

Wednesday, November 2,
2016

[Search the TBA Site for Opinions and News Items](#)

All Charges against Judge Sammons Dismissed

Senior Judge Paul Summers today threw out all charges against Campbell County General Sessions Court Judge Amanda Sammons, who was in court this week for a trial on two counts of official misconduct. After a day of testimony, Summers ruled that the state had failed to present enough proof of official misconduct for the jury to consider the case, [Knoxnews reports](#). Special prosecutor Dan Armstrong said he will consult with the state attorney general's office about an appeal of today's decision as well as an earlier ruling by Summers in which he [dismissed two unrelated charges](#). The Board of Judicial Conduct also said today it would lift its suspension of Sammons, clearing the way for her return to the bench.

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
- [01 - TN Workers Comp Appeals Board](#)
- 00 - TN Supreme Court - Rules
- [03 - TN Court of Appeals](#)
- [04 - TN Court of Criminal Appeals](#)
- 00 - TN Attorney General Opinions
- 00 - Judicial Ethics Opinions
- 00 - Formal Ethics Opinions - BPR
- 00 - TN Supreme Court - Disciplinary Orders

You can obtain full-text versions of the opinions two ways. We recommend that you download the Opinions to your computer and then open them from there. **1) Click the URL** at end of each Opinion paragraph below. This should give you the option to download the original document. If not, you may need to right-click on the URL to get the option to save the file to your computer.

TN Workers Comp Appeals Board

TIM VENABLE v. SUPERIOR ESSEX, INC., ET AL.

Court: TN Workers Comp Appeals Board

Attorneys:

Today's News

[Legal News](#)
[TBA Member Services](#)
[Celebrate Pro Bono](#)
[Upcoming](#)
[BPR Actions](#)

Legal News

Legal Staffing Group Releases 2017 Salary Guide

The legal staffing company Special Counsel has released its [2017 Salary Guide](#). The publication includes detailed job descriptions, salary data, industry trends and insights on attracting, hiring and retaining talent. The group predicts that with an improved economy, firms are having to compete for a dwindling pool of skilled talent and associate salaries will begin to rise. "The legal industry finds itself in a period of dynamic change, which is creating new opportunities within corporate legal departments and law firms alike."

Sentencing in Football Rape Case Set for Friday

Former Vanderbilt University football player Brandon Vandenburg is expected in court Friday for sentencing in a 2013 campus rape case, the [Tennessean reports](#). State law calls for a 15 to 25 year sentence for the crimes committed. Court documents indicate prosecutors will argue for a term close to the top of the range, making the case that Vandenburg was a leader in the assault and therefore deserves a longer prison sentence than the minimum term. Vandenburg has been in jail since a jury convicted him in June. He also

Lee Anne Murray, Nashville, Tennessee, for the employer-appellant, Superior Essex, Inc.

Mark Lambert, Memphis, Tennessee, for the employee-appellee, Tim Venable.

Judge: CONNER

In this interlocutory appeal, the trial court issued an order for medical benefits, determining the employee presented sufficient evidence to support the order despite a utilization review agent's reports that led to the denial of treatment recommended by an authorized physician. In reaching this conclusion, the trial court found the opinions of the utilization review physicians did not overcome the statutory presumption of correctness applicable to the opinion of the authorized physician. The employer has appealed. Having carefully reviewed the record, we affirm the trial court's decision and remand the case for further proceedings as may be necessary.

[venablet_110216.pdf](#)

TN Court of Appeals

J.A.C., BY AND THROUGH HER NEXT FRIEND AND MOTHER, LESHA CARTER AND LESHA PATRICIA CARTER, INDIVIDUALLY v. METHODIST HEALTHCARE MEMPHIS HOSPITALS, ET AL.

Court: TN Court of Appeals

Attorneys:

Donald Capparella, Nashville, Tennessee, Daniel S. Weinstock, Carolyn M. Chopko, and Scott G. Vezina, Philadelphia, Pennsylvania for the appellants, J.A.C. by and through her Next Friend, and Mother Lesha Patricia Carter, and Lesha Patricia Carter, Individually.

Eugene Podesta and Leslie R. Issacman, Memphis, Tennessee, for the appellees, Methodist Healthcare-Memphis Hospitals and Methodist Lebonheur Hospital.

Joseph M. Clark and Samantha E. Bennett, Memphis, Tennessee, for the appellees, Bo Charles Li, M. D., and OBGYN Physicians Group of Memphis, PC.

