

Supreme Court Appeals  
Pending Cases  
10-5-22

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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	Heard 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"> <li>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?</li> <li>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?</li> <li>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?</li> <li>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?</li> </ol>

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1.	Style	Roger Baskin v. Pierce & Allied Construction, Inc.
2.	Docket Number	M2021-00144-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/roger.baskin.opn_.pdf">https://www.tncourts.gov/sites/default/files/roger.baskin.opn_.pdf</a>
4.	Lower Court Summary	Plaintiff Roger Baskin sued Pierce & Allred Construction, Inc. ("Defendant") for breach of contract and breach of warranty, alleging Defendant failed to construct a house in Muscle Shoals, Alabama, in accordance with the parties' contract. Plaintiff alleged that although he "paid construction costs totaling more than \$1,700,000, [Defendant] failed to complete construction of the house and has left Plaintiff with a home riddled with construction defects that affect every major system of the home." Defendant moved to dismiss the complaint under Tenn. R. Civ. P. 12.02(2) and (3), asserting that the trial court lacked personal jurisdiction over it, and that venue was improper in Davidson County. The trial court dismissed the complaint for lack of personal jurisdiction and improper venue. We hold that Defendant's contacts with

Tennessee, including its purposeful applications for a certificate of authority to transact business and for a contractor's license in Tennessee, are such that Defendant should reasonably anticipate being haled into court in this state. Consequently, Tennessee courts may exercise personal jurisdiction over Defendant. We further find that Davidson County is a proper venue for this action, and therefore reverse the judgment of the trial court.

5. Status Appeal granted 7/15/22; Appellant's brief filed 8/16/22; Joint motion for extension granted 8/17/22; Motion requesting Oral Argument granted 9/26/22; Appellee's brief filed 9/30/22; Reply brief due 10/21/22; TBH 11/9/22.
6. Issue(s) As stated in the Appellant's application for permission to appeal:
1. Whether the Court of Appeals erred in comparing this case to Crouch by not focusing on the quality of the non-resident party's contacts with the State of Tennessee.
  2. Whether the Court of Appeals erred in considering Pierce's actions in the State of Tennessee after Mr. Baskin's cause of action accrued action in determining whether Pierce is subject to specific personal jurisdiction in the State of Tennessee.
  3. Whether the Court of Appeals erred in construing Ford to apply in situations wherein the non-resident's activities in the forum state, which do not cause any harm, are of the same general nature (construction), as opposed to applying Ford to situations involving the sales of identical vehicles or dialing of identical robocalls.

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](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.A
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*?”

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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\\_borngne\\_v.\\_chattanooga.pdf](https://www.tncourts.gov/sites/default/files/e2020-158_borngne_v._chattanooga.pdf)  
[https://www.tncourts.gov/sites/default/files/e2020-158\\_borngne\\_v.\\_chattanooga\\_sep\\_opin.pdf](https://www.tncourts.gov/sites/default/files/e2020-158_borngne_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 Heard 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)?

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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](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 *State v. Qualls*, 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.

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| 5. | Status   | Heard 4/6/22 in Nashville.  |
| 6. | Issue(s) | As stated in the Appellant's Rule 11 Application: <ol style="list-style-type: none"> <li>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.</li> <li>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.</li> </ol> |

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| 1. | Style                      | State of Tennessee v. Johnny Summers Cavin  |
| 2. | Docket Number              | E2020-01333-SC-R11-CD   |
| 3. | Lower Court Decision Links | <a href="https://www.tncourts.gov/sites/default/files/johnny_cavin_cca_opinion.pdf">https://www.tncourts.gov/sites/default/files/johnny_cavin_cca_opinion.pdf</a>   |
| 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                     | Heard 9/7/22 in Knoxville.  |
| 6. | Issue(s)                   | As stated in the Appellant's Rule 11 Application: <p>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</p>  |

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

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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	Heard 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).

