

Supreme Court Appeals
Pending Cases
1-17-19

1.	Style	Christopher Batey v. Deliver This, Inc., et al.
2.	Docket Number	M2018-00419-SC-R3-WC
3.	Lower Court Decision Links	N/A
4.	Lower Court	N/A
5.	Summary Status	Heard 10/4/18 at Nashville.
1.	Style	Nathan E. Brooks v. Board of Professional Responsibility
2.	Docket Number	E2018-00125-SC-R3-BP
3.	Lower Court Decision Links	N/A
4.	Lower Court	N/A
5.	Summary Status	Heard 9/6/18 at Knoxville
1.	Style	Jeffery Todd Burke v. Sparta Newspapers, Inc.
2.	Docket Number	M2016-01065-SC-R11-CV
3.	Lower Court Decision Link	https://www.tncourts.gov/sites/default/files/burke.jeffery.opn_.pdf
4.	Lower Court Summary	The trial court granted summary judgment to defendant publisher of an allegedly defamatory newspaper article concerning plaintiff. The article was based upon a one-on-one, private interview between the public information officer for the White County Sheriff's Office and a newspaper reporter. The court determined that the interview given by the public information officer constituted an "official action" of government that the article fairly and accurately reported. As such, the court concluded that any alleged defamatory statements included in the article were privileged under the common-law "fair report privilege." Plaintiff appealed, arguing in part, that the fair report privilege does not apply. Because we conclude that the interview did not constitute an official act of government, we reverse the grant of summary judgment.
5.	Status	Application granted 1/17/19; Appellant brief due 2/18/19.
1.	Style	Katherine D. Chaney v. Team Technologies Inc.
2.	Docket Number	E2018-00248-SC-R9-WC
3.	Lower Court Decision Link	N/A

4.	Lower Court Summary	N/A
5.	Status	Heard 9/19/18 at SCALES in Chattanooga
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1.	Style	Coffee County Board of Education v. City of Tullahoma This case has been consolidated with four other cases for oral argument: <i>Washington County School System, et al. v. The City of Johnson City Tennessee</i> , No. E2016-02583-SC-R11-CV; <i>Sullivan County, Tennessee, et al., v. The City of Bristol, Tennessee, et al.</i> , No. E2016-02109-SC-R11-CV; <i>Bradley County School System, et al. v. The City of Cleveland, Tennessee</i> , No. E2016-01030-SC-R11-CV; and <i>Blount County Board of Education, et al. v. City of Maryville, Tennessee, et al.</i> , No. E2017-00047-SC-R11-CV.
2.	Docket Number	M2017-00935-SC-R11-CV
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/coffeecountyv.cityoftullahoma.opn_.pdf
4.	Lower Court Summary	This is a controversy between the City of Tullahoma and Coffee County about the proper distribution of a portion of liquor by the drink revenues collected in Tullahoma. The trial court ruled that the distribution provisions of Tenn. Code Ann. § 57-4-306(2)(A) were not effective in Coffee County and that the statute was ambiguous. The trial court resorted to the legislative history to determine that Tullahoma should keep the funds addressed in Tenn. Code Ann. § 57-4-306(2)(A). We do not find the statutory language ambiguous and reverse the decision of the trial court.
5.	Status	Heard 10/4/18 at Nashville.
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1.	Style	State of Tennessee v. Brandon Cole-Pugh
2.	Docket Number	W2017-00469-SC-R11-CD
3.	Lower Court Decision Link	http://www.tsc.state.tn.us/sites/default/files/cole-pugh_brandon_opn.pdf
4.	Lower Court Summary	Following a jury trial, the defendant, Brandon Cole-Pugh, was convicted of being a felon in possession of a handgun and sentenced to eight years. On appeal, the defendant challenges the trial court's denial of his request for an instruction on the defense of necessity. Having thoroughly reviewed the record, we conclude the trial court did not err in denying the defendant's request on the defense of necessity.
5.	Status	Application granted 6/22/18; Appellant brief filed 9/06/18 after extension; Appellee brief filed 11/5/18 after extension; Oral argument continued from 11/7/18 in Jackson.
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1.	Style	Benjamin Shea Cotten, as Personal Representative for the Estate of Christina Marie Cotten, Deceased, et al. v. Jerry Scott Wilson
2.	Docket Number	M2016-02402-SC-R11-CV
3.	Lower Court Decision Links	http://www.tncourts.gov/sites/default/files/cotten.christina.opn_.pdf
4.	Lower Court	

