

Wednesday, October 26,  
2016

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## Clapton, Labels Sued over Iconic Song

The stepgrandson of Bo Carter is suing Eric Clapton, alleging that he wrongly attributed the song "Corrine, Corrina" to Huddie Ledbetter (better known as Lead Belly) in his 2013 re-release of his "Unplugged" album. The suit also seeks more than \$5 million from a slate of songwriters, publishers and broadcasters for receiving royalties and failing to give Carter proper credit for the widely covered blues and country standard. Among those named are Warner Music Group Corp., Sony/ATV Music Publishing, EMI Mills Music Inc., Rhino Entertainment Co., Viacom Inc., Folkways Music Publishers Inc., Hal Leonard LLC, J.W. Pepper & Sons Inc. and 10 "John Does." Industry [observers tell the Tennessean](#) that the very nature of the blues genre may make it difficult to prove copyright violations.

## Today's Opinions

Click on the category of your choice to view summaries of today's opinions from that court, or other body. A link at the end of each case summary will let you download the full opinion in PDF format.

- 00 - TN Supreme Court
- 00 - TN Workers Comp Appeals
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## TN Court of Appeals

**ANDERSON LUMBER COMPANY, INC. v. CHRIS KINNEY, ET AL.**

Court: TN Court of Appeals

## Today's News

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## Legal News

### DOJ to Review Memphis Police Department

Memphis Police Director Mike Rallings has confirmed that the U.S. Department of Justice's Community Oriented Policing Services (COPS) will review his force, from the officers on the streets to the people they protect. Staff from the group were scheduled to be in Memphis this morning to begin mapping out a comprehensive review of the police department. There is "no better partner than the COPS Office coming out of D.C. to do a review of our community outreach, community policing efforts and also to do a review of our use of deadly force," said Rallings. The review is separate from an inquiry requested by Rep. Steve Cohen for the DOJ to review the death of Darrius Stewart. It is unclear when the review will start and how long it will take, [WREG reports](#).

### Board of Law Examiners Closed Through Tuesday for Move

The Tennessee Board of Law Examiners is relocating its offices this week and will be closed today through Tuesday. Staff access to telephones and email will be limited during the move, according to the board. The office is moving from its current location on Church Street to 511 Union Street, Suite 520, in downtown Nashville.

Attorneys:

William F. Kinney, Maryville, Tennessee, appellant, pro se.

Margaret E. Kinney, Maryville, Tennessee, appellant, pro se.

John T. McArthur, Maryville, Tennessee, for the appellee, Anderson Lumber Company, Inc.

Judge: MCCLARTY

This is an interlocutory appeal as of right, pursuant to Rule 10B of the Rules of the Supreme Court of Tennessee, from the denial of a Motion for Disqualification or Recusal filed by the Defendants, William Kinney and Margaret Kinney ("Defendants") in this case that arises out of the indebtedness of Defendants' business, Kinney Custom Interiors, to the Plaintiff, Anderson Lumber Company, Inc. ("Plaintiff"). Having reviewed the petition for recusal appeal filed by Defendants, and finding no error in Trial Court's ruling, we affirm.

[andersonlumber\\_102616.pdf](#)

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#### **NORRIS BETTIS v. REBECCA BETTIS**

CORRECTION: On page 5, paragraph 3, the word "solid" should have been "solido"

Court: TN Court of Appeals

Attorneys:

John R. Meldorf, III, Chattanooga, Tennessee, for the appellant, Norris Bettis.

William H. Horton, Chattanooga, Tennessee, for the appellee, Rebecca Bettis.

Judge: GIBSON

This is an appeal of a trial court's award of alimony and valuation of marital assets. Husband appeals the trial court's decision to award a percentage of his bonus income as alimony as well as the trial court's valuation of stock allocated to Husband. Wife appeals the trial court's decision not to award her alimony in futuro. We affirm both the trial court's finding with respect to the value of the stock and its decision to not award alimony in futuro. However, we vacate the trial court's decision to award a percentage of Husband's bonus income as alimony and remand for proceedings consistent with this opinion.

