S.C.A.L.E.S.

THE SUPREME COURT ADVANCING LEGAL EDUCATION FOR STUDENTS

The scales have long been used to symbolize this careful balance of elements in the justice system and legal proceedings.

There is a balance sought between the two parties to any case; between the rights of one accused and those of the state to pursue justice on behalf of its citizens.

There are two sides to every story. As you listen to the arguments today, think how you would balance what each party is sharing with the court.

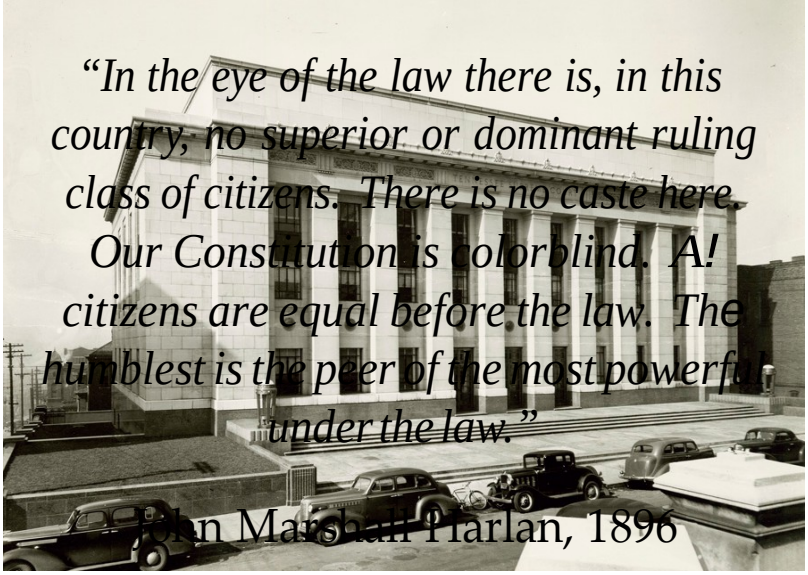
January 7, 2015
3rd Judicial District

Information about Tennessee's court system, including Tennessee Supreme Court opinions, is available at:

TNCourts.gov • Follow us on Twitter: @**TNCourts**

The SCALES Project
Supreme Court Advancing Legal Education for Students
3rd Judicial District
January 7, 2015
Niswonger Performing Arts Center
Greeneville, TN

8:45 a.m.	**Case 1 students enter the courtroom** Chuckey-Doak High School Greeneville High School North Greene High School South Greene High School West Greene High School Thomas Howard McNeese Educational Center
9:00 a.m. – 10:00 a.m.	State of Tennessee v. Larry Jereller Alston et al E2012-00431-SC-R11-CD
10:00 a.m.	Group 1 students move to the gymnasium at Greeneville High School to be debriefed.
10:05 a.m.	**Case 2 students enter the courtroom** Morristown-Hamblen High School East Morristown-Hamblen High School West Hancock County High School Cherokee High School Clinch School Volunteer High School
10:15 a.m. – 11:15 a.m.	Anne Payne v. CSX Transportation, Inc. E2012-02392-SC-R11-CV
11:15 a.m.	Case 2 students will remain in the courtroom to be debriefed.
11:20 a.m.	Case 1 students will walk back to Niswonger Performing Arts Center, go through the lunch line in the lobby, and enter the courtroom to eat lunch.
11:40 a.m.	Case 2 students will exit the courtroom, go through the lunch line in the lobby, and return to the courtroom to eat lunch.
12:00p.m – 12:45 p.m.	The luncheon will consist of the students, teachers, and principals from the participating high schools; the attorneys from each case; law enforcement; 3rd Judicial District Judges, court clerks, and possibly other local representatives. Chief Justice Lee will make a speech and present a plaque to the 12 participating high schools. The schools will have a designee present to accept the plaque.
12:45 p.m.	Case 2 students will load the buses and return to school
12:55 p.m.	Case 1 students will load the buses and return to school



Court Protocol

DO

- Dress appropriately.
- Remove hats before entering the courtroom.
- Enter the courtroom prior to the commencement of an argument.
- Stand when the justices enter and leave the courtroom.
- Listen attentively to courtroom proceedings.
- Address a member of the Supreme Court as "Justice" or "Chief Justice," followed by the last name. All judges may be called "Your Honor."

DO NOT

- Bring weapons of any kind to SCALES. This includes pocketknives.
- Bring food, drinks, cameras, recorders or cell phones into the courtroom.
- Bring book bags, backpacks, or large purses into the courtroom.
- Enter or leave the courtroom during an argument.
- Chew gum or create any distraction in the courtroom.
- Engage in any conversation once an argument begins.
- Discuss the cases with members of the Supreme Court.

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Supreme Court

State of Tennessee

CHAMBERS OF
CHIEF JUSTICE SHARON G. LEE

P.O. BOX 444
505 MAIN STREET
KNOXVILLE, TENNESSEE 37901

(865) 594-6707
Justice.Lee@tncourts.gov

Students, Faculty, and Staff,

Welcome to this special session of the Tennessee Supreme Court. Although the Court normally meets in Knoxville, Nashville, and Jackson, we wished to hold court here in Greeneville so you could see first-hand how the judicial system works.

The Supreme Court is the highest court in the State of Tennessee and consists of five individuals who take an oath to apply and interpret the law in a fair and impartial manner. We are ever mindful of our responsibilities and the importance of fostering public confidence in the operation of our courts.

The judicial branch of government serves an important function in our governmental system. It is our duty to adjudicate the disputes of society and interpret and apply the Constitution and the laws passed by the Legislature. The laws of our great state and nation are designed to ensure the maintenance of a democratic society that is free and just, and it is the responsibility of the judiciary to see that those laws are properly applied. To preserve the strength and vitality of our legal system, we all must have confidence in the law's ability to protect our individual rights, settle our disputes, and bring us together as a society of diverse human beings.

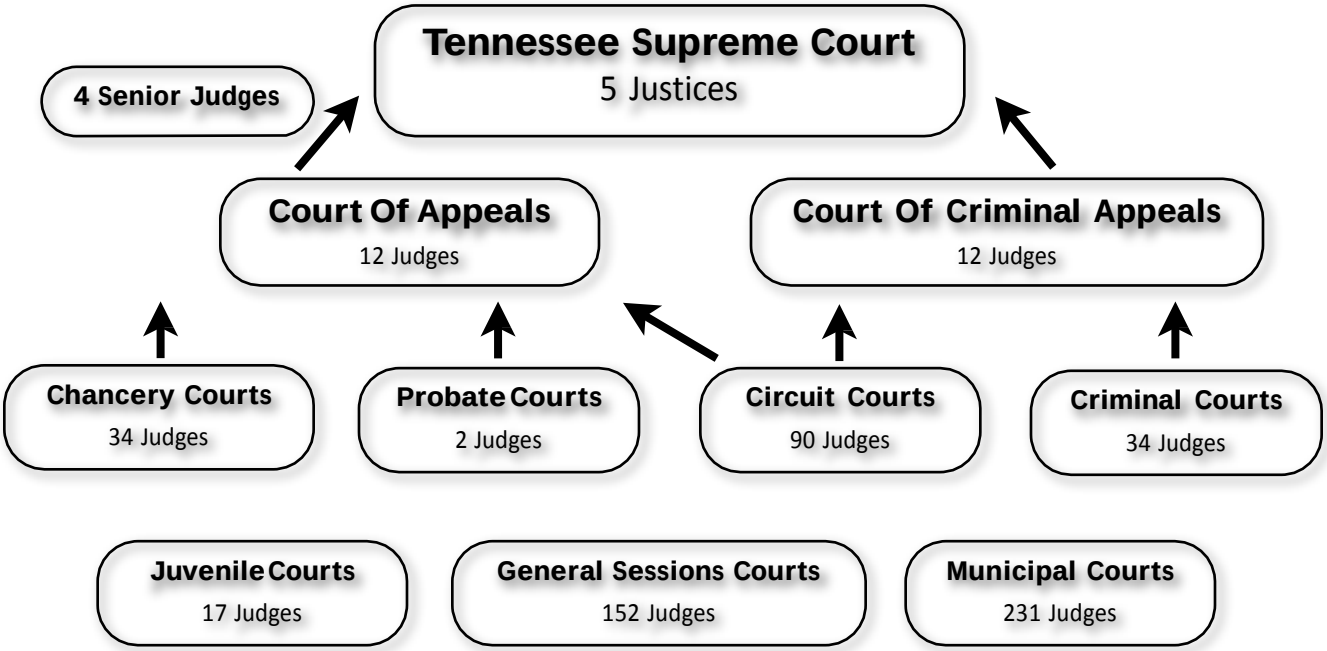
Thank you for your participation in S.C.A.L.E.S. We hope this experience will instill within you a great appreciation for the system of laws that governs our interactions and provide you with a better understanding of the judicial system that applies and interprets those laws.

