents a need to secure uniformity of decision and to resolve important questions of jurisdictional and statutory law regarding restitution judgments and orders. Through the three separate opinions in Cavin, plus the two separate opinions in Gevedon, the Court of Criminal Appeals judges have put forth at least three different standards for determining when and how a trial court sets a restitution amount that creates a final judgment ripe for appellate review: (1) trial courts must express the payment terms as a payment schedule of some sort (McMullen, J., and Witt, J., majority); (2) trial courts may express the payment terms as a total amount of restitution with the length of time for repayment as simply the defendant's probationary period (Holloway, J., and Williams, P.J., dissenting); or (3) trial courts must express the payment terms as a monthly installment plan, because failure to do so may amount to the trial court's de facto failure to consider the defendant's ability to pay (Witt, J., concurring).

This Court should grant review to resolve this split of authority and explain what trial courts must do to ensure that final judgments are created, and thus convey appellate jurisdiction, for issues involving restitution

1.	Style	City of Knoxville, Tennessee v. Netflix, Inc., et al.
2.	Docket Number	M2021-01107-SC-R23-CV
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	Rule 23 certified question accepted 1/19/22; TBH 5/3/22 in Knoxville.
6.	Issue(s)	The U.S. District Court for the Eastern District of Tennessee certified the following question: Whether Netflix and Hulu are video service providers, as that term is defined in the relevant provision of the CCVSA, Tenn. Code Ann. § 7-59-303(19).

1.	Style	In re: Joseph H. Crabtree, Jr., BPR #011451
2.	Docket Number	M2022-00339-SC-BAR-BP
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A

5. Status Board of Professional Responsibility's notice of submission 3/15/22; Order entered 3/28/22 proposing to increase punishment; directing the BPR to file the record; and setting a briefing schedule.

6. Issue(s) N/A

1. Style Robert Crotty, et al. v. Mark Flora, M.D.

2. Docket Number M2021-01193-SC-R11-CV

3. Lower Court Decision Links N/A

4. Lower Court Summary N/A

5. Status Application granted 3/24/22.

6. Issue(s) As stated in Appellant's Rule 11 Application:

1. Should the Trial Court exclude testimony regarding the role of a Non-party Physician in causing the Plaintiff's injuries, when there is no allegation of wrongful conduct by the Non-party Physician?

2. Should the Trial Court limit evidence of medical expenses to only those actual economic losses that were actually paid or are payable?

1. Style State of Tennessee v. Marvin Maurice Deberry

2. Docket Number W2019-01666-SC-R11-CD

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

4. Lower Court Summary A jury convicted the Defendant, Marvin Maurice DeBerry, of driving after having been declared a motor vehicle habitual offender ("MVHO") and of three misdemeanor offenses not presented for appellate review. After his conviction but prior to his sentencing, an amendment to the statute that was the basis of his MVHO conviction went into effect, so that the Defendant's conduct was no longer criminalized and, concomitantly, triggered no penalty. The trial court, after initially sentencing the Defendant to serve five years, modified the Defendant's judgment to reflect that he was to be subjected to no penalty. On appeal, we are called to determine whether the Defendant may benefit from the savings statute in Tennessee Code Annotated section 39- 11-112. We hold that the savings statute applies because Legislature's act of removing punishment for the offense constitutes a lesser penalty. Accordingly, we affirm the trial court's judgment reducing the Defendant's sentence.

5. Status Application granted 9/23/21; Appellant's brief filed 10/25/21; Appellee's brief filed 11/24/21; Appellant's reply brief filed 12/8/21; TBH 4/5/22 in Jackson.

6. Issue(s) As stated in the Appellant's Rule 11 Application:
- Does the "lesser penalty" language of the Criminal Savings Statute apply when the legislature has repealed a criminal offense rather than provided for a reduced punishment to that offense?

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 Heard 12/1/21 in Columbia.
6. Issue(s) As stated in the Appellant's Rule 11 Application:
- Whether the Court of Appeals through its Majority Opinion erred in upholding the trial court's limitation of the Appellant's recovery of costs and attorney's fees in the amount of \$3,600.00 pursuant to Tenn. Code Ann. § 20-12-119(c)?