[bettisn\\_corr\\_102616.pdf](#)

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#### **JACK WAYNE BUTLER v. TENNESSEE BOARD OF NURSING**

Court: TN Court of Appeals

#### **Judge Approves \$15B Volkswagen Settlement**

A federal judge has approved one of the largest consumer settlements in U.S. history, a nearly \$15 billion deal that sets in motion a massive vehicle buyback program and environmental remediation effort. [According to the Tennessean](#), U.S. District Court Judge Charles Breyer approved the sweeping agreement between consumers, the government, California regulators and the German automaker Volkswagen. The settlement comes about a year after the company admitted rigging 11 million vehicles worldwide with software designed to evade emissions standards. The company is still facing investigations by the U.S. Justice Department and German prosecutors, which could lead to additional financial penalties and criminal indictments. Those impacted can visit [VWCourtSettlement.com](#) for more information.

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#### **Nashville Judge Talks Health Issues with Local Paper**

In a [Tennessee Tribune](#) interview with Rachel L. Bell, the Davidson County General Sessions Court judge details a medical condition that she has been reluctant to discuss publicly. She tells the paper she has been managing Type 1 diabetes for 25 years and a thyroid condition for 11 years. She is wrapping up a 12-month diabetes education program at Vanderbilt Medical Center and is benefiting from workplace accommodations under the Americans with Disabilities Act, she says. "My ADA accommodations have been approved by Human Resources and the General Sessions Court Administrators Office."

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#### **Chamber of Commerce Honors Chancellor Cox**

The Fayetteville-Lincoln County Chamber of Commerce presented one of its top honors to Chancellor J.B. Cox and his wife, Nancy, at the 50th Annual Membership Banquet. The group named the couple as its Individual Chamber Member of the Year, the [Elk Valley Times reports](#). Cox serves as the 17th Judicial District's chancellor. He also is

Attorneys:

W. Gary Blackburn and Raymond Throckmorton, Nashville, Tennessee, for the appellant, Jack Wayne Butler.

Herbert H. Slatery, III, Attorney General and Reporter; Andréé S. Blumstein, Solicitor General; Sue A. Sheldon, Senior Counsel, for the appellee, Tennessee Board of Nursing.

Judge: STAFFORD

An applicant for a nursing license filed a petition for a writ of certiorari regarding the decision of the Tennessee Board of Nursing to deny his license. The trial court ruled: (1) that the applicant was not entitled to a contested case prior to the denial of his initial nursing license; (2) that the Tennessee Board of Nursing correctly found that the applicant's license could be denied due to his "fraud or deceit" in his efforts to procure his license; and (3) that the Tennessee Board of Nursing could not rely on an expunged conviction to establish the statutory ground of "guilty of a crime." Both parties appeal. Discerning no error, we affirm the decision of the trial court.

[butlerj\\_102616.pdf](#)

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#### **MICHAEL ANGELO COLEMAN v. TENNESSEE BOARD OF PAROLE, ET AL.**

Court: TN Court of Appeals

Attorneys:

Robert L. Delaney, Jodie A. Bell and Michael J. Passino, Nashville, Tennessee, for the appellant, Michael Angelo Coleman.

Herbert H. Slatery III, Attorney General and Reporter, Andréé Blumstein, Solicitor General, and Pamela S. Lorch, Senior Counsel, Nashville, Tennessee, for the appellees, Tennessee Board of Parole, Richard Montgomery, Chairman; Tennessee Department of Correction, Derrick D. Schofield, Commissioner; Patsy Bruce, Ronnie Cole, Gary M. Faulcon, Tim Gobble, Gay Gregson, Barrett Rich, and David Liner.

Judge: GIBSON

This appeal involves a multi-count petition filed in chancery court by a prisoner after he was denied parole. The prisoner's petition set forth five counts alleging various constitutional and civil rights violations in connection with the parole process, and he requested declaratory and injunctive relief related to these five counts. The sixth count in the petition sought review of the decision of the parole board pursuant to the common law writ of certiorari. The chancery court dismissed the five counts for declaratory and injunctive relief and certified its order of partial dismissal as final pursuant to Tennessee Rule of Civil Procedure 54.02, leaving only the certiorari action

involved in the Boy Scouts of America on the local and state levels, the Fabulous Fifties Show and Washington Street Church of Christ. "It's truly an honor to be recognized in this way -- it's validation for what we do every day," he said after receiving the honor.