Summary	The personal representative, on behalf of the decedent's estate, brought this negligence action against the defendant based, <i>inter alia</i> , on the defendant's alleged acts of displaying and failing to properly store and prevent accessibility to the firearm with which the decedent ultimately committed suicide. The trial court granted summary judgment in favor of the defendant, determining that he owed no duty of care to the decedent and that her suicide was an independent, intervening cause that broke the chain of causation. The estate has appealed. Based upon the applicable balancing test, we conclude that the defendant owed a legal duty of care to the decedent and that summary judgment was improperly granted in the defendant's favor on the basis of lack of duty. We further determine that the estate's evidence at the summary judgment stage was sufficient to establish the existence of a genuine issue of material fact for trial regarding causation. We therefore vacate the trial court's grant of summary judgment and remand for further proceedings consistent with this opinion. We affirm, however, the trial court's determination that no special relationship existed such as to impose liability for nonfeasance.
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5.	Status	Heard 5/23/18 at SCALES Boys State.
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1.	Style	Dialysis Clinic, Inc. v. Kevin Medley, et al
2.	Docket Number	M2017-01352-SC-R11-CV
3.	Lower Court Decision Link	N/A
4.	Lower Court Summary	N/A
5.	Status	Heard 10/3/18 in Nashville..
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1.	Style	James A. Dunlap v. Board of Professional Responsibility
2.	Docket Number	M2018-01919-SC-R3-BP
3.	Lower Court Decision Links	N/A
4.	Lower Court	N/A
5.	Summary Status	Notice of Appeal Filed 11/8/18.
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1.	Style	Glenn R. Funk v. Scripps Media, Inc., Et Al.
2.	Docket Number	M2017-00256-SC-R11-CV
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/funk.glenn_opn.pdf
4.	Lower Court Summary	A public figure filed a defamation lawsuit against an investigative reporter and a television station based on two news stories that were aired in February 2016. The defendants filed a motion to dismiss, claiming that their reports were constitutionally protected speech, were privileged as a fair and accurate report of pleadings and documents filed in two other lawsuits, and did not contain false or defamatory statements. The plaintiff served interrogatories and requests for documents on the defendants in an effort to discover the defendants' investigative files. The defendants objected on the grounds of relevance and the

Tennessee fair report privilege. The plaintiff filed a motion to compel, arguing that he needed the discovery to respond to the defendants' motion to dismiss by uncovering evidence of actual malice. The trial court agreed and granted the motion to compel. The defendants filed an interlocutory appeal of the trial court's decision granting the motion to compel. They argue that (1) actual malice is not an element of the fair report privilege and (2) the trial court erred in granting the plaintiff's motion to compel. We agree with the defendants' position on both issues and reverse the trial court's judgment.

5. Status Heard 10/4/18 at Nashville.

1. Style Gerald Stanley Green v. Board of Professional Responsibility

2. Docket Number W2017-02358-SC-R3-BP

3. Lower Court Decision Link N/A

4. Lower Court Summary N/A

5. Status Heard 11/07/18 in Jackson.

1. Style Estate of Ella Mae Haire et al., v. Shelby J. Webster et al.

2. Docket Number E2017-00066-SC-R11-CV

3. Lower Court Decision Link

http://www.tsc.state.tn.us/sites/default/files/estate_of_ella_mae_haire_et_al._v_shelby_j_webster.pdf

4. Lower Court Summary This appeal arises from a family dispute over joint bank accounts. Phillip Daniel Haire ("Danny Haire") sued First Tennessee Bank National Association ("the Bank") in the Chancery Court for Knox County ("the Trial Court") alleging, among other things, breach of contract. The Bank had allowed Danny Haire's late mother Ella Mae Haire ("Decedent") to remove him unilaterally as joint tenant with right of survivorship from certain accounts. The Bank filed a motion to dismiss, which the Trial Court granted. Danny Haire appealed. We hold, *inter alia*, that Danny Haire's complaint failed to identify which contract term the Bank allegedly breached, and that Decedent could have removed all of the funds from the account, thus effectuating the same practical result as that which actually occurred. We affirm the judgment of the Trial Court.

5. Status Heard 01/09/19 in Knoxville.

1. Style State of Tennessee v. David Scott Hall

2. Docket Number M2015-02402-SC-R11-CD

3. Lower Court Decision Link

http://tncourts.gov/sites/default/files/hall_david_scott_opn.pdf

4. Lower Court Summary The Appellant, David Scott Hall, was convicted in the Davidson County Criminal Court of attempted especially aggravated sexual exploitation of a minor, a Class C felony, and sentenced to four years to be served as one year in confinement and the remainder on

supervised probation. On appeal, the Appellant contends that the evidence is insufficient to support the conviction, that the trial court erred by allowing an expert witness to give irrelevant and highly prejudicial testimony, that he is entitled to coram nobis relief, that his right to a speedy trial was violated, that the trial court erred by allowing the State to introduce evidence without showing a proper chain of custody, that the trial court erred by allowing the State to play only a portion of a controlled telephone call to the Appellant, that the trial court erred by allowing the victim to testify about habit, that the trial court erred by allowing the State to introduce into evidence a letter supposedly written by the Appellant, and that the trial court erred by allowing the State to make improper closing arguments. Based upon the oral arguments, the record, and the parties' briefs, we conclude that the evidence is sufficient to support the conviction, that the trial court erred by allowing a witnesses to give irrelevant testimony but that the error was harmless, that the Appellant is not entitled to coram nobis relief, and that his right to a speedy trial was not violated. Finding no plain error as to the remaining issues, we affirm the judgment of the trial court.