1. Style State of Tennessee v. Corey Forest
2. Docket Number M2020-00329-SC-R11-CD
3. Lower Court Decision Links https://www.tncourts.gov/sites/default/files/forest.corey_opn.pdf
4. Lower Court Summary Following a bench trial, the trial court judge convicted the Defendant, Corey Forest, of possession of over .5 grams of cocaine with intent to sell and possession of a firearm during the commission of a dangerous felony and imposed an effective sentence of eleven years in the Tennessee Department of Correction. On appeal, the Defendant asserts that the trial court erred when it denied his motion to suppress evidence found during a search of his vehicle. After review, we affirm the trial court's judgments.
5. Status Application granted 10/15/21; Appellant's brief filed 12/27/21 (by Court order 12/22/21); Appellee's brief filed 1/26/22; TBH 4/6/22 in Nashville.
6. Issue(s) As stated in the Appellant's Rule 11 Application:
1. Whether Officer Barber, who at the time of the pretextual traffic stop never intended to write Mr. Forest a ticket, much less make a citizen's arrest, for speeding, unconstitutionally prolonged the duration of the traffic stop in order to buy Trooper Kilpatrick additional time to make it to the scene of the traffic stop with his drug dog?

2. Whether a private citizen in the State of Tennessee has the authority to conduct a purely pretextual arrest of another private citizen, particularly when the arresting person never intends to attempt, much less effectuate, a statutorily mandated duty to take the arrested person without unnecessary delay to a magistrate or deliver the arrested person to an officer?

3. Assuming, *arguendo*, that a private citizen in the State of Tennessee has the authority to conduct a pretextual stop, should that pretextual stop be subject to the “balancing” analysis set forth in *Whren v. United States* involving a search or seizure conducted in an extraordinary manner?

According to the Supreme Court’s Order granting the application for permission to appeal:

In the briefs and at oral argument, the Court is particularly interested in the parties addressing the permissible scope of activity for a law enforcement officer acting as private citizen under Tenn. Code Ann. § 40-7-109.

1.	Style	State of Tennessee v. Tyler Ward Enix
2.	Docket Number	E2020-00231-SC-R11-CD
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/tyler_ward_enix_cca_majority_opinion.pdf
4.	Lower Court Summary	Tyler Ward Enix, Defendant, was indicted for three counts of first degree felony murder, one count of premeditated first degree murder, one count of especially aggravated robbery, one count of especially aggravated kidnapping, and one count of carjacking. The trial court dismissed the kidnapping and carjacking counts at the State’s request. After a jury trial, Defendant was found not guilty of felony murder. The jury found Defendant guilty of first degree premeditated murder and especially aggravated robbery. After the jury deadlocked on a sentence for first degree murder, the trial court imposed a life sentence. After a separate sentencing hearing, the trial court ordered Defendant to serve a consecutive twenty-five-year sentence for especially aggravated robbery. The trial court denied a motion for new trial and this appeal followed. On appeal, Defendant raises the following issues: (1) the evidence was insufficient to support the convictions for first degree murder and especially aggravated robbery; (2) the State made improper statements during closing argument; (3) the State made improper statements during opening statements; (4) the trial court improperly admitted hearsay evidence; (5) the trial court abused its discretion in admitting multiple photographs of the victim’s body; (6) the trial court erred by denying a motion for change of venue; (7) the trial court erred in refusing to give a definition of passion to the jury; and (8) cumulative errors. After a thorough review of the record and applicable authorities, we affirm Defendant’s convictions and sentences.
5.	Status	Heard 1/26/22 in Knoxville (by video).
6.	Issue(s)	According to the Supreme Court’s Order granting the application for permission to appeal: Whether plenary or plain error review should apply to a claim of prosecutorial misconduct during closing argument when a contemporaneous objection is not lodged

at the time the misconduct allegedly occurred but the claim is raised in the motion for a new trial.

