



Tennessee Supreme Court
DISCRETIONARY APPEALS
Grants & Denials List
May 21, 2018 - May 25, 2018

GRANTS

Style/Appeal Number	County/Trial Judge/ Trial Court No.	Intermediate Court	Supreme Court Action
<u>Nashville</u>			
STATE OF TENNESSEE v. STEPHANO LEE WEILACKER M2016-00546-SC-R11-CD	Montgomery County Circuit Court William R. Goodman, III 40700673	Woodall, Thomas T.: Affirm	Granted/Remanded: Application of Stephano Lee Weilacker Order filed 5-21-18 (See Attached Order)
IN RE CONSERVATORSHIP OF JAMES EDWARD CLARK M2018-00672-SC-R10-CV	Davidson County Probate Court David Randall Kennedy 09P425	Per Curiam: Case Dispositional Decision	Denied: Application of Robert L. Clark Order filed 5-25-18

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

05/21/2018

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. STEPHANO LEE WEILACKER

**Circuit Court for Montgomery County
No. 40700673**

No. M2016-00546-SC-R11-CD

ORDER

Upon consideration of the application for permission to appeal of Stephano Lee Weilacker and the record before us, the Court is of the opinion that the application should be, and is hereby, granted for the purpose of remanding the case to the Court of Criminal Appeals for reconsideration of several issues, as addressed below.

On remand, the Court of Criminal Appeals shall consider the suppression and prosecutorial misconduct issues raised by Mr. Weilacker by conducting a plenary review. The law of the case doctrine does not apply because this Court vacated the Court of Criminal Appeals' judgment in the second direct appeal and remanded the case specifically so that the defendant had the benefit of a plenary review of the issues raised in a timely motion for new trial. See State v. Weilacker, No. M2013-01532-SC-R11-CD (Tenn. Jan. 20, 2015) (Per Curiam Order); Ladd v. Honda Motor Co. Ltd., 939 S.W.2d 83, 91 (Tenn. Ct. App. 1996) (holding that the law of the case doctrine "does not apply to intermediate appellate court opinions that have been reversed or vacated").

Further, on remand the Court of Criminal Appeals shall consider the indictment issue raised by Mr. Weilacker by conducting a plain error review. If the Court of Criminal Appeals analyzes and determines that one of the factors for plain error relief is not satisfied, then analysis of the remaining factors is unnecessary. See State v. Smith, 24 S.W.3d 274, 283 (Tenn. 2000) ("We re-emphasize that the presence of all five factors must be established by the record before this Court will recognize the existence of plain error, and complete consideration of all the factors is not necessary when it is clear from the record that at least one of the factors cannot be established."); see also State v. Minor, No. W2016-00348-SC-R11-CD, 2018 WL 1736684, at *6 (Tenn. Apr. 11, 2018) (rejecting the State's argument that appellate courts had no obligation at all to review unpreserved claims based on new rules and stating that "[w]e reiterate that the failure to satisfy appellate review preservation requirements does not preclude the application of new rules to cases pending on appeal. Rather, it means that an appellate court uses the

plain error doctrine, instead of plenary appellate review, when applying the new rule and evaluating the defendant's entitlement to relief.”).

PER CURIAM

ROGER A. PAGE, NOT PARTICIPATING