5.	Status	Heard 1/10/18 in Knoxville; Opinion filed 1/7/19.
1.	Style	State of Tennessee v. Angela Carrie Payton Hamm and David Lee Hamm
2.	Docket Number	W2016-01282-SC-R11-CD
3.	Lower Court Decision Link	https://www.tncourts.gov/sites/default/files/hamm_angela_david_opn.pdf
4.	Lower Court Summary	The State appeals the trial court's order granting the Defendants' motions to suppress evidence seized as a result of a warrantless search of their house. The trial court found that, although Defendant Angela Hamm was on probation at the time of the search and was subject to warrantless searches as a condition of her probation, the search was invalid because the police officers did not have reasonable suspicion to justify the search. On appeal, the State contends that (1) the search was supported by reasonable suspicion; (2) the search was reasonable based upon the totality of the circumstances; (3) Angela Hamm consented to the search by agreeing to the warrantless search probation condition; and (4) the warrant search was valid as to Defendant David Lee Hamm under the doctrine of common authority. Upon review, we affirm the judgment of the trial court.
5.	Status	Application granted 8/13/18; Appellant brief filed 9/12/18; Appellee brief filed 10/11/18.
1.	Style	Bonnie Harmon, et al. v. Hickman Community Healthcare Services, Inc.
2.	Docket Number	M2016-02374-SC-R11-CV
3.	Lower Court Decision Link	https://www.tncourts.gov/sites/default/files/harmon.bonnie.opn_.pdf
4.	Lower Court Summary	This suit was brought by the children of a woman who died while incarcerated at Hickman County Jail. Defendant is a contractor of the jail that provides medical services at the jail; a nurse in Defendant's employment treated the decedent for symptoms of drug and alcohol withdrawal. She passed away shortly after. The children brought this suit under the Health Care Liability Act claiming negligence and negligent hiring, retention, and supervision. In due course, Defendant moved for summary judgment, arguing, among other things, that there was not a genuine issue of material fact as to causation and it was entitled to judgment as a matter of law on that element of Plaintiffs' claim; the trial court granted Defendant's motion and subsequently denied a motion to revise, filed by the Plaintiffs. This appeal followed.

5.	Status	Application granted 11/15/18; Appellant brief due 12/14/18; Appellee brief filed 1/15/19.
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1.	Style	Individual Healthcare Specialists, Inc. v. BlueCross BlueShield of Tennessee, Inc.
2.	Docket Number	M2015-02524-SC-R11-CV
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/indiv.healthv.bluecro.blushi.opn_.pdf
4.	Lower Court Summary	<p>This is a breach of contract action in which the issues hinge on the meaning of several provisions in the agreement. In 1999 and again in 2009, BlueCross BlueShield of Tennessee, Inc. (“BlueCross”) and Individual Healthcare Specialists, Inc. (“IHS”) entered into a general agency agreement that authorized IHS to solicit applications for individual insurance policies through IHS’s in-house agents and outside “subagents.” The commission rates to be paid were stated in a schedule, which was subject to modification by BlueCross. During the first eleven years, BlueCross modified the commission schedule several times and each modification was prospective only. In 2011, BlueCross modified the commission schedule and, for the first time, applied the commission schedule retrospectively. At the same time, IHS determined that BlueCross had been underpaying commissions since 1999. As a consequence, it commenced this action asserting claims for, inter alia, breach of contract and damages, while also claiming it was entitled to recover its attorney’s fees based on the contract’s indemnification provision. BlueCross denied any breach of contract. It also asserted the statute of limitations defense as a bar to recovering any commissions that accrued more than six years earlier, and asserted that IHS was not entitled to recover its attorney’s fees because the indemnification provision did not apply to disputes between the contracting parties. Shortly thereafter, BlueCross terminated the general agency agreement and began paying renewal commissions directly to IHS’s subagents instead of paying them to IHS as it had done since 1999. IHS then amended its complaint to assert a claim that BlueCross also breached the agreement by failing to pay commissions directly to IHS. Following a bench trial, the court denied BlueCross’s statute of limitations defense on the ground that IHS’s claims were “inherently undiscoverable.” The court also determined that BlueCross breached the contract by underpaying commissions, by applying the 2011 commission rates for renewals to existing policies, and by failing to pay all renewal commissions to IHS after termination of the general agency agreement. As for damages, the court awarded IHS some of the damages it claimed but denied others on the ground the evidence was speculative. As for IHS’s attorney’s fees, the trial court considered parol 05/15/2017 evidence to ascertain the intent of the parties and held that the indemnification provision authorized the recovery of attorney’s fees in a dispute between the contracting parties.</p>
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5.	Status	Heard 02/7/18 in Nashville.
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1.	Style	State of Tennessee v. Denton Jones
2.	Docket Number	E2017-00535-SC-R11-CD
3.	Lower Court Decision Link	https://www.tncourts.gov/sites/default/files/denton_jones_cca_opinion.pdf
4.	Lower Court Summary	<p>The defendant, Denton Jones, appeals his Knox County Criminal Court jury conviction of theft of property valued at \$1,000 or more, arguing that the State should not have been permitted to aggregate into a single count of theft the value of property taken on five separate occasions from two different locations; that the trial court erred by permitting</p>