1.	Style	Beverly Gardner v. Saint Thomas Midtown Hospital
2.	Docket Number	M2019-02237-SC-R11-CV
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/gardner.beverly.opn_.pdf
4.	Lower Court Summary	A patient filed a health care liability claim against a hospital, asserting the hospital was vicariously liable for injuries she suffered as a result of the anesthesia providers' conduct. The hospital moved for summary judgment, arguing that the anesthesia providers were not employed by the hospital and the hospital was, therefore, not liable for the anesthetists' actions as a matter of law because the statute of limitations had run on the plaintiff's direct claims against the anesthesia providers by the time the plaintiff filed her complaint against the hospital. The trial court granted the hospital's motion and dismissed the plaintiff's complaint, relying on the common law set forth in <i>Abshire v. Methodist Healthcare Memphis Hospitals</i> , 325 S.W.3d 98 (Tenn. 2010). Acknowledging the conflict between provisions of the Tennessee Health Care Liability Act and the common law, we hold that the statute prevails. Accordingly, we reverse the trial court's judgment and remand the case for further proceedings.
5.	Status	Application granted 9/22/21; Appellant's brief filed 10/22/21; Appellee's brief filed 11/23/21; Appellant's reply brief filed 12/6/21; TBH 4/6/22 in Nashville.
6.	Issue(s)	As stated in the Appellant's Rule 11 Application: <ol style="list-style-type: none"> 1. Does the Court of Appeals' reversal and remand of the trial court's order granting Saint Thomas' Motion for Summary Judgment directly conflict with case law and erroneously create an exception to the mandatory pre-suit notice provisions of the Tennessee Health Care Liability Act ("HCLA") by allowing Plaintiff to do an end run around and avoid the pre-suit notice requirements for claims against Saint Thomas' alleged agents that are otherwise procedurally barred? 2. Does the Court of Appeals decision violate the legislative intent of the HCLA pre-suit notice provisions applicable to Plaintiff and create a significant public policy change? 3. In this vicarious liability action, did Tenn. Code Ann. section 29-26-121(a)(5) require Saint Thomas to notify Plaintiff that its alleged non-employed agents were proper defendants?

1.	Style	State of Tennessee v. Joseph Gevedon
2.	Docket Number	M2020-00359-SC-R11-CD
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/gevedon_joseph-_filed_opn.pdf
4.	Lower Court Summary	The Defendant-Appellant, Joseph Gevedon, pleaded guilty to two counts of driving under the influence and to one count each of leaving the scene of an accident, violation

of the financial responsibility law, and simple possession of marijuana. He agreed to serve an effective sentence of three consecutive terms of eleven months, twenty-nine days, with ninety-six hours in confinement and the remainder on probation. He also agreed to a special condition that a restitution hearing would be held at a later time. A violation of probation warrant was issued before the restitution hearing was held, and following a hearing, the trial court found that the Defendant violated the terms of his probation, revoked his probation, and ordered him to serve his sentence in confinement and to pay \$30,490.76 as restitution. On appeal, the Defendant challenges the trial court’s order requiring him to serve his sentence in confinement and its restitution order. After review, we conclude that we are without jurisdiction to consider the merits of this appeal.

- 5. Status Application granted 3/24/22; TBH 9/22 in Knoxville.
- 6. Issue(s) According to the Supreme Court’s Order granting the application for permission to appeal:
 - 1. Whether a trial court's judgment is final for purposes of Rule 3 of the Tennessee Rules of Appellate Procedure when the trial court orders restitution pursuant to Tennessee Code Annotated section 40-35-304 but does not specify a payment schedule for restitution.
 - 2. Whether the trial court in this case abused its discretion by ordering the defendant to pay \$30,490.76 in restitution without considering the defendant's future ability to pay, after revoking the defendant's probation and ordering him to serve three consecutive sentences of eleven months and twenty-nine days in confinement.
 - 3. Whether the trial court erred by converting the judgment ordering restitution into a civil judgment without following the process prescribed by Tennessee Code Annotated section 40-35-304(h).

- 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 brief filed 5/3/21 (by Court Order 3/19/21); Appellee’s brief filed 7/1/21 (by Court Order 5/19/21); Appellant’s reply brief filed 7/28/21 (by Court order 7/1/21); Case submitted on briefs by Court 10/6/21; order filed 8/9/21.
- 6. Issue(s) N/A

- 1. Style George G. Ingram v. Dr. Michael Gallagher et al.
- 2. Docket Number E2020-01222-SC-R11-CV