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1.	Style	Commercial Painting Co., Inc. v. The Weitz Co. LLC et al.
2.	Docket Number	W2019-02089-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/commercialpaintingopn1.pdf">https://www.tncourts.gov/sites/default/files/commercialpaintingopn1.pdf</a>
4.	Lower Court Summary	This is the third appeal arising from a commercial construction project. Most recently, the case went to trial before a jury, which awarded the plaintiff subcontractor \$1,729,122.46 in compensatory damages under four separate theories and \$3,900,000.00 in punitive damages. The trial court further awarded the plaintiff pre- and post-judgment interest and attorney's fees and costs. We conclude the economic loss rule is applicable to construction contracts negotiated between sophisticated commercial entities and that fraud is not an exception under the particular circumstances of this case. Because punitive damages and interest are not authorized under the parties' agreement, those damages are reversed. The compensatory damages of \$1,729,122.46 awarded for breach of contract are affirmed. The award of attorney's fees incurred at trial are vacated for a determination of the attorney's fees incurred in obtaining the compensatory damages award. No attorney's fees are awarded on appeal. We therefore reverse in part, affirm in part, and vacate in part.
5.	Status	Application granted 8/4/22; Appellant's brief filed 8/26/22; Appellees' brief filed 9/26/22; TBH 11/9/22 in Jackson.

6. Issue(s) According to the Supreme Court's Order granting the application for permission to appeal:
1. Whether the Court of Appeals erred in applying this Court's holding in *Milan Supply Chain Solutions, Inc. v. Navistar, Inc.*, 627 S.W.3d 125 (Tenn. 2021), and expanding the application of the economic loss doctrine to the circumstances of this case.
  2. Whether the Court of Appeals erred in vacating the trial court's award of attorney's fees and in limiting the scope of recoverable fees on remand, and whether the Court of Appeals erred in denying Commercial Painting Company an award of costs and fees on appeal.
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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 BPR to file record, and setting a briefing schedule; Appellant's brief filed 6/27/22; Case submitted on briefs (by Court order 6/9/22).
  6. Issue(s) N/A
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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 Heard on 10/5/22 in Nashville.
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?

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1.	Style	Emergency Medical Care Facilities, P.C. v. Division of TennCare et al.
2.	Docket Number	M2020-01358-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/emergency.medical.corrected.opn_.pdf">https://www.tncourts.gov/sites/default/files/emergency.medical.corrected.opn_.pdf</a>
4.	Lower Court Summary	This appeal involves a reimbursement limitation that TennCare imposed on “non-emergent” medical services provided by emergency department physicians. TennCare informed its managed care organizations of the reimbursement limitation via email without engaging in rule-making procedures outlined in the Uniform Administrative Procedures Act (“UAPA”). The trial court concluded the reimbursement limitation was a “rule” subject to the rule-making requirements of the UAPA and invalidated the reimbursement limitation. We hold that the reimbursement limitation falls within the internal management exception of the 2009 version of the UAPA and was therefore not subject to the UAPA’s rule-making requirements. The ruling of the trial court is reversed.
5.	Status	Heard on 10/5/22 in Nashville.
6.	Issue(s)	As stated in the Appellant’s Rule 11 Application:  I. May a State agency impose a rule without rulemaking on the ground that, because the agency contracts with the affected entities, the rule concerns only the internal management of state government and not private rights, privileges or procedures available to the public?  II. Does Tennessee law require TennCare to engage in rulemaking when determining payment to Medicaid providers, as expressly set forth by the plain language of Tennessee Code Annotated § 71-5-105(a)(3)(A)?

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1.	Style	Earnest Falls, et al. v. Mark Goins, et al.
2.	Docket Number	M2020-01510-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/majority_opinion_13.pdf">https://www.tncourts.gov/sites/default/files/majority_opinion_13.pdf</a>
4.	Lower Court Summary	This case concerns the restoration of voting rights of a Tennessee citizen who was convicted of a felony in Virginia and subsequently granted clemency by the Governor of Virginia. Because the voting applicant did not provide evidence that he paid outstanding court costs, restitution, and/or child support as is required by Tenn. Code Ann. § 40-29- 202, the election commission denied his application to vote. The voting applicant appealed the election commission’s decision to the circuit court. The circuit court upheld the election commission’s decision as valid. We agree with the trial court and affirm the trial court’s judgment.
5.	Status	Heard on 10/5/22 in Nashville.
6.	Issue(s)	As stated in the Appellant’s Rule 11 Application:



Whether Applicant Ernest Falls has been unlawfully disenfranchised under Tennessee Constitution Art. I, § 5 and Tennessee Code § 2-19-143(3)—which states that Tennesseans convicted of felonies in other states are disenfranchised unless they have had their full rights of citizenship restored by the governor of the state of conviction, by the law of the state of conviction, or under the law of Tennessee—where Applicant Falls’ lone felony conviction was in Virginia and he has had his full rights of citizenship restored by the Governor of Virginia

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1.	Style	State of Tennessee v. Corey Forest
2.	Docket Number	M2020-00329-SC-R11-CD
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/forest.corey_.opn_.pdf">https://www.tncourts.gov/sites/default/files/forest.corey_.opn_.pdf</a>
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	Heard 4/6/22 in Nashville.
6.	Issue(s)	<p>As stated in the Appellant’s Rule 11 Application:</p> <ol style="list-style-type: none"> <li>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?</li> <li>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?</li> <li>3. Assuming, <i>arguendo</i>, 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 <i>Whren v. United States</i> involving a search or seizure conducted in an extraordinary manner?</li> </ol> <p>According to the Supreme Court’s Order granting the application for permission to appeal:</p> <p>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.</p>

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1.	Style	Beverly Gardner v. Saint Thomas Midtown Hospital
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2. Docket Number M2019-02237-SC-R11-CV
3. Lower Court Decision Links [https://www.tncourts.gov/sites/default/files/gardner.beverly.opn\\_.pdf](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 *Abshure v. Methodist Healthcare Memphis Hospitals*, 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 Heard 4/6/22 in Nashville.
6. Issue(s) As stated in the Appellant's Rule 11 Application:
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](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 Heard on 9/7/22 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 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](https://www.tncourts.gov/sites/default/files/ingram_vs._gallagher_coa_opinion.pdf)
4. Lower Court Summary 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.
5. Status Heard 5/25/22 in Cookeville.
6. Issue(s) As stated in Appellant's Rule 11 Application:
- 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.

- II. Whether the Court of Appeals erred in not affirm the trial court on the remaining [pretermitted] issues.

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1.	Style	Penny Lawson, et al. v. Hawkins County et al.
2.	Docket Number	E2020-01529-SC-R11-CV
3.	Lower Court Decision Links	<a href="#">penny lawson v. hawkins county coa opinion.pdf (tncourts.gov)</a>
4.	Lower Court Summary	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 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.
5.	Status	Heard 5/25/22 in Cookeville.
6.	Issue(s)	As stated in Appellant’s Rule 11 Application: <ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>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.</li> </ul>

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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
2.	Docket Number	M2019-01946-SC-R11-CD
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/lyonsusingercromwellcooperandhauser.opn.pdf">https://www.tncourts.gov/sites/default/files/lyonsusingercromwellcooperandhauser.opn.pdf</a>

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 Heard 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 Thomas Fleming Mabry v. The Board of Professional Responsibility of the Supreme Court of Tennessee
2. Docket Number E2022-00945-SC-R3-BP
3. Lower Court Decision Links N/A
4. Lower Court Summary N/A
5. Status Appeal filed 7/11/22.
6. Issue(s) N/A

1. Style Thomas Fleming Mabry v. The Board of Professional Responsibility of the Supreme Court of Tennessee
2. Docket Number E2022-01390-SC-R3-BP
3. Lower Court Decision Links N/A

4.	Lower Court Summary	N/A
5.	Status	Appeal filed 9/30/22.
6.	Issue(s)	N/A
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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); Appellant's brief filed 6/1/22; Appellee's motion for extension to file brief granted 7/7/22. Motion for extension to file reply brief as Appellant and responsive brief as Cross-Appellant's granted and due 10/14/22.
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	<a href="https://www.tncourts.gov/sites/default/files/inre.markus.e.opn_.pdf">https://www.tncourts.gov/sites/default/files/inre.markus.e.opn_.pdf</a>
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	Heard 9/28/22 via Zoom
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.