testimony concerning evidence that suggested the defendant had committed other offenses; that the trial court erred by denying his motions for mistrial, including one based upon an alleged violation of Brady v. Maryland; that the evidence was insufficient to support his conviction; and that the cumulative effect of the errors at trial entitle him to a new trial. Discerning no error, we affirm.

5.	Status	Application granted 10/11/18; Appellant brief filed 11/9/18; Appellee brief filed 12/10/18; Reply brief filed 12/21/18.
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1.	Style	State of Tennessee v. Henry Lee Jones
2.	Docket Number	W2015-02210-SC-DDT-DD
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/jones_henry_lee_opn.pdf
4.	Lower Court Summary	Defendant, Henry Lee Jones, was convicted of two counts of premeditated first degree murder and two counts of felony murder for his role in the 2003 murders of two Shelby County citizens. The jury sentenced Defendant to death for each murder. Defendant now appeals from these convictions and sentences. Defendant argues that the trial court erred by allowing Defendant to represent himself and committed other errors with regard to the provision of elbow counsel; the trial court erred by declaring a witness unavailable and allowing testimony from that witness regarding a prior bad act; the trial court erred by admitting photographs of the victims' bodies and wounds; the State utilized improper closing argument; the evidence was insufficient to support the convictions; the trial court erred in denying Defendant a mitigation expert or investigator in preparation for sentencing; and the death sentence is arbitrary and disproportionate.

5.	Status	Heard 5/31/18 at SCALES Girls State.
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1.	Style	Board of Professional Responsibility v. Loring Edwin Justice
2.	Docket Number	E2017-01334-SC-R3-BP
3.	Lower Court Decision Link	N/A
4.	Lower Court Summary	N/A
5.	Status	Notice of Appeal received 6/30/17; Motion for extension to file record granted on 10/23/17; Record filed 02/06/18; Certified transcript due 03/05/18 after extension; Case remanded to trial court for resolution of any alleged irregularity and for final certification of the transcripts 4/13/2018; Briefing schedule stayed pending certification of the transcripts; Appellant brief filed 12/4/18, after extension; Appellee brief due 1/17/19, after extension.

1.	Style	State of Tennessee v. Charles Keese
2.	Docket Number	E2016-02020-SC-R11-CD
3.	Lower Court Decision Link	https://www.tncourts.gov/sites/default/files/charles_keese_opinion.pdf
4.	Lower Court	

Summary

In this appeal, the State challenges the trial court's decision to apply the amended version of Code section 39-14-105, which provides the grading of theft offenses, when calculating the defendant's sentence. The defendant asserts that the State has no right to appeal the ruling of the trial court and, in the alternative, that the trial court correctly applied the amended statute in this case. The defendant also appeals the judgment of the trial court, claiming that the evidence was insufficient to support his convictions because the State failed to adequately establish the value of the stolen property. We agree with the defendant that no appeal of right lies for the State pursuant to either Tennessee Rule of Appellate Procedure 3 or Code section 40-35-402. Because we have concluded that the trial court exceeded its authority by the application of the amended version of Code section 39-14-105 before the effective date, we could treat the improperly-filed Rule 3 appeal as a common law petition for writ of certiorari. We need not do so, however, because, pursuant to Tennessee Rule of Appellate Procedure 13, this court acquired jurisdiction of the State's claim when the defendant filed a timely notice of appeal. Following our review of the issues presented, we hold that sufficient evidence supports the defendant's conviction but that the trial court erred by applying the amended version of Code section 39-14-105. Accordingly, we affirm the defendant's conviction but vacate the six-year sentence imposed by the trial court and remand the case for the entry of a modified judgment reflecting a 12-year sentence for a Class D felony conviction of theft of property valued at \$1,000 or more but less than \$10,000.