3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/ingram_vs._gallagher_coa_opinion.pdf
4.	Lower Court Summary	<p>This appeal arises from a healthcare liability action wherein the plaintiff initially sued the doctor, the hospital, and two other defendants. The plaintiff voluntarily dismissed the action without prejudice against all defendants except for the doctor. The doctor subsequently filed an answer to the complaint, stating that the action should be dismissed under the Governmental Tort Liability Act because the hospital, a governmental hospital entity and the doctor’s employer, was not a party to the action. Shortly thereafter, the plaintiff filed a “Motion to Alter or Amend,” seeking to set aside the Trial Court’s order of dismissal in order to withdraw his voluntary dismissal of the hospital as a party. The Trial Court denied the plaintiff’s motion to alter or amend, determining that the voluntary dismissal order was a final order and that the plaintiff knew about the doctor’s employment with the hospital prior to the voluntary dismissal. We determine that the Trial Court erred by treating the plaintiff’s motion as a Tennessee Rule of Civil Procedure 60 motion, instead of a motion to revise pursuant to Rule 54.02, and further hold that the Trial Court erred by denying the plaintiff’s motion to revise the non-final order of voluntary dismissal.</p>
5.	Status	Application granted 11/17/21; Appellant’s brief filed 1/28/22 (by Court order 1/10/22); Appellee’s brief filed 3/25/22 (by Court order 2/23/22); TBH 5/25/22 in Cookeville.
6.	Issue(s)	<p>As stated in Appellant’s Rule 11 Application:</p> <p>I. Whether a T.R.C.P. 41.01(1) voluntary dismissal (nonsuit) of less than all defendants removes the dismissed defendants from the lawsuit, such that they are “placed in their original positions prior to the filing of the suit,” “as if they had never been sued,” or leaves the dismissed defendants subject to T.R.C.P. 54.02 and being reinstated into the lawsuit upon motion of plaintiff, regardless of the expiration of the applicable statute of limitations in the interim.</p> <p>II. Whether the Court of Appeals erred in not affirm the trial court on the remaining [pretermitted] issues.</p>

1.	Style	Penny Lawson, et al. v. Hawkins County et al.
2.	Docket Number	E2020-01529-SC-R11-CV
3.	Lower Court Decision Links	penny lawson v. hawkins county coa opinion.pdf (tncourts.gov)
4.	Lower Court Summary	<p>This appeal arises from litigation concerning a fatal road accident. Steven W. Lawson (“Decedent”), by and through his wife, Penny Lawson, and on behalf of Corey Lawson, Decedent’s child (“Plaintiffs,” collectively), sued the Hawkins County Emergency Communications District Board (“ECD-911”), Hawkins County, Tennessee and Hawkins County Emergency Management Agency (“the EMA”) (“Defendants,” collectively) in the Circuit Court for Hawkins County (“the Trial Court”) alleging negligence, gross negligence, and recklessness in Defendants’ response to a road washout that led to Decedent’s death. Plaintiffs specifically alleged nepotism in Defendants’ hiring practices and a failure to train. Defendants filed motions for judgment on the pleadings, which the Trial Court granted partly on grounds that claims of recklessness could not proceed against the Defendant entities</p>

under the Governmental Tort Liability Act (“the GTLA”). Plaintiffs appeal. We hold that Plaintiffs could, in fact, proceed with their claims of recklessness and gross negligence under the GTLA, and the facts pled by Plaintiffs were sufficient to state claims based upon recklessness and gross negligence. We hold further that, based on the facts alleged at this stage, the third special duty exception to the public duty doctrine applies so as to remove Defendants’ immunity. We reverse the judgment of the Trial Court.

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| 5. | Status | Application granted 11/17/21; Appellant’s brief filed 12/14/21; Appellee’s brief filed 1/14/22; Appellant’s reply brief filed 1/27/22; TBH 5/25/22 in Cookeville. |
| 6. | Issue(s) | As stated in Appellant’s Rule 11 Application: <ul style="list-style-type: none"> I. Whether the Court of Appeals erred by holding that a plaintiff can sue a governmental entity under Tennessee Code Annotated section 29-20-205 for conduct of an employee that exceeds mere negligence. II. Whether the Court of Appeals erred by holding that a plaintiff can create a special duty by proving only gross negligence, not reckless misconduct. III. Whether the Court of Appeals erred by holding that if a plaintiff establishes the existence of a special duty based on reckless misconduct, the plaintiff can then sue a governmental entity for gross negligence or even mere negligence. |