Sincerely,

Sharon G. Lee

Sharon G. Lee
Chief Justice

Tennessee Judicial System



The **judicial branch,** one of the three basic divisions of state government, serves as a check on the powers of both the legislative and executive branches. Through the power of judicial review, the courts rule on the constitutionality of legislation passed by the Tennessee General Assembly and considers the legality of administrative policies and regulations.

Tennessee's judicial system is derived from a **constitutional foundation**: "The judicial power of this state shall be vested in one Supreme Court and in such Circuit, Chancery, and other inferior courts as the legislature shall from time to time ordain and establish . . . ." (Article VI, Section 1, Constitution of the State of Tennessee).

Although not a part of the court system, the offices of the attorney general, district attorneys general and district public defenders are associated with the judicial branch of state government.

The **attorney general** represents the interests of the state in civil litigation and in criminal cases in the appellate courts. The 31 **district attorneys** serve as prosecuting counsel in criminal cases in the trial courts.

Public defenders and **court-appointed private attorneys** represent indigent defendants, primarily in criminal cases.

The **Supreme Court** is the highest court in the state. The five justices are nominated by the Judicial Nominating Commission, appointed by the governor and subject to a retain/replace vote for eight-year terms. The majority of this court's workload consists of criminal and civil cases appealed from lower state courts.

The **intermediate appellate courts** -- the Court of Appeals and Court of Criminal Appeals -- hear civil and criminal cases appealed from the trial courts.

The state's **trial courts** include Chancery, Criminal, Circuit and Probate Courts. Judges in these courts are chosen by popular election within their judicial districts.

The fourth level of courts in Tennessee is composed of the **courts of limited jurisdiction** -- General Sessions, Juvenile and Municipal Courts. Their respective counties or municipalities fund these courts.

State Trial Courts

CIRCUIT COURTS are courts of general jurisdiction in Tennessee. Circuit Court judges hear civil and criminal cases and appeals of decisions from Juvenile, Municipal and General Sessions Courts. The jurisdiction of Circuit Courts often overlaps that of the Chancery Courts. Criminal cases are tried in Circuit Court except in districts with separate Criminal Courts established by the General Assembly.

CHANCERY COURTS are a good example of the court system's English heritage. The traditional equity courts are based on the English system in which the chancellor acted as the "King's conscience." Chancellors may, by law and tradition, modify the application of strict legal rules and adapt relief to the circumstances of individual cases.

CRIMINAL COURTS are established by the legislature to relieve Circuit Courts in areas with heavy caseloads. In addition to having jurisdiction over criminal cases, Criminal Court judges hear misdemeanor appeals from lower courts. In districts without Criminal Courts, criminal cases are handled at the trial level by Circuit Court judges.

PROBATE COURTS are created by the legislature and given jurisdiction over probate of wills and administration of estates.

Probate judges also handle conservatorships and guardianships.

The Jury System

The Sixth Amendment to the United States Constitution also guarantees any citizen accused of a crime a speedy and public jury trial.

A jury in Tennessee consists of 12 citizens selected from public records, such as voter registration, to make a decision based on facts in a case. State law regulates the right to a jury trial in civil -- or non-criminal -- cases, but in a criminal case where the accused could be imprisoned, there is an absolute right in Tennessee to a trial by jury. Juries are chosen from a "jury pool," selected at random to come to court for possible service. Lawyers for both sides and the judge may ask potential jurors questions during a process called "voir dire," a French term meaning "to speak the truth."

The process is intended to ensure that jurors will be impartial and fair. Prospective jurors may be excused "for cause," such as conflict of interest or bias. Each side also may exercise a limited number of "peremptory challenges," and dismiss a potential juror without stating a reason. While there is a right to a trial by jury, there is no requirement that a defendant have a jury trial. In some cases, the accused asks for a "bench trial" in which the judge hears the case and renders a decision. In Tennessee, judges impose sentences on defendants found guilty by juries except in death penalty cases. Juries also impose fines over $50 in criminal cases.

> **"That the right of trial by jury shall remain inviolate and no religious or political test shall ever be required as a qualification for jurors..."**
>
> ***Article I, Section VI, Tennessee Constitution***

COURTS OF LIMITED JURISDICTION

GENERAL SESSIONS COURT jurisdiction varies from county to county in Tennessee, based on statutes and private acts enacted by the legislature.

Every county is served by a court of limited jurisdiction, which hears civil and criminal cases, including matters that at one time were handled by local justices of the peace.

Civil jurisdiction of General Sessions Courts is restricted to specific monetary limits and types of actions. Criminal jurisdiction is limited to preliminary hearings in felony cases and trials of misdemeanor cases in which a defendant waives the right to a grand jury investigation and trial by jury in Circuit or Criminal Court.

General Sessions judges also serve as juvenile judges in all counties except those in which the legislature has established a separate Juvenile Court. General Sessions judges must be attorneys, although non-attorney incumbent judges may continue in office until they retire or are defeated. The judges are elected to eight-year terms.

JUVENILE COURT jurisdiction is vested in General Sessions Courts in all counties except those in which the law establishes special Juvenile Courts.

Juvenile Courts have exclusive jurisdiction in proceedings involving minors alleged to be delinquent, unruly, dependent and neglected. Juvenile Courts also have concurrent jurisdiction with Circuit, Chancery and Probate Courts in some areas.

MUNICIPAL COURT, also known as City Court, has jurisdiction in cases involving violations of city ordinances.

Generally, a city judge has authority to assess fines up to $50 and jail sentences up to 30 days. However, the jurisdiction varies widely from city to city. About 253 Tennessee cities have Municipal Courts.

Find local court information at TNCourts.gov/courts; click on interactive state map.

Administrative Office of the Courts

The Administrative Office of the Courts (AOC) provides support services to the Tennessee Supreme Court and the entire state court system. The director, appointed by the Supreme Court, is administrative officer for the courts and oversees the AOC.

Duties of the office include preparing the court system's annual budget; providing judicial education, law libraries, computers, other equipment, training and technical support for judges and other court personnel; assisting judges with case assignments; administering payroll for the court system; conducting orientation for new judges; administering the official state criminal court reporters system; providing assistance to judicial committees; compiling data; and disbursing funds to court-appointed attorneys representing indigents.