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#### **Memphis Marijuana Law Goes into Effect**

A recently approved ordinance to lessen penalties for carrying small amounts of marijuana is now in effect in Memphis. The measure, which gives police the option of imposing a misdemeanor, fine or community service on those found with the drug, was signed into law Monday, [WREG reports](#). Now, Shelby County Commissioner Van Turner wants a similar law adopted by the county to be applied in unincorporated parts of the jurisdiction. He was to propose the ordinance to the county commission today.

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#### **Election 2016**

#### **U.S. Attorneys Outline Plans for Election Complaints**

Following news yesterday on how the U.S. Attorney's Office in Nashville will handle election-related fraud and abuse complaints, federal prosecutors in Memphis and Knoxville have made similar announcements. In Memphis, Assistant U.S. Attorney Reagan M. Taylor will lead the [Election Day effort](#). She can be reached at 901-544-4231. The Memphis FBI field office also will be open and can be reached at 901-747-4300. In the [Eastern District](#), Assistant U.S. Attorney Perry H. Piper will take the lead. He can be reached at 423-385-1332. The Knoxville FBI field office also can be reached at 865-544-0751. Anyone with complaints about possible violations of federal voting rights law may also contact the Justice Department's [Civil Rights Division](#) directly by calling 800-253-3931, emailing [voting.section@usdoj.gov](mailto:voting.section@usdoj.gov) or filling out an [online complaint form](#).

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pending. We conclude that the trial court improvidently certified its order as final and dismiss the appeal.

[colemanm\\_102616.pdf](#)

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**JOHN HAMILTON v. METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, ET AL.**

Court: TN Court of Appeals

Attorneys:

Jamie R. Hollin and Daniel A. Horwitz, Nashville, Tennessee, for the appellant, John Hamilton.

Lora Barkenbus Fox and Catherine J. Pham, Nashville, Tennessee, for the appellees, Metropolitan Government of Nashville & Davidson Co., and Davidson County Election Commission.

Judge: ARMSTRONG

This case involves a challenge to an election commission's decision not to set a special election to fill a vacancy in the office of district council. Appellant, a Davidson County resident and registered voter, appeals the trial court's grant of Appellees', the Metropolitan Government of Nashville & Davidson County and the Davidson County Election Commission, Tennessee Rule of Civil Procedure 12.02(6) motion to dismiss. The trial court granted Appellees' motion on its finding that Appellant's petition failed to aver facts sufficient to show a distinct and palpable injury to Appellant so as to establish his standing to challenge the election commission's decision not to schedule a special election. Discerning no error, we affirm and remand.

[hamiltonj\\_102616.pdf](#)

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**THE RIVER OAKS, GP, ET AL. v. IOAN BUCSE, ET AL.**

Court: TN Court of Appeals

Attorneys:

Peter H. Curry, Nashville, Tennessee, for the appellants, The River Oaks, GP, and Ray Morris.

Brandon R. Meredith, Gallatin, Tennessee, for the appellees, Ioan Bucse and Felicia Bucse.

Judge: STAFFORD

This property dispute involves adjacent commercial property owners. When defendants revealed their intent to erect a fence between the adjoining properties, plaintiffs sued under the theories of adverse possession, prescriptive easement, and implied easement to use a portion of defendants' property for parking, trash removal, and receiving deliveries. After a bench trial, the trial court found that plaintiffs failed to meet their burden of establishing their asserted rights over the area in dispute. Plaintiffs appeal the trial court's conclusions as to

## Correction

### Belmont, Duncan among Best Value Law Schools

Belmont University College of Law in Nashville and the Duncan School of Law in Knoxville were omitted from a TBA Today story about Tennessee schools named a "best value" by preLaw magazine. They join Nashville's Vanderbilt University Law School on the private school list. The University of Tennessee College of Law made the magazine's top 20 best values among public universities. [See the complete list.](#)