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| 1. | Style | State of Tennessee v. Douglas E. Linville |
| 2. | Docket Number | W2019-02180-SC-R11-CD |
| 3. | Lower Court Decision Links | https://www.tncourts.gov/sites/default/files/linvilledouglasopn.pdf |
| 4. | Lower Court Summary | A jury convicted the Defendant, Douglas E. Linville, of possession of 0.5 grams or less of methamphetamine with intent to deliver in a drug-free zone, possession of Oxycodone with intent to deliver in a drug-free zone, possession of Xanax with intent to deliver in a drug free zone, simple possession of marijuana, and possession of drug paraphernalia. He received an effective twelve-year sentence. The Defendant appeals his conviction, arguing that the evidence was insufficient to support his convictions and that the trial court committed plain error by allowing a witness to testify about information the trial court previously ruled inadmissible. We affirm the trial court’s judgments, and we remand to the trial court for correction of the judgment form in count three in accordance with this opinion. |
| 5. | Status | Heard 11/3/21 in Jackson (by video). |
| 6. | Issue(s) | According to the Supreme Court’s Order granting the application for permission to appeal: <p>Whether the Court of Criminal Appeals erred in its statutory interpretation of Tennessee Code Annotated section 39-17-432(b) when it found that the defendant is subject to sentencing at one classification higher than is provided for in section 39-17-417(b)-(i) when the drug-free zone is created by a park.</p> |

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| 1. | Style | State of Tennessee v. Ronald Lyons, James Michael Usinger, Lee Harold Cromwell, Austin Gary Cooper, and Christopher Alan Hauser |
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2.	Docket Number	M2019-01946-SC-R11-CD
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/lyonsusingercromwellcooperandhauser.opn_.pdf
4.	Lower Court Summary	Ronald Lyons, James Michael Usinger, Lee Harold Cromwell, Austin Gary Cooper, and Christopher Alan Hauser, Defendants, were named in a 302-count indictment by the Davidson County Grand Jury for multiple counts of forgery and fraudulently filing a lien for their role in filing a total of 102 liens against 42 different individuals with the office of the Tennessee Secretary of State. Defendant Cooper was also named in a second indictment for five additional counts of forgery and five additional counts of fraudulently filing a lien. Prior to trial, Defendant Hauser filed a motion to dismiss for improper venue. Defendants Cromwell and Cooper joined in the motion. The trial court denied the motion after a hearing. After a jury trial, each defendant was convicted as charged in the indictment. The trial court sentenced Defendant Cromwell to an effective sentence of twenty-five years; Defendant Cooper to an effective sentence of fifty years; Defendant Lyons to an effective sentence of twenty-two years; Defendant Usinger to an effective sentence of twenty-one years; and Defendant Hauser to an effective sentence of twenty years. After motions for new trial and several amended motions for new trial were filed, the trial court held a hearing. The trial court denied the motions in a lengthy and thorough written order. Each defendant appealed, raising various issues challenging their convictions and sentences. After deep review, we affirm the all judgments and all sentences.
5.	Status	Application granted 8/5/21; Appellant Ronald Lyons' brief filed 9/2/21; Appellant Lee Harold Cromwell's brief filed 10/5/21 (by Court order 8/24/21); Appellant Austin Gary Cooper's brief filed 10/5/21 (by Court order 8/24/21); Appellant Christopher Alan Hauser's brief filed 11/8/21 (by Court order 10/8/21); Appellant James Michael Usinger's brief filed 11/8/21 (by Court order 10/8/21); Appellee's brief filed 12/8/21; Appellant Lyons' reply brief filed 12/15/21; Appellant Hauser's reply brief filed 12/17/21; TBH 4/6/22 in Nashville.
6.	Issue(s)	According to the Supreme Court's Order granting the application for permission to appeal: Whether the evidence was sufficient to support the convictions for forgery under Tennessee Code Annotated section 39-14-114.

1.	Style	Brian Philip Manookian v. Board of Professional Responsibility of the Supreme Court of Tennessee
2.	Docket Number	M2022-00075-SC-R3-BP
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	Appeal filed 1/12/22; Motion to dismiss denied (by Court order 2/3/22); Appellant's motion to consolidate with M2022-00301-SC-R3-BP granted (by Court order 3/14/22).

6.	Issue(s)	N/A
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1.	Style	In re Markus E.
2.	Docket Number	M2019-01079-SC-R11-PT
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/inre.markus.e.opn_.pdf
4.	Lower Court Summary	A mother and father appeal the termination of their parental rights. The trial court concluded that there was clear and convincing evidence of two statutory grounds for termination of the mother's rights and one statutory ground for the termination of the father's parental rights. The trial court also concluded that there was clear and convincing evidence that termination of their parental rights was in their child's best interest. After a thorough review, we affirm.
5.	Status	Application granted 3/23/22.
6.	Issue(s)	As stated in the Appellant's application for permission to appeal: Whether the father committed severe abuse against the child or failed to protect the child from severe abuse. Additionally, according to the Supreme Court's order granting the application for permission to appeal: 1. Whether the evidence supports the two grounds for termination of parental rights as to the mother. 2. Whether the termination proceeding was fundamentally fair, particularly as to the mother based on the exclusion of her mental health assessment.