Clerks of the Appellate & Trial Courts

COURT CLERKS ensure the efficient operation of state courts by maintaining dockets and records, handling administrative matters and serving as goodwill ambassadors to the public.

The clerk of the appellate courts is appointed by the Supreme Court for a six-year term and is based in Nashville, the Middle Division.

The appellate court clerk oversees the chief deputies and deputy clerks, who serve each grand division. Circuit Court clerks, elected in each county for four-year terms, also serve as General Sessions Court clerks in counties without designated General Sessions Court clerks.

Clerks also are elected in counties with Probate and Criminal Courts.

Each Chancery Court is served by a clerk and master, who is appointed by the Chancery Court judge for a six-year term.

Appellate Court Clerk
Jim Hivner

Jackson Supreme Court Building

Nancy Acred
Chief Deputy Clerk
Western Division

Nashville Supreme Court Building

Lisa Marsh
Chief Deputy Clerk
Middle Division

Knoxville Supreme Court Building

Joanne Newsome
Chief Deputy Clerk
Eastern Division

The Bench

Chief Justice Sharon G. Lee

Born December 8, 1953, Knoxville, TN; a life-long resident of Monroe County; has two daughters; attended Vanderbilt University; graduated from the UT College of Business with high honors and the UT College of Law; private practice, Madisonville, TN 1978-2004; member of the Tennessee Bar Association, served in the House of Delegates; member and former Director of the Tennessee Lawyers Association for Women; Member and former President of the East Tennessee Lawyers Association for Women; fellow of the American, Tennessee and Knoxville Bar Foundations; member of the Dean's Council for the UT College of Law; formerly an adjunct faculty member of the UT College of Law; Member of the Board of Directors of the East Tennessee Historical Society, the Knoxville YWCA, and the Sequoyah Birthplace Museum; formerly served as attorney for Monroe County and the Cities of Madisonville and Vonore; City Judge for Madisonville; recipient of the Spotlight Award from the National Association of Women Judges, the Spirit of Justice Award from the East Tennessee Lawyers Association for Women, the Distinguished Alumna Award from the Webb School of Knoxville, the Alumni Professional Achievement Award from the University of Tennessee; YWCA Tribute to Women Award, and Woman of Achievement Award from the Girl Scouts Council for the Southern Appalachians; first woman to serve as a Judge on the Eastern Section of the Tennessee Court of Appeals, appointed June 2004, elected August 2004, re-elected 2006; appointed to the Supreme Court October 2, 2008. Became Chief Justice in 2014.

Justice Cornelia A. Clark

Born September 15, 1950, Franklin, TN; B.A. Vanderbilt University, 1971; M.A.T. Harvard University, 1972; J.D. Vanderbilt School of Law, 1979; Articles Editor, Vanderbilt Law Review; private practice, Farris, Warfield & Kanaday 1979-1989; Circuit Judge, 21st Judicial District, 1989-1999; Director, Tennessee Administrative Office of the Courts, 1999-2005; Instructor, Vanderbilt University School of Law 1990-2000; faculty member, American Institute for Justice, Inc.; member, Williamson County, Tennessee, and American Bar Associations, American Judicature Society; Member and former Board of Directors member, Lawyers Association for Women, Marion Griffin Chapter and Tennessee Lawyers' Association for Women; Member and former Second Vice President, Nashville Bar Association; Fellow of the American and Nashville Bar Foundations; Fellow and former Board chair, Tennessee Bar Foundation; Member, ABA Commission on the American Jury 2004-05; Chair, Tennessee Judicial Council 2006-10; Harry Phillips American Inn of Court; Tennessee John Marshall American Inn of Court; Dean, Tennessee Judicial Academy 1997-98; Vice President, Tennessee Judicial Conference 1997-98; Board, Conference of State Court Administrators 2004-05; United Methodist Publishing House Board; Vanderbilt Law School National Council 2009-12; 2005 Liberty Bell Award recipient by the Williamson County Bar Association; 2010 Appellate Judge of the Year, American Board of Trial Advocates; 2010 inductee Nashville YWCA Academy for Women of Achievement; 2010 Appreciation Award, TCJFCJ; Board president, Nashville YWCA 1988-89; Board of Directors, Franklin/Williamson County Chamber of Commerce 1987-89; President, Tennessee Municipal Attorneys' Association 1988; Franklin First United Methodist Church; Appointed to Supreme Court September 2005; served as Chief Justice 2010-12.

Justice Gary R. Wade

Born May 31, 1948, Knox County, TN; a life-long resident of Sevier County; Married; three children; four grandchildren; Methodist; B.S. University of Tennessee, 1970; J. D. University of Tennessee College of Law, 1973; private practice of law 1973-87, Ogle and Wade, P.C.; University of Tennessee College of Law Dean's Circle; Tennessee Bar Association, past member House of Delegates and Board of Governors; American Bar Association, Convention Delegate; Tennessee Trial Lawyers Association; Tennessee Association of Criminal Defense Lawyers; American Inns of Court; fellow, Tennessee Bar Foundation; American Bar Foundation; Tennessee Judicial Conference, past president; Eta South Province, Phi Delta Theta Fraternity, past president; mayor, City of Sevierville, 1977-87; Mountain Press Mover and Shaker of the Year 1983-85 and 1997; Gary R. Wade Boulevard, 1987; Friends of the Great Smoky Mountains National Park, co-founder, past president, and chair emeritus; Citizen of the Year, Sevierville Chamber of Commerce, 2004; Appellate Judge of the Year, American Board of Trial Advocates, 2004; Legion of Honor, Phi Delta Theta International Fraternity, 2004; Judicial Excellence Award, Knoxville Bar Association, 2004; Garden Club of America Conservation Award, 2005; appointed to Tennessee Court of Criminal Appeals, 1987; elected 1988; reelected 1990 and 1998; served as presiding judge, 1998-2006; appointed to Supreme Court September 2006; served as Chief Justice 2012-14.

Justice Jeffrey S. Bivins

Born August 31, 1960, Kingsport, TN; Married; two children; Independent Christian; Graduate of Lynn View High School, 1978; B.A., East Tennessee State University, 1982; J.D. Vanderbilt University School of Law, 1986; private practice, Boult, Cummings, Conners & Berry, Nashville, TN, 1986-95; 2001-2005; Assistant Commissioner and General Counsel, Tennessee Department of Personnel, 1996-1999, 2000-2001; Appointed to Circuit Court, 21st Judicial District, 1999 by Gov. Don Sundquist; Appointed to Circuit Court, 21st Judicial District, 2005 by Gov. Phil Bredesen; Elected 2006; Tennessee Judicial Evaluation Commission; Tennessee Court of the Judiciary; John Marshall American Inns of Court; Williamson County Bar Association; Tennessee Bar Foundation; Nashville Bar Foundation; Tennessee Judicial Conference – Co-Chair of Compensation and Retirement Committee, Member of Executive Committee, Member of Criminal Pattern Jury Instructions Committee; Former County Commissioner for Williamson County; Former Member, Williamson County Library Board of Trustees; Former softball coach and board member of Girls Softball Association of Franklin; Appointed to Court of Criminal Appeals, August 2011 by Gov. Bill Haslam; appointed to the Tennessee Supreme Court in 2014 by Gov. Bill Haslam.