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1.	Style	State of Tennessee v. Kemontea Dovon McKinney
2.	Docket Number	M2020-00950-SC-R11-CD
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/mckinney_kemontea_dovon-filed_opn.pdf">https://www.tncourts.gov/sites/default/files/mckinney_kemontea_dovon-filed_opn.pdf</a>
4.	Lower Court Summary	The defendant, Kemontea Dovon McKinney, appeals his Robertson County Circuit Court jury convictions of aggravated robbery, first degree premeditated murder, first degree felony murder, and theft, arguing that the trial court erred by admitting his pretrial statement into evidence, that the evidence was insufficient to support his convictions, and that the evidence established that he acted in self-defense. Because the trial court erred by admitting the defendant's statement into evidence and because the error was not harmless beyond a reasonable doubt, the defendant's convictions are reversed and remanded for a new trial. Because the evidence was insufficient to support a conviction of first degree premeditated murder but sufficient to support a conviction of second degree murder, that conviction must be modified to one of second degree murder. The evidence was sufficient to support the jury verdicts of felony murder, aggravated robbery, and theft. Accordingly, we remand the case to the trial court for a new trial on two counts of felony murder, one count of second degree murder, one count of aggravated robbery, and, one count of theft of property.
5.	Status	Application granted 5/18/22; Appellant's brief filed 6/17/22; Appellee's brief filed 7/15/22; Reply brief filed 7/29/22; TBH 12/6/22 at ETSU (SCALES program).
6.	Issue(s)	As stated in the Appellant's Rule 11 Application:  I. Whether the Court of Criminal Appeals erroneously held that an involuntary-confession claim under the Due Process Clause is so "inextricably linked" to a <i>Miranda</i> -waiver claim that a successful <i>Miranda</i> claim effectively establishes an involuntary confession, which requires exclusion of non-testimonial evidence.  II. Whether the Court of Criminal Appeals erred in finding a <i>Miranda</i> violation where the proof—including a video recording of detectives clearly reading the defendant his rights in his mother's presence before the defendant confessed to killing the victim—demonstrated a voluntary waiver of his rights.  III. Whether the Court of Criminal Appeals analyzed the sufficiency of the evidence of premeditation by making its own credibility determinations and failing to draw all reasonable inferences from the evidence in favor of the State.

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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	<a href="https://www.tncourts.gov/sites/default/files/mosspaulzachary2opn.pdf">https://www.tncourts.gov/sites/default/files/mosspaulzachary2opn.pdf</a>

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; Appellant's brief filed 4/21/22; Appellee's brief filed 5/18/22; Reply brief filed 6/1/22; TBH 11/9/22 in Jackson.
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?
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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](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 Heard on 10/5/22 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.

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1.	Style	State of Tennessee v. Quinton D. Perry
2.	Docket Number	W2019-01553-SC-R11-CD
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/perryquintonopn.pdf">https://www.tncourts.gov/sites/default/files/perryquintonopn.pdf</a>
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	Heard 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.

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1.	Style	State of Tennessee v. Dashun Shackelford
2.	Docket Number	E2020-01712-SC-R11-CD
3.	Lower Court Decision Links	<a href="state_of_tennessee_v_dashun_shackelford.pdf">state_of_tennessee_v_dashun_shackelford.pdf</a> (tncourts.gov)
4.	Lower Court Summary	The Defendant-Appellant, Dashun Shackelford, was convicted by a Knox County Criminal Court jury as charged in a twenty-count indictment; four alternative counts each of aggravated robbery against four victims and four corresponding counts of criminal gang offense enhancement. The trial court merged the aggravated robbery convictions into four counts and imposed a total effective sentence of twenty years’ incarceration to be served at 85 percent. On appeal, the Defendant argues that (1) the evidence is insufficient to support his gang enhancement convictions; and (2) the gang enhancement counts violate his constitutional rights to due process and expressive association. Upon our review, we conclude that the State failed to sufficiently prove the gang enhancement counts and failed to comply with the notice requirements

mandated by Tennessee Code Annotated § 40-35- 121(g). Accordingly, we reverse and vacate the judgments in Counts 13 through 16, and remand for resentencing as to those counts. Because the gang enhancements are no longer applicable to the Defendant's case, we decline to address the constitutional questions raised in this appeal.

5. Status Application granted 8/9/22; TBH 12/6/22 at ETSU (SCALES project).
6. Issue(s) As stated in the Appellant's Rule 11 Application:
- I. Whether Tenn. Code Ann. § 40-35-121 requires the State to allege in the gang-enhancement counts of the defendant's indictment that the defendant is in the same subset of a criminal gang as the individuals whose criminal activity establishes the gang's pattern of criminal gang activity.
- II. Whether the defendant forfeited plenary review of a variance issue when he did not raise the issue at any point in the trial court or on appeal.