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	Heard 6/3/21 in Nashville (by video); Appellants' brief with supplemental authority filed 7/2/21; Appellees' response to Appellant's brief with supplemental authority filed 7/12/21; Order filed 12/17/21 setting case for reargument on 2/24/22 and designating Judge Frierson to participate in the appeal; Heard 2/24/22 in Nashville.

6. Issue(s) As stated in the parties’ Rule 11 Applications:
- Davidson and Shelby Counties sued the State of Tennessee to challenge the constitutionality of the General Assembly’s 2019 Tennessee Education Savings Account Pilot Program. The ESA Pilot Program provides alternative educational opportunities for children from low income families who are zoned to attend the lowest-performing public schools. The questions presented are:
1. Whether the ESA Pilot Program violates the Home Rule Amendment, article XI, section 9, of the Tennessee Constitution.
 2. Whether the county-government plaintiffs have standing to challenge the constitutionality of the ESA Pilot Program under the Home Rule Amendment.
- AND
1. Whether the Court of Appeals erred in ruling that the ESA Pilot Program, which applies to three local education agencies in two counties, violates the Home Rule Amendment, which prohibits laws applicable to “a particular county.”
 2. Whether the Court of Appeals erred in ruling that the ESA Pilot Program financially harms the county government plaintiffs, such that they have standing and ripeness to challenge it.

1. Style State of Tennessee v. William Eugene Moon
2. Docket Number M2019-01865-SC-R11-CD
3. Lower Court Decision Links https://www.tncourts.gov/sites/default/files/moon.william.opn_.pdf
4. Lower Court Summary A Coffee County jury convicted William Eugene Moon, Defendant, of attempted second degree murder and unlawful employment of a firearm during the commission of or attempt to commit a dangerous felony. On appeal, Defendant argues that the trial court erred by allowing the improper impeachment of a defense witness, that there was insufficient evidence to support his convictions, and that he was denied the right to a speedy trial. After a thorough review of the record and applicable case law, the judgments of the circuit court are affirmed
5. Status Heard 10/6/21 in Nashville (by video).
6. Issue(s) As stated in the Appellant’s Rule 11 Application:
 - I. When the Court of Criminal Appeals looks at an appeal arguing a speedy trial violation, sometimes it reviews the case using a de novo standard. Other times, as it did here, it only looks at whether the trial court abused its discretion. This Supreme Court has never specifically ruled on which standard is correct. For an appeal arguing the denial of a speedy trial, what is the standard of review?
 - II. Was the right to a speedy trial violated?

- III. Because the Defendant's case was strong, rather than weak, the Court of Criminal Appeals found evidentiary error to be "harmless." Did the lower court apply the harmless error rule erroneously, and even backwards?

1.	Style	Paul Zachary Moss v. Shelby County Civil Service Merit Board
2.	Docket Number	W2017-01813-SC-R11-CV
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/mosspaulzachary2opn.pdf
4.	Lower Court Summary	This appeal arises from a petition for judicial review of a decision of the Shelby County Civil Service Merit Board. The appellant was a firefighter and paramedic and was terminated from his employment after he was involved in a physical altercation at a political rally. After a hearing, the Board upheld his termination. The appellant then sought judicial review in chancery court. After reviewing the administrative record, the chancery court likewise upheld termination. On appeal, this Court concluded that the decision upholding the appellant's termination should be reversed due to a violation of his due process rights. The Tennessee Supreme Court found no due process violation and reversed the decision of this Court, remanding for consideration of alternative arguments raised by the appellant that were deemed pretermitted in our previous opinion. Having carefully considered the appellant's alternative arguments, we affirm the chancery court's rulings on some issues but ultimately must vacate in part the decision upholding termination and remand for further proceedings before the Board.
5.	Status	Application granted 3/25/22.
6.	Issue(s)	As stated in the Appellant's Rule 11 Application: Civil service merit panels review terminations of government employees to determine whether just cause exists to support the decision to terminate. In this case, the Civil Service Merit Board declined to hear Moss's proposed evidence that other employees in other cases had received lighter disciplines, and instead relied on the extensive proof that Moss's use of a handgun at a political rally and subsequent untruthfulness were inappropriate and terminable. Did the CSMB act within its discretion when it excluded evidence of separate disciplines of other employees in finding that just cause existed to terminate Moss for his conduct?