Justice Holly M. Kirby

Born in 1957, Memphis, TN; Married, two children; Presbyterian; Graduate of Columbia Central High School, Columbia, Tenn.; B.S. in Engineering, University of Memphis, 1979 (Magna Cum Laude, Herff and Honors Alumni Scholarship); J.D., University of Memphis School of Law, 1982 (Herff Scholarship; Law Review, Notes Editor); admitted to bar in 1982; Law Clerk to the Honorable Harry W. Wellford, Sixth Circuit, U.S. Court of Appeals, 1982-1983; practiced law in Memphis, 1983-1995 (first female partner in law firm Burch, Porter & Johnson); Tennessee Appellate Court Nominating Commission, 1989-1994, Chairperson, 1994; Leo Bearman, Sr. American Inn of Court, 1995-1998; University of Memphis Award for Outstanding Young Alumna, 1996; University of Memphis College of Engineering Outstanding Alumnus, 2002; elected to Memphis Bar Foundation, 2007; appointed to Court of Appeals in 1995 by Governor Don Sundquist (first woman to serve on Court of Appeals); elected 1996; re-elected to eight-year terms in 1998 and 2006; appointed to the Tennessee Supreme Court in 2014 by Gov. Bill Haslam.

Tennessee Supreme Court

As required by the state Constitution, the five members of the Tennessee Supreme Court hear cases in Nashvi!e, Jackson and Knoxville. Pictured in the courtroom at the Supreme Court building in Nashvi!e are (%ont, seated) Chief Justice Sharon G. Lee; (standing %om le' to right) Justice Ho!y M. Kirby, Justice Je(ey S. Bivins, Justice Gary R. Wade, Justice Cornelia A. Clark. The Supreme Court sits "en banc," or as a whole, rather than in sma!er panels as the Tennessee intermediate appeals courts do.

"The judicial power of this state shall be vested in one Supreme Court and in such Circuit, Chancery and other inferior courts as the Legislature shall from time to time ordain and establish...."
Article VI, Section I,
Tennessee Constitution

The **TENNESSEE SUPREME COURT** is the state's highest court and the court of last resort. The five justices review civil and criminal cases appealed from lower state courts. They interpret the laws and constitutions of Tennessee and the United States.

The justices are appointed by the governor, confirmed by the legislature and then elected every eight years on a "yes-no" retention vote. They represent each of the state's grand divisions – West, Middle and East Tennessee.

By constitutional mandate, the court normally meets in Nashville, Jackson and Memphis.

Under the 1992 Appellate Court Improvements Act, the Supreme Court may assume jurisdiction over undecided cases in the state Court of Appeals or Court of Criminal Appeals when there is a special need for a speedy decision.

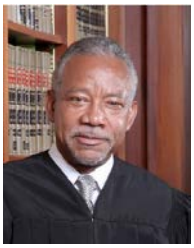
The court also has appellate jurisdiction in cases involving state taxes, the right to hold public office and issues of constitutional law.

If requested, attorneys may present oral arguments before the Supreme Court. Unlike trials in lower courts, there are no witnesses, juries or testimony.

After the justices have heard oral arguments and reviewed the attorneys' written materials, or *briefs*, they issue written decisions, known as *opinions*.

Tennessee Supreme Court opinions on federal constitutional issues can be appealed only to the United States Supreme Court, which may or may not agree to consider the appeal.

Tennessee Court of Appeals



Court of Appeals *judges are (left, from top) Kenny W. Armstrong, Andy D. Bennett, Frank G. Clement, Jr., Richard H. Dinkins, Thomas R. Frierson, II, Brandon O. Gibson. (Right, from top) Arnold B. Goldin, W. Neal McBrayer, John Westley McClarty, J. Steven Stafford, Charles D. Susano, Jr, and D. Michael Swiney.*

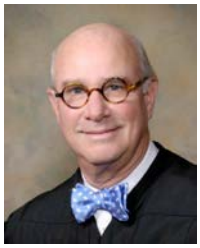
The **COURT OF APPEALS**, created by the General Assembly in 1925, hears appeals in civil — or non-criminal — cases from trial courts and certain state boards and commissions.

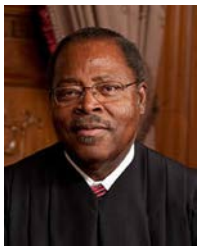
The court has 12 members, who sit in panels of three in Jackson, Knoxville and Nashville. All decisions made by the Court of Appeals may be appealed, by permission, to the Tennessee Supreme Court.

No witnesses, juries or testimony are presented before the Court of Appeals. Instead, attorneys present oral and written arguments.

Court of Appeals judges are elected on a "yes-no" ballot every eight years. When a vacancy occurs on the intermediate appellate court, the 11-member Governor's Council for Judicial Appointments interviews applicants and recommends three candidates to the governor. The governor appoints a new judge, who must then be confirmed by the legislature to serve until the next August general election, when they are subject to the retention vote.

"The Constitution of the United States was made not merely for the generation that then existed, but for posterity — unlimited, undefined, endless, perpetual posterity."
Senator Henry Clay





Tennessee Court of Criminal Appeals

***Court of Criminal Appeals** judges are (seated from left) Norma McGee Ogle, James Curwood Witt, Jr., Thomas T. Woodall, John Everett Williams, and Robert W. Wedemeyer. (Standing from left) Robert H. Montgomery, Jr., Roger A. Page, D. Kelly Thomas, Jr., Camille R. McMullen, Robert L. Holloway, Jr., and Timothy L. Easter.* Not pictured: *Alan E. Glenn.*

The **COURT OF CRIMINAL APPEALS**, created by the legislature in 1967, hears trial court appeals in felony and misdemeanor cases, as well as post-conviction petitions.

The Tennessee General Assembly increased the membership of the court from nine to 12 on September 1, 1996. The members sit monthly in panels of three in Jackson, Knoxville and Nashville.

They may also meet in other places as necessary.

All Court of Criminal Appeals decisions may be appealed to the state Supreme Court by permission, except in capital cases, which are appealed automatically.

No witnesses, juries or testimony are presented in the Court of Criminal Appeals. Instead, attorneys present oral and written arguments.

Court of Criminal Appeals judges serve eight-year terms. Judges are elected on a "yes-no" ballot every eight years.

When a vacancy occurs on the intermediate appellate court, the 11-member Governor's Council for Judicial Appointments interviews applicants and recommends three candidates to the governor.

The governor appoints a new judge, who must then be confirmed by the legislature to serve until the next August general election, when they are subject to the retention vote.

The word democracy comes from the Greek demos, meaning "the people," and kratia, meaning "rule."

Glossary of Legal Terms

acquit - To find a defendant not guilty in a criminal trial.

adjudication - A judgment or decree.

affidavit - A written or printed declaration or statement under oath.

affirm - The ruling of an appellate court that the judgment of a lower court is correct and should stand.

appeal - Review of a case by a higher court.

appellant - Party appealing a decision or judgment to a higher court.

appellee - The party against whom an appeal is filed.

arbitration - The hearing and settlement of a dispute between opposing parties by a third party whose decision the parties have agreed to accept.

arraignment - A court hearing in a criminal case where a defendant is advised of the charges and asked to plead guilty or not guilty.

bail bond - An agreement by a third party to pay a certain sum of money if the defendant fails to appear in court.

bench trial - Trial held before judge sitting without a jury; jury waived trial.

bench warrant - Process issued by the court or "from the bench" for the attachment or arrest of a person.

binding over - The act by which a court or magistrate requires a person to enter into a recognizance or furnish bail to appear for trial, to keep the peace, to attend as a witness, etc. The term also describes act of lower court in transferring case to higher court or to grand jury after a finding of probable cause to believe that defendant committed crime.