Darrell E. Baker, Jr., Deborah Whitt, and M. Jason Martin, Memphis, Tennessee, for the appellees, Stephen Ehiremen, M.D., and OB/GYN Centers of Memphis, MPLLC.

Herbert H. Slatery, III, Attorney General and Reporter; Andrée S. Blumstein, Solicitor General; and Laura Miller Assistant Attorney General, for the appellee, State of Tennessee .

Judge: GOLDIN

In this health care liability action, Defendants moved to dismiss based on the Plaintiffs' failure to provide the Health Insurance Portability and Accountability Act ("HIPAA") medical authorization required by Tennessee Code Annotated section

has been added to Tennessee's sex offender registry.

More than 50 Students Join Hamilton County Youth Court

More than 50 students from 12 Chattanooga area schools have been trained and sworn in to the Hamilton County Youth Court, the [Hamilton County Herald](#) reports. Juvenile Court Judge Robert Philyaw administered the oath to the students, who have undergone significant training by local juvenile court staff. After the ceremony, Philyaw thanked local school administrators and attorneys at Miller & Martin and Blue Cross Blue Shield of Tennessee for their support. "While youth courts contribute to a decrease in recidivism ... its true value and long-lasting effect lies with the students who are exposed to the law, the judicial process, and professionals like these," he said. Tennessee now has [19 counties with 26 youth courts](#).

County Puts off Vote on Marijuana Penalty

The Shelby County Commission put off a vote on a proposed ordinance to reduce the penalty for possession of a half-ounce or less of marijuana after the co-sponsor asked for additional time to resolve an outstanding issue. The [Commercial Appeal reports](#) that Van Turner is asking the county attorney's office to determine if the law can be written for only the southeast portion of the county's unincorporated areas.

Memphis Law Names Public Interest Counselor

The University of Memphis School of Law has named alumna Josie Holland as its [new public interest counselor](#). Holland, who earned her law degree and masters of business administration degree from the school in 2014, will work with students and area lawyers to create public interest

29-26-121(a)(2)(E). Based on its determination that the Plaintiffs failed to substantially comply with the foregoing statute, the trial court held that the Plaintiffs were not entitled to an extension of the applicable statutes of limitations and repose under Tennessee Code Annotated section 29- 26-121(c) and accordingly concluded that the Plaintiffs' claims were time-barred. The trial court also concluded that the Plaintiffs' constitutional challenges to the viability of Tennessee Code Annotated section 29-26-121 were without merit. We affirm and remand for further proceedings consistent with this Opinion.

[carterl_110216.pdf](#)

ARIANNA A. GEORGE ET AL. v. TESSA G. DUNN

Court: TN Court of Appeals

Attorneys:

Theodore R. Kern, Knoxville, Tennessee, for the appellant, Tessa G. Dunn.

Dudley W. Taylor, Knoxville, Tennessee, for the appellees, Arianna A. George and Alexa C. George.

Judge: FRIERSON

This case involves a trustee's disbursement of funds from two trusts, without authorization of the trusts' respective beneficiaries, in order to pay legal expenses incurred in defending against a prior action filed against the trustee on behalf of the beneficiaries. The trial court had dismissed the prior action with prejudice in an agreed order entered on August 31, 2012, which further provided that the funds at issue would be disbursed by the trustee for the benefit of the beneficiaries. On April 13, 2015, the beneficiaries filed a complaint, alleging that the trustee had violated the terms of the August 2012 order and her fiduciary duty by writing checks against the trust funds in an amount totaling \$30,563.16. The trustee filed an answer, asserting that pursuant to Maryland law governing the establishment of the trust accounts, she was entitled to be reimbursed from the trust accounts for legal fees incurred in defense of the prior lawsuit filed on behalf of the beneficiaries and ultimately dismissed. The beneficiaries filed a motion for summary judgment. Following a hearing, the trial court granted summary judgment in favor of the beneficiaries, awarding each beneficiary, respectively, \$15,281.58 plus prejudgment interest and attorney's fees. The trustee appeals. Discerning no reversible error, we affirm. Having determined that the trial court did not abuse its discretion by awarding attorney's fees upon the finding that the trustee breached her fiduciary duty, we further determine an award to the beneficiaries of attorney's fees on appeal to be appropriate. We remand for the trial court to determine the amount of reasonable attorney's fees incurred by the beneficiaries during the appellate process.