5.	Status	Application granted 08/09/18; Appellant brief filed 10/10/18 after extension; Appellee brief filed 12/19/18; Reply brief filed 1/2/19; to be set for oral argument immediately preceding <u>State v. Michael Eugene Tolle</u> , E2017-00571-SC-R11-CD.
1.	Style	Polly Spann Kershaw v. Jeffrey L. Levy
2.	Docket Number	M2017-01129-SC-R11-CV
3.	Lower Court Decision Link	https://www.tncourts.gov/sites/default/files/kershaw.polly_.opn_.pdf
4.	Lower Court Summary	This is a legal malpractice case. Appellant filed suit against Appellee, who had previously served as Appellant's attorney in a divorce matter. Appellant alleged that she suffered monetary damages and was convicted of criminal contempt as a result of the negligent legal representation she received from Appellee in her divorce case. Appellee filed a motion for summary judgment claiming that Appellant's claims were, among other things, barred by the doctrine of judicial estoppel as a result of the sworn statements Appellant made in conjunction with her divorce settlement. The trial court agreed and granted summary judgment in favor of Appellee. We affirm.
5.	Status	Application granted 9/18/18; Appellant brief filed 10/3/18; Appellee brief filed 11/9/18, after extension; TBH 02/06/19 in Nashville.
1.	Style	Gregory J. Lammert, et al., v. Auto Owners (Mutual) Insurance Company
2.	Docket Number	M2017-02546-SC-R23-CV
3.	Lower Court Decision Link	N/A
4.	Lower Court Summary	As described in the memorandum opinion by the Chief Judge Crenshaw: Under an insurance policy that (1) defines actual cash value as "the cost to replace damaged property with new property of similar quality and features reduced by the amount of depreciation applicable to the damaged property immediately prior to the loss," or (2) states that "actual cash value includes a deduction for depreciation," can the insurer depreciate not

only materials, but also a portion of the labor costs? Because the answer to that question is central to resolution of this case and has not been definitively answered by the Tennessee courts, and because the answer could affect thousands of policy-holders in this state, the Court will grant Plaintiffs' Motion to Certify Question to the Tennessee Supreme Court.

5.	Status	Heard 10/4/18 at Nashville.
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1.	Style	Board of Professional Responsibility v. James S. MacDonald
2.	Docket Number	E2018-01699-SC-R3-BP
3.	Lower Court Decision Link	N/A
4.	Lower Court Summary	N/A
5.	Status	Notice of appeal filed 09/18/18; Appellate record filed 1/14/19; Appellant brief due 2/13/19.

1.	Style	Melissa Martin, et al. v. Rolling Hills Hospital, LLC, et al.
2.	Docket Number	M2016-02214-SC-R11-CV
3.	Lower Court Decision Link	http://tncourts.gov/sites/default/files/martin.melissa.opn_.pdf
4.	Lower Court Summary	This is an appeal in a health care liability action from the dismissal of the action for Plaintiffs' failure to comply with Tennessee Code Annotated section 29-26-121(a)(2)(E) when they failed to provide the Defendants with HIPAA compliant authorizations for release of medical records. The trial court held that, as a result of the failure, Plaintiffs were not entitled to an extension of the one-year statute of limitations for bringing suit and the action was barred. Plaintiffs appeal. Upon our review, we find that Plaintiffs substantially complied with the requirements of section 29-26-121 and that the Defendants have not shown that they were prejudiced by the deficiencies in the authorizations; accordingly, we reverse the decision of the trial court and remand the case for further proceedings.
5.	Status	Application granted 11/16/18; Appellant brief filed 12/17/18; Appellee brief due 2/15/19, after extension.

1.	Style	State of Tennessee v. Quintis McCaleb
2.	Docket Number	E2017-01381-SC-R11-CD
3.	Lower Court Decision Link	https://www.tncourts.gov/sites/default/files/quintis_mccaleb_cca_opinion.pdf
4.	Lower Court Summary	The State, pursuant to Rule 9 of the Tennessee Rules of Appellate Procedure, appeals the trial court's grant of Defendant's motion to suppress inculpatory statements made during his post-polygraph interview. The trial court found that the statements were voluntary but determined that they were inadmissible under Tennessee Rule of Evidence 403 because Defendant would be required to reference the polygraph examination to provide context for Defendant's statements made during the post-polygraph interview. Concluding that the trial court abused its discretion by excluding the statements, we reverse the judgment of the trial court and remand this case for further proceedings consistent with this opinion.