brief - A legal document, prepared by an attorney, which presents the law and facts supporting his or her client.

caseload - The number of cases a judge handles.

cause of action - A legal claim.

certiorari - A procedure for removing a case from a lower court to a higher court for review.

change of venue - Moving a case from one court, or location, to another.

civil law - All law that is not criminal law.

class - There are five classifications of felonies and three classifications of misdemeanors. With the exception of murder in the first degree, all felonies in the Revised Criminal Code, in the old Title 39 and in titles other than Title 39 are classified. Each felony has an A, B, C, D, or E classification. "A" is the most serious and "E" is the least serious. Each misdemeanor has either an A, B, or C classification with "A" being most serious and "C" being least serious. Murder in the first degree carries three possible penalties: life (with the possibility of parole), life without parole, and death.

code - A collection of laws promulgated by legislative authority.

common law - A system of jurisprudence based on precedent rather than statutory laws.

commutation - Change of punishment from a greater to a lesser degree or ending a sentence that has been partially served.

corpus delicti - The body or material substance upon which crime has been committed; e.g., the corpse of a murdered person or the charred remains of a burned house.

de novo - "Anew." A trial de novo is a completely new trial.

declaratory judgment - A judgment declaring the rights of the parties on a question of law.

decree - Decision or order of the court. A final decree completes the suit; an interlocutory decree is provisional or preliminary.

default judgment - Under Rules of Civil Procedure, when a party against whom a judgment for affirmative relief is sought has failed to plead (i.e., answer) or otherwise defend, he is in default and a judgment by default may be entered by either the clerk or the court.

defendant - A person charged with a crime or a person against whom a civil action is brought.

deposition - Sworn testimony taken outside the courtroom according to the rules of the court.

discovery - A pretrial proceeding where a party to an action may be informed of the facts known by other parties or witnesses.

docket - Book containing entries of all proceedings in a court.

double jeopardy - Prohibition against more than one prosecution for the same crime.

due process - Constitutional guarantee that an accused person receives a fair and impartial trial.

en banc - "On the bench." All judges of a court sitting together to hear a case.

et al. - "And others."

ex parte - A proceeding brought for the benefit of one party only without notice to or challenge by an adverse party.

felony - A serious criminal offense for which the minimum sentence is one year.

grand jury - A panel of citizens sworn to inquire into crime and if appropriate bring accusations, or indictments, against the suspects.

guardian ad litem - A person appointed by a court to manage the interests of a minor or incompetent person whose property is involved in litigation.

habeas corpus - "You have the body." A writ of habeas corpus requires that a person be brought before a judge. It is usually used to direct an official to produce a prisoner so the court may determine if liberty has been denied without due process.

indictment - Written accusation of a grand jury charging a crime.

injunction - Court orders prohibiting specific actions from being carried out.

interrogatories - Written questions which must be answered under oath.

judgment - Final determination by a court.

judgment document - Document that explains the sentence an offender receives from a trial court.

jurisprudence - The science of law.

limited jurisdiction - Courts limited in the types of cases they may hear.

litigant - Person or group engaged in a lawsuit.

misdemeanor - Criminal offense that is less than a felony and punishable by less than a year in jail.

mitigating circumstances - Do not justify or excuse an offense, but may be considered as reasons for reducing the degree of blame.

motion - Oral or written request before, during or after a trial on which a court issues a ruling or order.

moot - Unsettled or undecided.

negligence - The absence of ordinary care.

nolo contendere - Latin phrase meaning "I will not contest it;" a plea in a criminal case which has a similar legal effect as pleading guilty. A defendant may plead nolo contendere only with the consent of the court.

opinion, per curiam - Phrase used to distinguish an opinion of the whole court from an opinion written by only one judge.

parole - The conditional and revocable release of an inmate by the Board of Probation and Paroles to parole supervision.

peremptory challenge - Procedure for rejecting prospective jurors without a reason. Each side is permitted a limited number of peremptory challenges.

power of attorney - Document authorizing another to act as one's agent or attorney in fact (not an attorney at law).

probable cause - Reasonable belief that a crime has been committed; the basis for all lawful searches.

probate - The legal process of establishing the validity of a will and settling an estate.

probation - A sentence of confinement which is suspended upon a term of probation supervision. It may include community ser vice or restitution or both. Probation must automatically be considered if the defendant is eligible.

pro bono - Legal services provided without attorney fees.

pro se - Legal representation of oneself.

pro tem - "Temporary."

recess - A short interval during which court suspends business, but without adjourning.

remand - To send back.

sentence, concurrent - Two or more sentences which run at the same time.

sentence, consecutive - Two or more sentences which run one after another.

sentence, determinate - A sentence that states exactly the time to be served or money to be paid.

sequester a jury - To place members of a jury into 24-hour a day seclusion until a verdict is reached.

settlement conference - A meeting between parties of a lawsuit, their attorneys and a judge to attempt a resolution of the dispute without a trial.

statute - A law created by the Legislature.

stay - Halting a judicial proceeding by order of the court.

subpoena - A written legal notice requiring a person to appear in court and give testimony or produce documentary evidence.

subpoena duces tecum - "Under penalty you shall take it with you." A process by which the court commands a witness to produce specific documents or records in a trial.

tort - An injury or wrong committed with or without force to the person or property of another giving rise to a claim for damages.

venue - The specific county, city or geographical area in which a court has jurisdiction.

voir dire - (pronounced "vwar-deer") - "To speak the truth." The process of preliminary examination of prospective jurors regarding their qualifications.

writ - A written court order directing a person to perform or refrain from performing a specific act.

writ of mandamus - An order issued by a court of superior jurisdiction commanding performance of a particular act by an inferior court or public official.