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## Celebrate Pro Bono

### Training Offered to Help Lawyers Help Veterans

The University of Tennessee College of Law will hold a two-hour training session on Nov. 11 from 2 to 4 p.m. EST for those interested in learning more about volunteering at a Project Salute event or assisting veterans with legal issues in any setting. A "meet and greet" will follow the program. [Register online.](#)

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## Upcoming

### UT Law Celebrates 100th Homecoming Reunion

The University of Tennessee College of Law will join the university at large in celebrating [100 years of homecoming](#) reunions with events on Nov. 4 and 5. Members of the classes of 1966, 1971, 1976, 1981, 1986, 1991, 1996, 2001, 2006 and 2011 are invited to return to campus to reconnect with classmates and friends. On Friday, class photos will be followed by cocktails and dinner at the Knoxville Convention Center. On Saturday, a Homecoming BBQ will take place on the law school patio prior to the football game. [Register for the full weekend](#) or for [the BBQ only](#), but do so by Nov. 1.

prescriptive easement and easement by implication only. Discerning no error, we affirm.

[riveroaks\\_102616.pdf](#)

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### **JAMES SMALLWOOD v. STATE OF TENNESSEE**

Court: TN Court of Appeals

Attorneys:

James Smallwood, Only, Tennessee, Pro se.

Herbert H. Slatery, III, Attorney General and Reporter, Andree S. Blumstein, Solicitor General, and Jennifer L. Brenner, Assistant Attorney General, Nashville, Tennessee, for the appellee, the State of Tennessee.

Judge: CLEMENT

An inmate of the Tennessee Department of Correction filed a claim against the State of Tennessee seeking to recover damages for personal injuries he sustained when he was attacked on August 23, 2013, by a fellow inmate. The Claims Commissioner found that the material facts were not disputed and there was no forewarning of the assault. Because the claimant provided no evidence showing that the attack was foreseeable, the Claims Commissioner concluded that the prison did not breach any duty to protect the claimant and summarily dismissed the claim. The claimant appealed. We affirm.

[smallwoodj\\_102616.pdf](#)

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### **TN Court of Criminal Appeals**

### **TRAVIS ARMSTRONG v. STATE OF TENNESSEE**

Court: TN Court of Criminal Appeals

Attorneys:

Eric Mogy, Memphis, Tennessee, for the appellant, Travis Armstrong.

Herbert H. Slatery III, Attorney General and Reporter; Caitlin Smith, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Omar Malik, Assistant District Attorney General, for the appellee, State of Tennessee.

Judge: WOODALL

Petitioner, Travis Armstrong, appeals from the denial of his petition for post-conviction relief. Following convictions, Petitioner received an agreed sentence of 20 years for possession of .5 grams or more of cocaine with intent to deliver and 15 years for possession of a controlled substance in a penal institution, to run concurrently, in exchange for waiving his right to appeal from the

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convictions which he received in a jury trial. Petitioner subsequently filed a petition for post-conviction relief alleging ineffective assistance of counsel. After appointment of counsel and filing of multiple amended petitions, this petition was denied following an evidentiary hearing. After careful review, we affirm the judgment of the post-conviction court.

[armstrongt\\_102616.pdf](#)

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**BILLY DEBOW v. STATE OF TENNESSEE**

Court: TN Court of Criminal Appeals

Attorneys:

Billy DeBow, Whiteville, Tennessee, pro se.

Herbert H. Slatery III, Attorney General and Reporter; and Sophia S. Lee, Assistant Attorney General, for the appellee, State of Tennessee.

Judge: WITT

The petitioner, Billy DeBow, appeals the summary dismissal of his petition for writ of habeas corpus, which petition challenged his 1999 conviction of first degree murder. Because the interest of justice does not require that we waive the timely filing of the notice of appeal in this case, the appeal is dismissed.

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**STATE OF TENNESSEE v. GREGORY CHARLES DIXON**

Court: TN Court of Criminal Appeals

Attorneys:

Michael Thorne, Lexington, Tennessee (on appeal); and Patrick S. Butler, Waynesboro, Tennessee (at trial), for the appellant, Gregory Charles Dixon.