5.	Status	Heard 01/09/19 in Knoxville.
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1.	Style	State of Tennessee v. Jerome Antonio McElrath
2.	Docket Number	W2015-01794-SC-R11-CD
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/mcelrathj_opinion.pdf
4.	Lower Court Summary	<p>The State appeals the suppression of evidence by the Obion County Circuit Court. The defendant, Jerome Antonio McElrath, was arrested on two separate occasions for criminal trespass. The searches of the defendant's person incident to those arrests produced marijuana in the amounts of 10.1 grams and 4.0 grams, respectively. After an evidentiary hearing, the trial court granted the defendant's motion to suppress the evidence seized incident to his arrests and dismissed the charges. The State argues that the arresting officer had probable cause to arrest the defendant and, therefore, the search incident to each arrest was lawful. Furthermore, the State contends that the evidence was legally obtained because the officer acted in good-faith reliance on information provided by dispatch. After review, we affirm the decision of the trial court.</p>
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5.	Status	Heard 04/04/18 at Jackson.
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1.	Style	State of Tennessee v. Ashley N. Menke
2.	Docket Number	M2017-00597-SC-R11-CD
3.	Lower Court Decision Link	https://www.tncourts.gov/sites/default/files/menke_ashley_nopn.pdf
4.	Lower Court Summary	<p>On July 14, 2016, Ashley N. Menke, the Defendant, entered an open guilty plea in Case No. 925-CR-2015 to five felonies and three misdemeanors, including one count of theft in the amount of \$1,000 or more but less than \$10,000 (Count 9), and to a violation of probation in Case No. 268-CR-2014. The value of the property taken in Count 9 was exactly \$1,000, and the Defendant was released on bail for felony offenses in Counts 3, 4, 5, and 6 at the time she committed the theft in Count 9. Following the December 2, 2016 sentencing hearing, the trial court took the matter under advisement without sentencing the Defendant. On January 1, 2017, the Public Safety Act of 2016 became effective. Section 5 of the Public Safety Act "deleted and replaced" Tennessee Code Annotated section 39-14-105(a), the "grading of theft" statute. Theft in the amount of \$1,000 or less committed after January 1, 2017, is now graded as a Class A misdemeanor. In its March 10, 2017 sentencing order, the trial court imposed an eleven month and twenty-nine day sentence in Count 9 based on the criminal savings statute, Tennessee Code Annotated section 39-11-112, and ordered the sentence to be served concurrently with the effective three-year sentence for the other seven counts. The judgment states that the conviction offense is a Class D felony. We hold that the criminal savings statute does not apply and that the trial court erred in sentencing the Defendant in Count 9 to a concurrent sentence of eleven months and twenty-nine days because of the following: (1) the General Assembly did not specifically indicate that Section 5 of the Public Safety Act operated retrospectively so the statute is presumed to operate prospectively; (2) "the value of the property or services obtained" is an essential element of the offense of theft; and (3) the legislature changed an essential element of, not the sentence for, Class A misdemeanor theft, Class E felony theft, and Class D felony theft. We affirm the judgment of conviction for the Class D felony theft in Count 9, vacate the sentence in Count 9, and remand the case to the trial court for resentencing within the</p>

applicable range for Class D felony theft and for consecutive alignment of the sentence pursuant to Tennessee Code Annotated section 40-20-111(b) and Tennessee Rule of Criminal Procedure 32(c)(3)(C).

5.	Status	Application granted 10/11/18; Appellant brief filed 12/20/18; Appellee brief due 1/21/19; to be set for oral argument immediately preceding <u>State v. Keese</u> .
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1.	Style	State of Tennessee v. Anthony Jerome Miller
2.	Docket Number	E2016-01779-SC-R11-CD
3.	Lower Court Decision Link	https://www.tncourts.gov/sites/default/files/anthony_jerome_miller_opinion.pdf
4.	Lower Court Summary	Anthony Jerome Miller, the Defendant, pled guilty to sexual exploitation of a minor and reserved a certified question for appeal regarding the trial court's denial of his motion to suppress evidence. He asserts that the trial court erred in denying his motion to suppress the evidence obtained by the State during a search of his residence because the District Attorney General's Office did not apply for the search warrant, as required by Tennessee Code Annotated section 39-17-1007. The State responds that: (1) a search warrant is not "process" as intended by the meaning of section 39-17-1007; (2) the search warrant is valid under section 39-17-1007 because Investigator O'Keefe's application falls under the "except as otherwise provided" clause because law enforcement are authorized to apply for search warrants under Tennessee Rule of Criminal Procedure 41(a); and (3) if a search warrant is considered process under section 39-17-1007, then Investigator O'Keefe fulfilled the requirements of the statute by seeking verbal consent from an Assistant District Attorney. After a thorough review of the record and applicable law, we affirm.

5.	Status	Heard 5/23/18 at SCALES Boys State.
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1.	Style	Jennifer Elizabeth Meehan v. Board of Professional Responsibility
2.	Docket Number	M2018-01561-SC-R3-BP
3.	Lower Court Decision Link	N/A
4.	Lower Court Summary	N/A
5.	Status	Notice of appeal filed 08/29/18; Appellate record filed 11/6/18; Appellant brief filed 12/20/18; Appellee brief due 2/19/19, after extension.

1.	Style	Carlos Eugene Moore v. Board of Professional Responsibility
2.	Docket Number	W2018-00969-SC-R3-BP
3.	Lower Court Decision Link	N/A
4.	Lower Court Summary	N/A
5.	Status	Heard 11/7/18 in Jackson.

1.	Style	State of Tennessee v. Hassan Falah al Mutory
2.	Docket Number	M2017-00346-SC-R11-CD
3.	Lower Court Decision Link	N/A
4.	Lower Court Summary	N/A
5.	Status	Application granted 8/09/18; Appellant brief filed 9/11/18; Appellee brief filed 11/9/18, after extension; Reply brief filed 11/26/18; TBH 02/06/19 in Nashville.