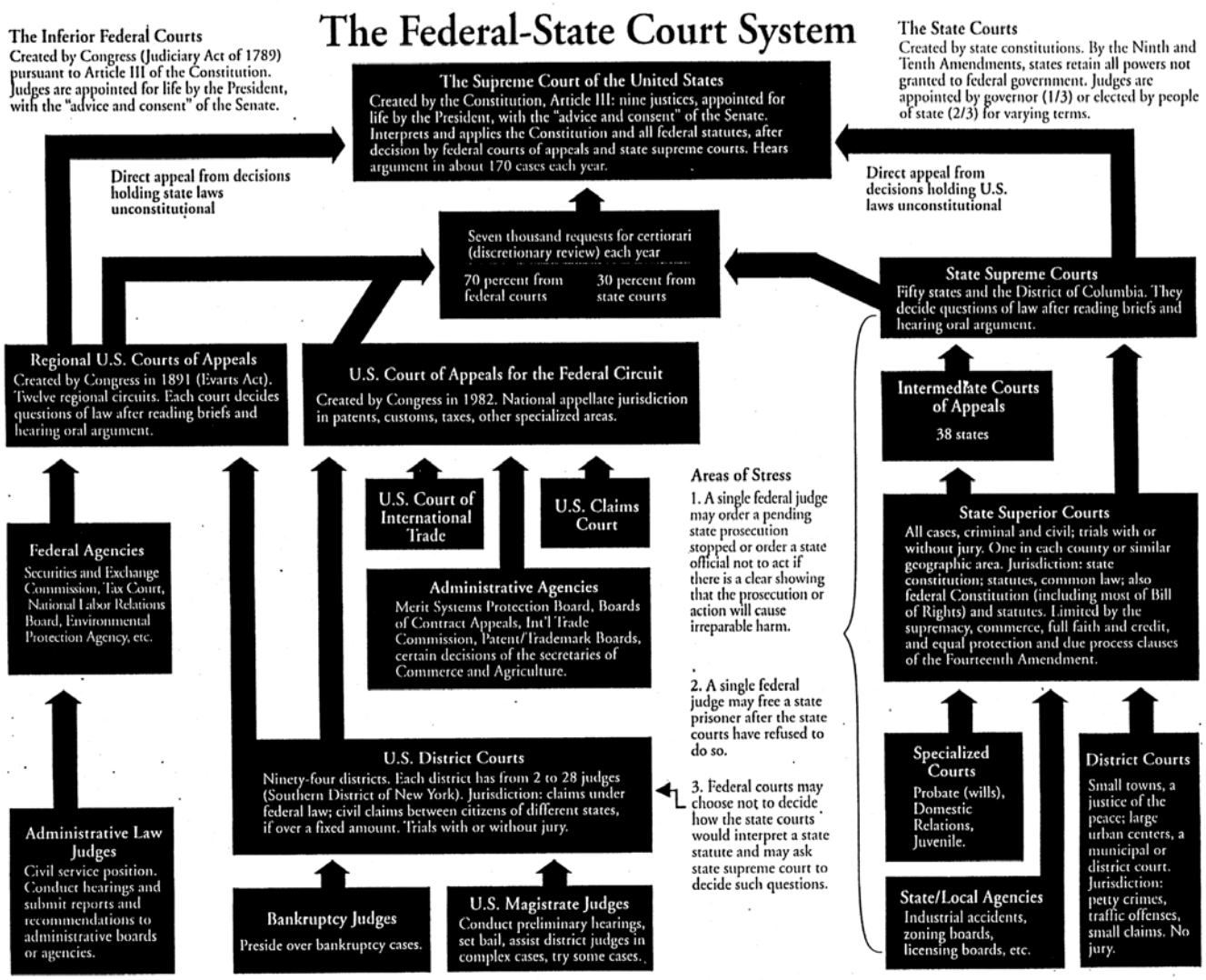
Organization of the Federal Court System

The federal judicial branch of government is composed of the federal courts. The United States Supreme Court is the highest court in the federal system and has the last word on issues of federal law and the federal Constitution.

The courts just below the U.S. Supreme Court, the intermediate federal courts, are known as circuit courts of appeal. There are 13 federal circuit courts in the U.S. Tennessee is within the jurisdiction of the Sixth Circuit Court of Appeals.

Thus, federal cases originating in Tennessee are appealed to the Sixth Circuit Court of Appeals. The federal trial court in which federal lawsuits originate is the federal district court. Tennessee is divided into three federal districts - western, middle and eastern.

Federal courts may constitutionally hear only two types of cases: cases involving a federal law question and cases involving citizens of two different states when the amount in dispute is greater than $75,000.



CASE SUMMARIES

STATE OF TENNESSEE v. LARRY ALSTON, KRIS YOUNG, and JOSHUA WEBB
(Appellee) **(Appellants)**

Primary Issues

Whether an instruction pursuant to *State v. White*, 362 S.W.3d 559 (Tenn. 2012), is required when a kidnapping is accompanied by a burglary.

Whether the Court of Criminal Appeals erred in determining that the absence of the *White* instruction was harmless beyond a reasonable doubt.

Facts

On the afternoon of April 15, 2010, the three defendants (Larry Jereller Alston, Kris Theotis Young, and Joshua Edward Webb) confronted the victim as she was getting into her car in front of her house. They took her purse at gunpoint and forced her into the house. They pushed her onto a couch and dumped the contents of her purse on a coffee table. They took her money and demanded the personal identification number for her bank card. They began looting the house. As one of the defendants was walking out of the house with the victim's television, the police arrived and apprehended the defendants. The entire incident lasted only a few minutes.

Trial Court Action

The case was tried before release of the Supreme Court's decision in *White*. The trial court denied the defendants' request for a jury instruction similar to the one adopted in *White*. The jury convicted all three defendants as charged of especially aggravated kidnapping, aggravated burglary, aggravated robbery, and possession of a firearm with the intent to go armed during the commission of a dangerous felony. The trial court entered an order dismissing the charges of especially aggravated kidnapping and aggravated burglary on the ground that they violated due process principles. The trial court later dismissed the firearms charge on the ground that it could not stand in light of the dismissal of the especially aggravated kidnapping and aggravated burglary charges.

Court of Criminal Appeals Decision

The Court of Criminal Appeals affirmed the conviction of aggravated robbery and the dismissal of the firearms charge. The Court of Criminal Appeals reinstated the convictions of especially aggravated kidnapping and aggravated burglary. Upon granting the defendants' application for permission to appeal, the Supreme Court remanded the case to the Court of Criminal Appeals in January 2014 for reconsideration in light of *State v. Cecil*, 409 S.W.3d 599 (Tenn. 2013). Confirming on remand its earlier holdings, the Court of Criminal Appeals stated that "the evidence clearly and overwhelmingly established that the removal of the victim from her driveway and her confinement within the house went far beyond that necessary to accomplish the single aggravated robbery as that offense was narrowly charged in the indictment [*i.e.*, taking from the person of the victim a purse and its contents]." Court of Criminal Appeals slip opinion, p. 8.

Permission to Appeal

The defendants applied for permission to appeal from the judgment of the Court of Criminal Appeals, and the Supreme Court granted their application. Therefore, the defendants are the appellants, and the State of Tennessee is the appellee.

Text of Tennessee Code Annotated Section 39-13-302

39-13-302. False imprisonment. – (a) A person commits the offense of false imprisonment who knowingly removes or confines another unlawfully so as to interfere substantially with the other's liberty.

Text of Tennessee Code Annotated Section 39-13-305

39-13-305. Especially aggravated kidnapping. – (a) Especially aggravated kidnapping is false imprisonment, as defined in § 39-13-302:
(1) Accomplished with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon; . . .

Text of Tennessee Code Annotated Section 39-13-401

39-13-401. Robbery. – (a) Robbery is the intentional or knowing theft of property from the person of another by violence or putting the person in fear.

Text of Tennessee Code Annotated Section 39-13-402

39-13-402. Aggravated Robbery. – (a) Aggravated robbery is robbery as defined in § 39-13-401:
(1) Accomplished with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon; . . .

Text of Tennessee Code Annotated Section 39-14-403

39-14-403. Aggravated Burglary. – (a) Aggravated burglary is burglary of a habitation as defined in §§ 39-14-401 and 39-14-402.

Holding of *State v. White*

By using false imprisonment as the "building block" for kidnapping offenses, Tennessee statutes require that a defendant "knowingly removes or confines another unlawfully so as to *interfere substantially with the other's liberty*." *White*, 362 S.W.3d at 576 (quoting Tenn. Code Ann. § 39-13-302(a)). Whether a victim's removal or confinement is, in essence, incidental to an accompanying offense or, in the alternative, is significant enough, standing alone, to support a separate conviction is a jury question, to be reviewed by the appellate courts under a sufficiency of the evidence standard. *White*, 362 S.W.3d at 577-78. Prior Tennessee Supreme Court decisions that had applied a separate due process analysis in appellate review are expressly overruled. *White*, 362 S.W.3d at 578. An appropriate instruction on the "substantial interference" element is necessary to assure that juries properly afford constitutional due process protections to those on trial for a kidnapping offense

and an accompanying offense. *Id.* The instruction to the jury on the "substantial interference" element should provide as follows:

> To establish whether the defendant's removal or confinement of the victim constituted a substantial interference with his or her liberty, the State must prove that the removal or confinement was to a greater degree than that necessary to commit the offense of [insert offense], which is the other offense charged in this case. In making this determination, you may consider all the relevant facts and circumstances of the case, including, but not limited to, the following factors:
>
> - the nature and duration of the victim's removal or confinement by the defendant;
> - whether the removal or confinement occurred during the commission of the separate offense;
> - whether the interference with the victim's liberty was inherent in the nature of the separate offense;
> - whether the removal or confinement prevented the victim from summoning assistance, although the defendant need not have succeeded in preventing the victim from doing so;
> - whether the removal or confinement reduced the defendant's risk of detection, although the defendant need not have succeeded in this objective; and
> - whether the removal or confinement created a significant danger or increased the victim's risk of harm independent of that posed by the separate offense.