1. Style State of Tennessee v. Tony Thomas and Laronda Turner
2. Docket Number W2019-01202-SC-R11-CD
3. Lower Court Decision Links <https://www.tncourts.gov/sites/default/files/thomastonyturnerlarondaopn.pdf>  
<https://www.tncourts.gov/sites/default/files/thomastonyturnerlarondadis.pdf>
4. Lower Court Summary The Defendants, Tony Thomas and Laronda Turner, were convicted of three counts of firstdegree premeditated murder and received life sentences on each count. On appeal, they raise the following issues: (1) whether the evidence was sufficient to support their convictions, specifically whether the co-defendant's testimony was reliable and sufficiently corroborated; (2) whether the trial court erred by denying the Defendants' motion to dismiss the indictment due to the State's Ferguson violation by failing to preserve the photographic lineups shown to the witnesses and the co-defendant's cell phone taken upon his arrest; (3) whether the trial court erred by not granting a new trial because the State committed a Brady violation by failing to disclose all inconsistent statements made by the co-defendant during proffer sessions; (4) whether the trial court committed error when it sua sponte prohibited the introduction of the printout of the co-defendant's message to his girlfriend implicating himself in the murders, and in so doing, made an improper comment on the evidence; and (5) whether the trial court erred in instructing the jury by including the language "or either of them" throughout the jury instructions.1 Following our review, we affirm the judgments of the trial court.
5. Status Application granted 4/14/22; Appellant Thomas's brief filed 5/17/22; Appellant Turner's brief filed 6/14/22 (by Court order 5/9/22); Appellee's brief filed 8/3/22 (by Court order 7/8/22); Appllant's reply brief filed 9/2/22; TBH 11/9/22 in Jackson.
6. Issue(s) According to the Supreme Court's Order granting the application for permission to appeal:
- 1) Whether the prosecution breached its constitutional duty of production under Brady v. Maryland, 373 U.S. 83 (1963), by failing to produce statements made by a co-defendant in proffer conferences, which were allegedly inconsistent with the co-defendant's formal statement to law enforcement.

2) Whether the evidence was sufficient to support Laronda Turner’s convictions for first-degree murder.

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1.	Style	Dennis Harold Ultsch v. HTI Memorial Hospital Corporation
2.	Docket Number	M2020-00341-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/ultsch.dennis.opn_.pdf">https://www.tncourts.gov/sites/default/files/ultsch.dennis.opn_.pdf</a>
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	Heard 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?

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Style	James A. Welch et al. v. Oaktree Health and Rehabilitation Center LLC d/b/a Christian Care Centers of Memphis et al.	
Docket Number	W2020-00917-SC-R11-CV	
Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/welchjamesaopn.pdf">https://www.tncourts.gov/sites/default/files/welchjamesaopn.pdf</a>	
4.	Lower Court Summary	This appeal involves an arbitration agreement executed in connection with a patient’s admission to a nursing home. The arbitration agreement was executed by the patient’s brother, who had been designated as the patient’s attorney-in-fact for health care pursuant to a durable power of attorney for health care executed by the patient several years earlier. When the patient’s brother filed this wrongful death suit in circuit court, the nursing home defendants filed a motion to compel arbitration. The patient’s brother then asserted that he did not have authority to bind the patient to the arbitration agreement because the patient had been mentally incompetent when he executed the durable power of attorney for health care years earlier. The defendants argued that the trial court was not permitted to “look beyond” the durable power of attorney for health care to determine the competency of the patient at the time of its execution. The trial court ruled that it would “look beyond” the power of attorney for health care in order to consider the patient’s competency and allowed the parties to engage in discovery related to the issue of incompetence. Discovery ensued, and the parties submitted

additional evidence regarding the patient’s competency. The trial court then found by clear and convincing evidence that the patient was incompetent at the time the durable power of attorney for health care was executed. As a result, the trial court concluded that the patient’s brother lacked authority to sign the arbitration agreement as attorney-in-fact for health care. The trial court denied the motion to compel arbitration, and the defendants appealed. Pursuant to the Tennessee Supreme Court’s decision in *Owens v. National Health Corp.*, 263 S.W.3d 876 (Tenn. 2007), we hold that the trial court erred in looking beyond the durable power of attorney for health care to examine the patient’s competency at the time it was executed. We reverse the decision of the trial court and remand for further proceedings consistent with this opinion.