1.	Style	State of Tennessee v. Leroy Myers, Jr.
2.	Docket Number	M2015-01855-SC-R11-CD
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/myers_leroyopn.pdf
4.	Lower Court Summary	After a bench trial, the trial court issued a written order finding the Defendant, Leroy Myers, Jr., not guilty of the charged offense, aggravated assault, but guilty of reckless endangerment. The Defendant appealed, asserting that reckless endangerment is not a lesser-included offense of aggravated assault under the facts of this case and that there was not an implicit amendment to the indictment to include reckless endangerment. We affirmed the trial court. <i>State v. Leroy Myers, Jr.</i> , No. M2015-01855-CCA-R3-CD, 2016 WL 6560014 (Tenn. Crim. App., at Nashville, November 4, 2016). The Defendant filed an application for permission to appeal with the Tennessee Supreme Court pursuant to Rule 11(a) of the Tennessee Rules of Appellate Procedure. On September 22, 2017, the Tennessee Supreme Court granted the Defendant's application for the purpose of remanding the case to this Court to supplement the record. On remand, we again affirm the trial court's judgment.
5.	Status	Application granted 7/18/18; Appellant brief filed 8/15/18; Appellee brief filed 9/14/18; TBH 02/06/19 in Nashville.

1.	Style	State of Tennessee v. A.B. Price, Jr. and Victor Tyrone Sims
2.	Docket Number	W2017-00677-SC-R11-CD
3.	Lower Court Decision Link	http://www.tncourts.gov/sites/default/files/price_a.b._jr._and_sims_victor_tyrone_opn.pdf http://www.tncourts.gov/sites/default/files/price_a.b._jr._and_sims_victor_tyrone_concur.pdf http://www.tncourts.gov/sites/default/files/price_a.b._jr._and_sims_victor_tyrone_dissent.pdf
4.	Lower Court Summary	This consolidated appeal comes to us following the passage of the Public Safety Act ("the PSA"), which, as relevant here, see Tenn. Code Ann. §§ 40-28-301,-306, changed how non-criminal or "technical" violations of probation are handled in Tennessee. These provisions require the Tennessee Department of Probation and Parole ("the department") to develop, among other things, a single system of graduated sanctions for technical violations of community supervision and an administrative review process for objections by the probationer to imposition of such sanctions. Prior to accepting the Defendants' guilty pleas,

the trial court expressed concern regarding the implementation of the PSA, as these consolidated cases were the first in its district to which the graduated sanctions of the PSA would apply. The Defendants then objected to the imposition of the PSA as a mandatory condition of their probation and “request[ed] that the Court find certain of the provisions of T.C.A. § 40-28-301 through § 40-28-306, relative to sentences of probation, to be facially unconstitutional, and, therefore, decline to incorporate them within the judgment.” Specifically at issue are the provisions (1) mandating trial courts to include as a condition of probation that the department supervising the individual may impose graduated sanctions for violations of probation; and (2) the extent to which the department’s administrative process to review graduated sanctions contested by supervised individuals complies with principles of due process. After a hearing, the trial court issued an extensive order finding these sections of the PSA violated the separation of powers doctrine and principles of due process and equal protection. It is from this order that the State appeals. For the reasons that follow, we affirm the judgments of the trial court.

5.	Status	Application granted 12/05/18; Appellant brief filed 1/4/19; Appellee brief due 2/4/19.
1.	Style	State of Tennessee v. Ernesto Delgadilo Rodriguez
2.	Docket Number	E2017-00369-SC-R11-CD
3.	Lower Court Decision Link	http://www.tsc.state.tn.us/sites/default/files/ernesto_rodriguez_cca_opinion.pdf
4.	Lower Court Summary	A Knox County jury convicted the Defendant, Ernesto Delgadilo Rodriguez, of resisting arrest and assault. The trial court sentenced the Defendant to six months for the resisting arrest conviction and to eleven months and twenty-nine days for the assault conviction. On appeal, the Defendant challenges (1) a jury instruction of the definition of “arrest”; (2) the sufficiency of the evidence; and (3) the admissibility of evidence regarding alcohol and drug use. After a thorough review of the record and applicable law, we affirm the judgments of the trial court.
5.	Status	Application granted 10/11/18; Appellant brief filed 11/13/18; Appellee brief filed 12/13/18.
1.	Style	Tennessee Farmer’s Mutual Ins. Co. v. Brandon DeBruce
2.	Docket Number	E2017-02078-SC-R11-CV
3.	Lower Court Decision Link:	https://www.tncourts.gov/sites/default/files/tennessee_farmers_mutual_insurance_company_v._brandon_w._debruce.pdf
4.	Lower Court Summary	This appeal involves a plaintiff with a personal injury claim who has challenged the validity of a declaratory judgment involving the defendant tortfeasor and his insurer because the personal injury plaintiff was not made a party to the declaratory judgment action. The personal injury plaintiff brought an action for damages against the defendant tortfeasor in December 2013 in Hamilton County, prior to the filing of the instant declaratory judgment action, based upon an automobile accident that occurred in December 2012. The defendant tortfeasor in the personal injury action reportedly failed to notify his insurance company of the lawsuit or cooperate with his insurance company regarding an investigation into the accident, which allegedly amounted to a breach of the automobile insurance policy between them. In March 2015, the insurance company filed the instant action in the Bradley County Chancery Court against the defendant tortfeasor, seeking a declaratory judgment that the insurance company had no duty to defend or indemnify the defendant tortfeasor based on his alleged breach of the insurance contract. In June 2015, the Bradley County Chancery