White, 362 S.W.3d at 580-81. The failure to give the "substantial interference" instruction is non-structural constitutional error, which is subject to harmless error analysis. *See White*, 362 S.W.3d at 580 n.20.

Holding of *State v. Cecil*

The Supreme Court confirmed that the absence of the *White* instruction results in instructional error that must be subjected to constitutional harmless error analysis. *Cecil*, 409 S.W.3d at 610. The reviewing court should address whether the instructional error was harmless beyond a reasonable doubt. *Cecil*, 409 S.W.3d at 610 (citing *State v. Rodriguez*, 254 S.W.3d 361, 371 (Tenn. 2008)). The touchstone of this inquiry is whether a rational trier of fact could interpret the proof at trial in different ways. *Cecil*, 409 S.W.3d at 610 (citing *White*, 362 S.W.3d at 579).

Harmless Error Standards

There are three categories of trial errors: structural constitutional error, non-structural constitutional error, and non-constitutional error. Structural constitutional errors are errors that compromise the integrity of the judicial process itself and therefore require automatic reversal. Non-structural constitutional errors and non-constitutional errors may be harmless and not require reversal. With a non-structural constitutional error, the State has the burden of proving beyond a reasonable doubt

that the error did not contribute to the verdict obtained. With a non-constitutional error, the defendant has the burden of proving that the error "more probably than not affected the judgment or would result in prejudicial to the judicial process." Tenn. R. App. P. 36(b).

Appellants (Larry Alston, Kris Young, and Joshua Webb) Argument

The defendants argue that, under the facts of this case, they were entitled to a *White* instruction with regard to the aggravated burglary as well as the aggravated robbery. They contend that the proof was capable of more than one interpretation regarding whether there was a removal or confinement of the victim that was not essentially incidental to the underlying offenses of aggravated robbery and aggravated burglary. Because the jury was not instructed as to which accompanying offense the kidnapping was related, the defendants assert that the reviewing court has no way of knowing whether the individual jurors found the defendants guilty of kidnapping related to the removal and detention of the victim at the car, on the way to the house, inside the house, or at some other time during the four minutes this criminal episode took place.

The defendants argue that the Court of Criminal Appeals injected an additional element in its analysis that no other similarly situated case includes, that is, *as charged in the indictment*, the aggravated robbery was concluded prior to any incidental movement of the victim. They contend that taking the purse and forcing the victim into the house were all part of one course of conduct and one single criminal episode and that, when viewed this way, the facts fall squarely within the recent line of cases finding the erroneous omission of the *White* instruction is not harmless beyond a reasonable doubt. They assert that, when analyzing whether the absence of the *White* instruction is harmless error, the reviewing court should look at the totality of the circumstances, instead of dividing a single crime into separate temporal and spatial units without some "clear break" in the chain of events to complete the aggravated robbery.

Appellee (State of Tennessee) Argument

The State argues that a *White* instruction is not required when a kidnapping is accompanied by a burglary because burglary – a property crime which is fully complete upon entry into a habitation – is not among those felonies such as rape or robbery for which some period of confinement is inherent to the commission of the offense. The State contends that the due process concerns in *White* are not implicated because there is no danger of an incidental kidnapping during a burglary. The State asserts that public policy also disfavors extending *White* protection to kidnappings accompanied by a burglary because it would give incentive to burglars to detain victims during burglaries.

The State argues that the Court of Criminal Appeals properly found that the absence of the *White* instruction was harmless beyond a reasonable doubt because the aggravated robbery, as charged in the indictment, was complete before the removal or confinement that served as the basis for the kidnapping charge. The State contends that the defendants committed three separate and distinct offenses: an aggravated robbery in taking the victim's purse outside the house, followed by an especially aggravated kidnapping in forcing the victim back to the house, followed by an aggravated burglary in entering the house. The State asserts the "clear break" analysis, on which the defendants rely, would apply if the State had attempted to charge them with one count of

aggravated robbery for stealing the victim's purse outside the house and then another count of aggravated robbery for stealing other items once inside the house, but that the "clear break" analysis does not apply when a defendant is convicted of legally distinct offenses such as aggravated robbery and aggravated burglary in this case.

CASE GLOSSARY
State of Tennessee v. Larry Alston, Kris Young, and Joshua Webb

Due Process - Due process, at its most basic level, means fundamental fairness and substantial justice. One of the most basic due process requirements is a fair trial in a fair tribunal. A conviction based on legally insufficient evidence on any element of the charged offense constitutes a denial of due process. In Tennessee, due process is protected by Article I, section 8, of the Tennessee Constitution, which provides "[t]hat no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land." Similarly, the Fifth Amendment to the United States Constitution states that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." Likewise, the Fourteenth Amendment to the United States Constitution prohibits states from "depriv[ing] any person of life, liberty, or property, without due process of law."

Harmless Error - An error that does not require reversal of the judgment.

Sufficiency of the Evidence - When the sufficiency of the evidence is challenged, the relevant question is whether, after reviewing the evidence in the light most favorable to the State, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

ANNE PAYNE V. CSX TRANSPORTATION, INC.

(Appellee) (Appellant)

Issues

1. Whether, in reversing the new-trial order under the applicable federal standard of review, the Court of Appeals failed to give proper deference to Judge Wimberly's first-hand assessment of various errors at trial.

2. Whether the Court of Appeals' summary reversal of Judge Workman's rulings excluding specific-causation testimony from Plaintiff's experts is irreconcilable with the gatekeeping role courts must perform under *McDaniel v. CSX Transportation, Inc.*,955 S.W.2d 257 (Tenn. 1997), and whether, under the proper standard of review, those rulings were within Judge Workman's discretion.

3. Whether the Court of Appeals erred in holding that, after the jury returned its initial verdict, Judge Wimberly had no discretion to give the jury an accurate, non-duplicative instruction that was necessary to correct the court's (and Plaintiff's counsel's) prior incomplete statements of the law regarding the consequences of the jury's findings.

4. Whether the Court of Appeals deviated from this Court's precedents as well as Tennessee's statutory right to poll jurors by ordering Judge Wimberly to enter judgment on an initial verdict that was rejected by all but one juror when polled and that the jury subsequently revised after further deliberations.

5. Whether the Court of Appeals exceeded its authority by barring Judge Wimberly from considering on remand arguments made in CSX Transportation, Inc.'s post-trial motions that he did not resolve when granting CSX Transportation, Inc.'s motion for a new trial.

Facts

Winston Payne ("Mr. Payne") worked for CSX Transportation, Inc. ("CSXT") as a trainman and a switchman from 1962, until his retirement in 2002. From 1962 until approximately 1988, Mr. Payne was a pack-a-day cigarette smoker. In 2005, Mr. Payne was diagnosed with lung cancer, for which he underwent extensive treatment, including chemotherapy and radiation treatments.