5. Status Application granted 8/4/22; Appellant’s brief filed 9/6/22; TBH 11/9/22 in Jackson.
6. Issue(s) According to the Supreme Court’s Order granting the application for permission to appeal:
1. Whether the Court of Appeals went beyond the permitted scope of review in reversing the circuit court’s decision based on application of the Tennessee Health Care Decisions Act, Tenn. Code Ann. § 68-11-1801 to -1815, a statute not raised by either of the parties on appeal or addressed by the circuit court;
  2. Whether this Court’s citation to Tennessee Code Annotated section 34-6- 208 in footnote 4 in *Owens v. National Health Corp.*, 263 S.W.3d 876 (Tenn. 2007), creates a bright line rule prohibiting trial courts from considering a principal’s lack of capacity to grant a healthcare power of attorney and other healthcare agency appointments; and
  3. Whether the Court of Appeals’ determination that the circuit court erred in looking into the validity of the health care power of attorney to enforce the arbitration agreement improperly favors nursing home arbitration agreements over other contracts, contrary to the requirements of 9 U.S.C.A. § 2, *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011), and Tennessee contract law?

- Style James Williams v. Smyrna Residential, LLC, et al.
- Docket Number M2021-00927-SC-R11-CV
- Lower Court Decision Links [https://www.tncourts.gov/sites/default/files/james.williams.opn\\_.pdf](https://www.tncourts.gov/sites/default/files/james.williams.opn_.pdf)
10. Lower Court Summary This appeal concerns the enforceability of an arbitration agreement in a wrongful death lawsuit. James Williams (“Plaintiff”), individually as next of kin and on behalf of the wrongful death beneficiaries of Granville Earl Williams, Jr., deceased (“Decedent”), sued Smyrna Residential, LLC d/b/a Azalea Court and Americare Systems, Inc. (“Defendants,” collectively) in the Circuit Court for Rutherford County (“the Trial Court”). Decedent was a resident of Azalea Court, an assisted living facility. Plaintiff alleged his father died because of Defendants’ negligence. Defendants filed a motion to compel arbitration, citing an arbitration agreement (“the Agreement”) entered into by Decedent’s daughter and durable power of attorney Karen Sams (“Sams”) on behalf of Decedent when the latter was admitted to Azalea Court. Notably, the durable power of attorney (“the POA”) did not cover healthcare decision-making. The Trial Court held that Sams lacked authority to enter into the Agreement and that, in any event, the wrongful death beneficiaries would not be bound by the Agreement even if it were enforceable. Defendants appeal. We affirm.

11. Status Application granted 9/29/22
12. Issue(s) As stated in the Appellant's Rule 11 Application:
1. Whether the Court of Appeals erred in creating a bright line rule that an attorney-in-fact, validly appointed pursuant to a general Durable Power of Attorney and granted with the authority to act on behalf of a principal "in all claims and litigation matters," has no authority to sign an independent arbitration agreement because it was executed in conjunction with the principal's admission to a long-term care facility?
  2. Whether the Court of Appeals' determination that a durable power of attorney who indisputably has the authority to bind the principal to arbitration cannot bind that principal to arbitration in the health care context improperly places nursing home arbitration agreements on unequal footing with other contracts, thereby disfavoring arbitration, contrary to the Federal Arbitration Act, 9 U.S.C. § 2?
  3. Whether the Court of Appeals erred in determining that Defendants waived their surrogate authority argument when the parties presented both the Living Will and the Tennessee Physician Orders for Scope of Treatment ("POST") to the Circuit Court, and the Circuit Court considered the evidence and made a ruling regarding the agent's authority based on that evidence?
  4. Whether the Court of Appeals erred in determining that Defendants failed to establish the statutory requirements for surrogate status were met with respect to the Mr. Williams, when Defendants presented a form signed by a designated physician and entered into the clinical record that on its face showed that the Mr. Williams lacked capacity and that the physician recognized Ms. Sams as his surrogate?
  5. Whether the Court of Appeals erred in finding that pursuant to *Beard v. Branson*, 528 S.W.3d 487 (Tenn. 2017), the Decedent's wrongful death beneficiaries are not bound by the Arbitration Agreement, where it was a validly-executed agreement and Tennessee law establishes that their claims are derivative of the estate's claim?