[georgea_110216.pdf](#)

STEVEN KEMPSON, ET AL. v. PAMELA CASEY, ET AL.
With Dissenting Opinion by Susano

opportunities for the law school. Her office hours will be Tuesdays from 8:30 a.m. to 4:30 p.m., Wednesdays from 12:30 to 4:30 p.m., and Thursdays from 8:30 a.m. to 4:30 p.m.

New Cameras Coming to Coffee County Jail

The Coffee County Sheriff's Department will soon install 11 video cameras in the county jail and purchase new bulletproof and stab-proof vests for its deputies, the [Manchester Times reports](#). The cameras, which are estimated to cost between \$20,000 and \$25,000, will be paid for through the department's drug fund. They will be installed in holding rooms and an area where evidence is stored – neither of which have any current video surveillance. The department also has received a grant of \$41,000 from the Tennessee Justice Department's Bulletproof Vest Partnership. The grant will cover 50 percent of the cost of the vests, with the sheriff's department's drug fund covering the other half.

TBA Member Services

Open Enrollment for Health Insurance Now Available

Open enrollment for health insurance through the Affordable Care Act (ACA) kicked off this week and runs through Jan. 31, 2017. TBA Member Insurance Solutions has the tools to guide TBA members through enrollment on the federal exchange or directly with insurance providers. Whether you are interested in an ACA-compliant plan or an alternative, we are here to help. Call 800-347-1109, email lawyers@assoc-admin.com or visit us at TBAinsurance.com.

Celebrate Pro Bono

Court: TN Court of Appeals

Attorneys:

Ashley L. Ownby, Cleveland, Tennessee, for the appellants, Steven Kempson, and Melanie Kempson.

Ronald D. Wells, Chattanooga, Tennessee, for the appellees, Pamela Casey, and Bradley H. Smith.

Judge: MCCLARTY

Pickup truck driver sued to recover for injuries he allegedly sustained when his truck was rear-ended while he was stopped for traffic on the interstate. His wife asserted that she had suffered from the loss of consortium with and services of her husband. The defendant driver acknowledged responsibility for the collision but disputed that the plaintiffs had proven, by a preponderance of the evidence, that the accident in question caused any injury. The jury found that the collision caused no damage to the plaintiffs. On the jury's verdict, the trial court entered judgment, awarding the plaintiffs no damages and denying the motion for a new trial. The plaintiffs appeal. We vacate the trial court's judgment and remand for a new trial on damages alone.

[kempsons_110216.pdf](#)
[kempsons_dissent_110216.pdf](#)

TN Court of Criminal Appeals

STATE OF TENNESSEE v. KEVIN DEAN ATKINS

Court: TN Court of Criminal Appeals

Attorneys:

James R. Potter, Clarksville, Tennessee, for the appellant, Kevin Dean Atkins.

Herbert H. Slatery III, Attorney General and Reporter; Clark B. Thornton, Senior Counsel; John W. Carney, District Attorney General; and Brooke M. Orgain, Assistant District Attorney General, for the appellee, State of Tennessee.

Judge: WILLIAMS

The Defendant, Kevin Dean Atkins, appeals the trial court's order setting aside a plea agreement whereby the Defendant pled guilty to public intoxication and admitted violating the terms of his probation for a prior conviction. The Defendant filed a motion for permission to seek an interlocutory appeal of the trial court's order pursuant to Rule 9 of the Tennessee Rules of Appellate Procedure, and his motion was granted. On appeal, the State concedes that the trial court's order violated the Defendant's double jeopardy rights. We agree and accept the State's concession. Accordingly, we reverse the judgment of the trial court and remand the case for further proceedings consistent with this opinion.

Reminder: Thursday's STRUT 2016 Benefits CLC

The Community Legal Center (CLC) will host its primary fundraiser of the year Thursday from 6 to 8 p.m. at Mercedes-Benz of Memphis. [STRUT! 2016](#) will feature a fashion show, food, drinks and a live band. Proceeds raised through a wine pull, giving wall and silent and live auction will benefit the work of the CLC. Tickets are \$50 and [can be purchased online](#). Law students can [buy discounted tickets](#) for \$25 each.