In 2007, Mr. Payne sued CSXT under the Federal Employers Liability Act ("FELA"), alleging that CSXT had been negligent in exposing him to asbestos, diesel fumes and radioactive materials in the course of his employment, and that CSXT had violated federal statutes and regulations enacted for the safety of railroad employees, making CSXT negligent per se, all resulting in Mr. Payne's injuries. Mr. Payne died on January 24, 2010, and his wife, Anne Payne ("Mrs. Payne"), was substituted as the plaintiff.

The case was tried for ten days over a two-week period in November 2010. At the close of the proof, the trial court instructed the jury and provided a verdict form that included special interrogatories. The trial court specifically instructed the jury that a finding of contributory negligence on the part of Mr. Payne would reduce any award of damages to Mrs. Payne in proportion to the percentage of such contributory negligence, but that the jury was to determine the amount of any damages without making that reduction. The trial court also instructed the jury with respect to the issue of alleged statutory and regulatory violations. However, the court did not instruct the jury that a finding of such violations and the resulting negligence per se would preclude the reduction of any damages recoverable by Mrs. Payne that otherwise would occur as the result of a finding of contributory negligence on the part of Mr. Payne.

The jury determined that CSXT was negligent and that it had violated certain statutes and regulations, such that it also was negligent per se, causing injury to Mr. Payne. The jury also determined that Mr. Payne was contributorily negligent and that his negligence was a 62% cause of his injuries. The jury initially returned a verdict in favor of Mrs. Payne in the amount of $8,600,000.00. However, upon questioning by the trial court and a further instruction on the effect of the jury's determination of statutory and regulatory violations on the amount of damages recoverable by Mrs. Payne, the foreman of the jury requested that the jury be permitted to further deliberate. The jury deliberated for an additional eight minutes and returned with a revised verdict reducing the damages awarded to Mrs. Payne to $3,200,000.00 "@ 100%."

On December 7, 2010, Mrs. Payne moved the trial court to enter judgment on the jury's original verdict in the amount of $8,600,000.00. CSXT opposed the motion and moved the court to enter judgment on the jury's revised verdict in the amount of $3,200,000.00. On March 7, 2011, the trial court entered judgment on the revised verdict.

On April 6, 2011, CSXT moved the trial court for a judgment notwithstanding the verdict or, in the alternative, for a new trial. According to CSXT, the trial court had committed numerous errors at trial with respect to the admission of evidence and the instruction of the jury. On September 6, 2011, the trial court granted CSXT's motion for a new trial. On March 9, 2012, the original trial judge recused himself, and the case was assigned to a new trial judge.

On September 4, 2012, CSXT moved in limine to exclude the testimony of Mrs. Payne's expert witnesses with respect to the issue of specific causation; i.e., whether Mr. Payne's alleged exposure to asbestos, diesel fumes and/or radioactive material had caused his injuries. The trial court granted CSXT's motion and excluded Mrs. Payne's experts' specific causation testimony. CSXT then moved for summary judgment based upon Mrs. Payne's inability to establish the essential element of causation. In response, Mrs. Payne conceded

that without the expert testimony, she could not establish causation. Consequently, on November 2, 2012, the trial court granted CSXT's motion and dismissed the case.

Trial Court Action

As noted, after further instructing the jury and allowing it to further deliberate and return a revised/reduced verdict, the trial court entered judgment on that verdict. The trial court then granted CSXT a new trial, and the original trial judge recused himself. The trial court thereafter granted CSXT's motion in limine to exclude expert testimony, granted CSXT's motion for summary judgment, and dismissed the case.

Court of Appeals Decision

The Court of Appeals reversed the judgment of the trial court ordering a new trial. The Court of Appeals further reversed the judgment of the trial court granting CSXT's motion in limine and granting summary judgment and dismissing the case. The Court of Appeals remanded the case to the trial court, with instructions to the original trial judge to review the evidence at trial and enter judgment in the amount of $8,600,000.000 if he determines that the verdict is not against the clear weight of the evidence. If, however, he determines that the $8,600,000.00 verdict is against the clear weight of the evidence, the Court of Appeals instructed that the original trial judge enter judgment in the amount of $3,200,000.00.

Permission to Appeal

CSXT filed for permission to appeal the judgment of the Court of Appeals, and the Supreme Court granted its application. Therefore, CSXT is the appellant, and Mrs. Payne is the Appellee.

Text of 45 U.S.C. § 53 (FELA)

Contributory negligence; diminution of damages

In all actions on and after April 22, 1908 brought against any such common carrier by railroad under or by virtue of any of the provisions of this chapter to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: Provided, That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

Appellant (CSXT) Argument

CSXT argues that the trial court did not act arbitrarily or abuse its discretion in ordering a new trial, particularly when evaluating that decision under the appropriate deferential standard of review applicable to such decisions. According to CSXT, a new trial was justified on the basis of the trial court's errors with respect to the admission of certain evidence at trial and with respect to its instructions to the jury. CSXT further argues that the trial court did not err in thereafter excluding the specific causation testimony of Mrs. Payne's experts and in granting summary judgment in favor of CSXT and dismissing the case.

CSXT argues that the Court of Appeals erred in holding that the trial court had committed error in further instructing the jury and in permitting the jury to further deliberate and return a revised verdict. According to CSXT, the trial court's additional instruction was proper, accurate, and necessary to correct its prior incomplete instruction. Further according to CSXT, the trial court's obligation to correctly instruct the jury did not end until the jury's verdict had been accepted by the court and the jury had been discharged.

CSXT argues that the remedy imposed by the Court of Appeals, remand with instruction to enter judgment on the jury's original verdict, was in error. CSXT contends that the Court of Appeals erred in resurrecting a verdict rejected by the jury when it was polled.

Finally, CSXT argues that if the case is remanded to the trial court, the court should be permitted to determine those issues which were pretermitted by the grant of a new trial. Those issues include, according to CSXT, whether CSXT is entitled to a judgment as a matter of law and whether it is entitled to a new trial because the verdict is against the clear weight of the evidence.

Appellee (Mrs. Payne) Argument

Mrs. Payne argues that the trial court's original instructions to the jury were proper and sufficient, and that the trial court erred in further instructing the jury and in permitting it to further deliberate and to return a revised verdict. Mrs. Payne further argues that the trial court erred in ordering a new trial. According to Mrs. Payne, the trial court did not commit errors with respect to the admission of evidence or its instructions to the jury such as would warrant the grant of a new trial.

Mrs. Payne argues that the trial court erred in excluding the specific causation testimony of her expert witnesses and in granting summary judgment in favor of CSXT and dismissing the case.

Mrs. Payne argues that the Court of Appeals should have ordered the trial court to simply enter judgment on the jury's original verdict on remand. Alternatively, Mrs. Payne argues

that any new trial on remand should be limited to the issue of damages and that there are no pretermitted issues to be addressed by the trial court.

CASE GLOSSARY

ANNE PAYNE V. CSX TRANSPORTATION, INC.

Contributory Negligence- In a case under FELA, negligence of the employee which causes or contributes to cause the injury claimed.

Motion in Limine- A motion made in advance of trial, as in this case to exclude certain anticipated testimony or evidence.

Negligence Per Se- Conduct which is in violation of a statute or regulation may be deemed to be negligent as a matter of law.

Special Interrogatories- Questions to be answered by the jury in reaching its verdict in a case.

Specific Causation- A condition or circumstance which not only may generally cause injury of the type claimed, but which also is proven by the testimony and/or evidence in the case to have caused the specific injury claimed by the plaintiff.