1.	Style	Kenneth J. Mynatt v. National Treasury Employees Union, Chapter 39 et al.
2.	Docket Number	M2020-01285-SC-R11-CV
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/mynatt.kenneth.opn_.pdf
4.	Lower Court Summary	This case involves claims of malicious prosecution and civil conspiracy. The trial court dismissed the claims pursuant to Tennessee Rule of Civil Procedure 12.02(6), determining that the plaintiff could not prove that the underlying criminal prosecution had terminated in his favor, a necessary element of a malicious prosecution claim. Regarding the civil conspiracy claim, the court determined that the conspiracy claim was only actionable if the underlying tort were actionable. Having found that the malicious prosecution claim could not stand, the court concluded that the conspiracy

claim had to be dismissed as well. The plaintiff timely appealed. Based upon the applicable standard of review, we conclude that the trial court erred in dismissing the plaintiff's claims, and we accordingly reverse the judgment of dismissal and remand this matter to the trial court for further proceedings.

5. Status Application granted 1/19/22; Appellant's brief filed 3/18/22 (by Court order 1/25/22); Appellee's motion for extension to file brief denied in part and granted in part (by Court order 3/22/22); Appellee's brief due 5/18/22; TBH 6/1/22 in Nashville.
6. Issue(s) As stated in the Appellant's Rule 11 Application:

[W]hether the Court of Appeals erred by disregarding *Himmelfarb* [*v. Allain*, 380 S.W.3d 35 (Tenn. 2012)] and allowing Plaintiff Mynatt's malicious prosecution suit to proceed under pre-*Himmelfarb* caselaw, even though (a) Plaintiff's suit is predicated on a prior criminal proceeding that was disposed of through a voluntary retirement and subsequent dismissal of the charges against him, and (b) Plaintiff concedes that the way he seeks to establish that this disposition reflects his innocence is through fact-intensive discovery that Plaintiff hopes will show that the prosecutor acted in the subjective belief that Plaintiff was innocent.

1. Style State of Tennessee v. Quinton D. Perry
2. Docket Number W2019-01553-SC-R11-CD
3. Lower Court Decision Links <https://www.tncourts.gov/sites/default/files/perryquintonopn.pdf>
4. Lower Court Summary Defendant-Appellant, Quinton Devon Perry, entered guilty pleas to eighteen counts of aggravated sexual exploitation of a minor, a Class C felony, and six counts of aggravated sexual exploitation of a minor where the number of exploitive materials exceeded twentyfive, a Class B felony under Tennessee Code Annotated sections 39-17-1004(a)(1) and (2). The trial court ordered partial consecutive sentencing and imposed an effective sentence of eighteen years' imprisonment. In this appeal as of right, the Defendant argues the trial court erred in applying certain enhancement factors and in imposing partial consecutive sentencing. Upon review, the judgment of the trial court is affirmed.
5. Status Application granted 11/18/21; Appellant's brief filed 12/20/21; Appellee's brief filed 1/18/22; Appellant's reply brief filed 2/1/22; TBH 4/5/22 in Jackson.
6. Issue(s) As stated in the Appellant's Rule 11 Application:

Whether a trial court abuses its discretion when it determines, for purposes of consecutive sentencing, that a defendant has a record of extensive criminal history based solely on the number of convictions before the court, and the defendant has no prior record of criminal history.

1. Style Tommie Phillips v. State of Tennessee
2. Docket Number W2019-01927-SC-R11-PC

3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/00130 - _phillips_tommie_majority_opinion.pdf
4.	Lower Court Summary	The petitioner, Tommie Phillips, appeals the denial of his petition for post-conviction relief, which petition challenged his 2011 Shelby County Criminal Court jury convictions of felony murder, reckless homicide, attempted first degree murder, aggravated rape, aggravated sexual battery, especially aggravated kidnapping, and aggravated burglary. He argues that he was deprived of the effective assistance of counsel. Discerning no error, we affirm.
5.	Status	Heard 11/3/21 in Jackson (by video).
6.	Issue(s)	As stated in the Appellant's Rule 11 Application: The trial court erred when it decided that Phillips's trial counsel was not ineffective when they failed to challenge whether Phillips's Fourth Amendment rights were violated based on the grounds that there was an unreasonable delay in obtaining a probable cause hearing.