Court entered a declaratory judgment against the defendant tortfeasor, holding that the insurer had no duty to defend or indemnify him. In June 2017, the personal injury plaintiff filed a petition to set aside that declaratory judgment pursuant to Tennessee Rule of Civil Procedure 60.02, alleging that she was a missing indispensable party to the declaratory judgment action and requesting to intervene therein. Following a hearing, the Bradley County Chancery Court denied the personal injury plaintiff's petition. The personal injury plaintiff has appealed. Having determined that the personal injury plaintiff had a sufficient interest in the declaratory judgment action and was therefore an indispensable party, we set aside the underlying declaratory judgment as void for lack of subject matter jurisdiction.

5.	Status	Application granted 1/16/19; Appellant brief due 2/18/19.
1.	Style	George H. Thompson. III v. Board of Professional Responsibility of the Supreme Court of Tennessee
2.	Docket Number	M2018-02216-SC-R3-BP
3.	Lower Court Decision Link	N/A
4.	Lower Court Summary	N/A
5.	Status	Notice of Appeal filed 12/12/18.
1.	Style	John O. Threadgill v. Board of Professional Responsibility
2.	Docket Number	E2018-01211-SC-R3-BP
3.	Lower Court Decision Link	N/A
4.	Lower Court Summary	N/A
5.	Status	Heard 01/09/19 in Knoxville.
1.	Style	State of Tennessee v. Michael Eugene Tolle
2.	Docket Number	E2017-00571-SC-R11-CD
3.	Lower Court Decision Link	https://www.tncourts.gov/sites/default/files/michael_eugene_tolle_opinion.pdf
4.	Lower Court Summary	In this appeal, the State challenges the trial court's decision to apply the amended version of Code section 39-14-105, which provides the grading of theft offenses, to modify the class of the defendant's conviction offense and the corresponding sentence following the revocation of the defendant's probation. No appeal right lies for the State pursuant to either Tennessee Rule of Appellate Procedure 3, Code section 40-35-402, or Tennessee Rule of Criminal Procedure 35 under the circumstances in this case. Because we have concluded that the trial court exceeded its authority by the application of the amended version of Code section 39-14-105, however, we have elected to treat the improperly filed appeal as a petition for the common law writ of certiorari. Accordingly, we vacate the order of the trial court and remand the case for proceedings consistent with this opinion.

5.	Status	Application granted 8/09/18; Appellant brief filed 10/08/18 after extension; Appellee brief filed 11/21/18, after extension; Reply brief filed 12/19/18; to be set for oral argument immediately following <u>State v. Charles Keese</u> , E2016-02020-SC-R11-CD.
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1.	Style	TWB Architects, Inc., v. The Braxton, LLC, et al.
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2.	Docket Number	M2017-00423-SC-R11-CV
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3.	Lower Court Decision Link	http://www.tsc.state.tn.us/sites/default/files/twb.architectsv.thebraxton.opn_.pdf
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4.	Lower Court Summary	<p>This is the second appeal in a dispute over enforcement of a mechanic's lien. An architect entered into an architect agreement with the developer to build a condominium project in Ashland City, Tennessee. The architect later entered into a purchase agreement with the successor developer to receive a penthouse as "consideration of design fees owed" on the first contract. The architect never received payment for its work and filed suit against the successor developer and its surety to enforce its mechanic's lien for the amount owed under the architect agreement. The trial court held that the purchase agreement was a novation, extinguishing the rights and obligations of the parties under the architect agreement. In the first appeal, this Court found a lack of intent for a novation and, therefore, reversed the decision of the trial court and remanded the case for further proceedings. On remand, after additional discovery, the architect moved for summary judgment on its claim. The trial court granted summary judgment in favor of the architect. In this appeal, the developer argues that the trial court erred in granting summary judgment on its defense of novation and multiple other defenses. We affirm the decision of the trial court.</p>
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5.	Status	Application granted 7/19/18; Appellant brief filed 8/20/18; Appellee brief filed 9/19/18; Reply brief filed 10/3/18; TBH 02/06/19 in Nashville.
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1.	Style	Rhonda Willeford, et al. v. Timothy P. Klepper, M.D., et al. v. State of Tennessee
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2.	Docket Number	M2016-01491-SC-R11-CV
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3.	Lower Court Decision Link	N/A
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4.	Lower Court Summary	N/A
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5.	Status	Heard 01/10/18 in Nashville; Set for additional oral argument to be heard 2/6/19 in Nashville.
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