Herbert H. Slatery III, Attorney General and Reporter; Jeffrey D. Zentner, Assistant Attorney General; Mike Bottoms, District Attorney General; and Gary Howell, Assistant District Attorney General, for the appellee, State of Tennessee.

Judge: WITT

The defendant, Gregory Charles Dixon, appeals his Lawrence County Circuit Court jury conviction of theft of property valued at \$1,000 or more but less than \$10,000, claiming that the evidence was insufficient to sustain his conviction and that the sentence imposed was excessive. Discerning no error, we affirm.

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**STATE OF TENNESSEE v. KENNETH KYLE FLETCHER**

Court: TN Court of Criminal Appeals

Attorneys:

David L. Robbins, Johnson City, Tennessee, for the appellant, Kenneth Kyle Fletcher.

Herbert H. Slatery III, Attorney General and Reporter; Nicholas W. Spangler, Assistant Attorney General; Anthony Wade Clark, District Attorney General; and Dennis D. Brooks, Assistant District Attorney General, for the appellee, State of Tennessee.

Judge: GLENN

The defendant, Kenneth Kyle Fletcher, was convicted by a Carter County jury of facilitation of initiation of a process to manufacture methamphetamine, a Class C felony. Following a sentencing hearing, the trial court sentenced him to ten years on community corrections. In a separate case, the trial court sentenced the defendant to concurrent four-year sentences for five counts of promoting the manufacture of methamphetamine and ordered that the four-year sentence be served consecutively to the ten-year sentence in the instant case, for a total effective sentence of fourteen years on community corrections. In a timely appeal to this court, the defendant challenges the sufficiency of the convicting evidence and the trial court's order of consecutive sentencing. Following our review, we affirm the judgment of the trial court.

[fletcherk\\_102616.pdf](#)

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**STATE OF TENNESSEE v. ARTERIOUS NORTH**

Court: TN Court of Criminal Appeals

Attorneys:

Thomas G. Slaughter, Knoxville, Tennessee, for the appellant, Arterious North.

Herbert H. Slatery III, Attorney General and Reporter; Nicholas W. Spangler, Senior Counsel; Charme Allen, District Attorney General; and Ta Kisha Fitzgerald, Assistant District Attorney General, for the appellee, State of Tennessee.

Judge: WEDEMEYER

A Knox County jury convicted the Defendant, Arterious North, of four counts of attempted voluntary manslaughter and four counts of employing a firearm during the commission of a dangerous felony. The trial court sentenced the Defendant to twenty-two years of confinement. On appeal, the Defendant contends that the trial court erred when it denied his motion to sever his case from the cases of his co-defendants and that the evidence is insufficient to sustain his convictions. After review, we reverse the trial court's judgments of conviction and

dismiss the charges for the attempted voluntary manslaughter of L.P. and for employing a firearm during the commission of the attempted voluntary manslaughter of L.P. We affirm the trial court's judgments in all other respects.

[northa\\_102616.pdf](#)

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**STATE OF TENNESSEE v. LINDSEY A. OCHAB**

Court: TN Court of Criminal Appeals

Attorneys:

Herbert H. Slatery III, Attorney General and Reporter; M. Todd Ridley, Assistant Attorney General; Kim R. Helper, District Attorney General; and Tristan Poorman, Assistant District Attorney General, for the appellant, State of Tennessee.

Roger Reid Street, Jr., and Elizabeth A. Russell, Franklin, Tennessee, for the appellee, Lindsey A. Ochab.

Judge: WITT

In this appeal, the State challenges the ruling of the trial court granting the defendant's motion to suppress evidence and dismiss the two-count indictment charging the defendant with driving under the influence ("DUI") and driving with a blood alcohol content greater than .08 percent ("DUI per se"). Because the trial court failed to consider the effect of a search warrant and because, at any rate, probable cause supported the defendant's arrest, the trial court erred by granting the defendant's motion to suppress. The judgment of the trial court is reversed, and the case is remanded to the trial court for further proceedings consistent with this opinion.

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Questions, comments: Email us at [TBA Today@tnbar.org](mailto:TBA Today@tnbar.org)

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