1.	Style	Candes Vonniest Prewitt v. Board of Professional Responsibility of the Supreme Court of Tennessee
2.	Docket Number	M2021-01141-SC-R3-BP
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	Notice of Appeal filed 9/27/21; Appellant's brief filed 12/17/21; Appellee's brief filed 2/15/22 (by Court order 1/19/22); Reply brief filed 3/1/22; Case submitted on briefs 4/6/22 (by Court order 12/21/21).
6.	Issue(s)	N/A

1.	Style	Recipient of Final Expunction Order in McNairy County Circuit Court Case No. 3279 v. David B. Rausch, Director of the Tennessee Bureau of Investigation, et al.
2.	Docket Number	M2021-00438-SC-R11-CV
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	Heard 1/26/22 in Knoxville (by video).
6.	Issue(s)	According to the Supreme Court's Order granting the application for permission to appeal:

Under what circumstances, if any, may the Tennessee Bureau of Investigation refuse to comply with a final expungement order issued by a court of record.

1.	Style	Elijah “LIJ” Shaw, et al. v. Metropolitan Government of Nashville and Davidson County
2.	Docket Number	M2019-01926-SC-R11-CV
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/shaw.elijah.opn_.pdf
4.	Lower Court Summary	Two homeowners filed suit against a metropolitan government challenging a metropolitan code provision that prevented them from serving customers at their home-based businesses. The trial court granted summary judgment to the metropolitan government. After the homeowners filed this appeal, the metropolitan council repealed the challenged code provision and enacted a new provision allowing certain home-based businesses to serve up to six clients a day. We have determined that, in light of the metropolitan government’s enactment of the new ordinance, this appeal is moot.
5.	Status	Heard 1/26/22 in Knoxville (by video).
6.	Issue(s)	As stated in the Rule 11 application: <p>1. Did the Metropolitan Government of Nashville & Davidson County (“Metro”) make it “absolutely clear” that its unequal prohibition of home-business client visits “cannot be reasonably expected to recur” when (a) Metro replaced the challenged prohibition after the Homeowners filed their appellate brief with a temporary ordinance that continues to restrict home-business client visits unequally, and (b) Metro has not disavowed enforcing the challenged prohibition again when the temporary ordinance expires? See <u>Norma Faye Pyles Lynch Family Purpose LLC v. Putnam County</u>, 301 S.W.3d 196, 205 (Tenn. 2009).</p> <p>2. Does the Tennessee Constitution allow Metro to prohibit the Homeowners’ home-business clients, when an undisputed record shows that thousands of other Metro homeowners may host noise-, traffic-, parking-, trash-, and lewdness-generating home-business clients while the Homeowners’ clients cause no harm at all? See, e.g., <u>State v. Tester</u>, 879 S.W.2d 823, 829 (Tenn. 1994) (“There must be reasonable and substantial differences in the situation and circumstances of the persons placed in different classes which disclose the propriety and necessity of the classification.”).</p>

1.	Style	Dennis Harold Ultsch v. HTI Memorial Hospital Corporation
2.	Docket Number	M2020-00341-SC-R11-CV
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/ultsch.dennis.opn_.pdf
4.	Lower Court Summary	This appeal concerns the interplay between the Tennessee Health Care Liability Act (“HCLA”) and the common law on vicarious liability with respect to pre-suit notice in a health care liability claim against the principal only. We have determined that the provisions of the HCLA take precedence over the common law and that the plaintiff’s

claims in this case were timely filed. Therefore, we reverse the decision of the trial court.

5. Status Application granted 9/22/21; Appellant's brief filed 10/21/21; Appellee's brief filed 11/23/21; TBH 4/6/22 in Nashville.

6. Issue(s) As stated in the Appellant's Rule 11 Application:

Does pre-suit notice to a health care provider operate to extend the statute of limitations as to each and every person who might be considered an agent of that provider?

Did the trial court properly dismiss Plaintiff's vicarious liability claims against TriStar Skyline, since by the time of filing the Complaint, Plaintiff's claims against Tri-Star Skyline's alleged agents were procedurally barred by operation of law, that is, the statute of limitations?