Nashville Community Court Serving Hundreds

Davidson County General Sessions Judge Rachel Bell has taken the lead on the General Sessions [Music City Community Court](#), which is focused on working on preventive and diversionary justice. The concept of the program is to offer court services in various locations around Nashville and Davidson County. In October, the court held two Saturday sessions. Offerings included a Community Service Docket; Pro Se Indigency Docket, which served more than 100; and an Expungement Clinic, which reviewed 500 criminal records, [Nashville Pride reports](#). The next Indigency Docket and Expungement Clinic will be held Nov. 19 at the Boys & Girls Club on 16th Avenue. Registration starts at 8 a.m. and will be limited to the first 100 persons to register. The clinic will begin at 10 a.m.

Upcoming

Mental Health Court Forum Set for Thursday

A public forum is scheduled for Thursday to continue planning for the 10th Judicial District Mental Health Court, which was [announced earlier this fall](#). The court will serve Bradley, Polk, Monroe and McMinn counties. The forum will take place at 6:30 p.m. at the Bradley County

[atkinsk_110216.pdf](#)

STATE OF TENNESSEE v. QUINCY TERRELL BRANDO SHARPE

Court: TN Court of Criminal Appeals

Attorneys:

Joshua L. Brand, Nashville, Tennessee, for the appellant, Quincy Terrell Brando Sharpe.

Herbert H. Slatery III, Attorney General and Reporter; Clark B. Thornton, Senior Counsel; Glenn R. Funk, District Attorney General; and Janice Norman, Assistant District Attorney General, for the appellee, State of Tennessee.

Judge: WOODALL

Defendant, Quincy Terrell Sharpe, was indicted by the Davidson County Grand Jury, along with his co-defendant DeAndre D. Rucker, for premeditated first degree murder. Defendant and Rucker were tried jointly, and both were convicted as charged. The trial court sentenced Defendant to a term of life imprisonment. In this appeal as of right, Defendant contends that the prosecutor committed prosecutorial misconduct during closing argument and that the evidence was insufficient to support his conviction. Following our review, we conclude that the Defendant is entitled to a reversal of his conviction based on prosecutorial misconduct by the State during closing argument. Accordingly, we reverse the judgment of the trial court and remand for a new trial.

[sharpeq_110216.pdf](#)

STATE OF TENNESSEE v. LAMONEZ DESHAUN THAXTON

Court: TN Court of Criminal Appeals

Attorneys:

David A. Collins, Nashville, Tennessee, for the appellant, Lamonez Deshaun Thaxton.

Herbert H. Slatery III, Attorney General and Reporter; Caitlin Smith, Assistant Attorney General; Glenn R. Funk, District Attorney General; and Jude Santana and Jeffrey Jackson, Assistant District Attorneys General, for the appellee, State of Tennessee.

Judge: WITT

The defendant, Lamonez Deshaun Thaxton, appeals his Davidson County Criminal Court jury convictions of reckless endangerment and attempted especially aggravated robbery, claiming that the trial court erred by denying the defendant's motion to exclude evidence, that the evidence was insufficient to sustain his convictions, and that the sentence imposed was excessive. Discerning no error, we affirm.

Courthouse. Circuit Court Judge Andrew Freiberg said the court's mission is "to recognize the existence of mental illness and provide sentencing alternatives to those individuals in the criminal justice system who may be rehabilitated through appropriate mental health treatment." He [posted a reminder](#) of the event on Facebook. The court is scheduled to open in January.

BPR Actions

Benton County Lawyer Suspended

Benton County lawyer Alan George Ward was suspended from the practice of law Tuesday after the Tennessee Supreme Court determined that he posed a threat of substantial harm to the public. Specifically, the court found that he failed to file briefs in the Court of Criminal Appeals and failed to appear before the court pursuant to a show cause order. [Read the BPR notice.](#)

Williamson County Lawyer Suspended

The Tennessee Supreme Court suspended Williamson County lawyer John Jay Clark from the practice of law today following his conviction for forgery by the Davidson County Criminal Court. In addition to imposing the suspension, the Supreme Court directed the Board of Professional Responsibility to institute a formal proceeding to determine final discipline. The suspension will remain in effect until further order of the court. [Read the BPR notice.](#)

JAMES ROBERT WILSON v. STATE OF TENNESSEE

Court: TN Court of Criminal Appeals

Attorneys:

James Robert Wilson, Only, Tennessee, Pro Se.

Herbert H. Slatery III, Attorney General and Reporter; Sophia S. Lee, Senior Counsel; Glenn R. Funk, District Attorney General; and J. Wesley King, Assistant District Attorney General, for the appellee, State of Tennessee.

Judge: WEDEMEYER

A Davidson County jury convicted the Petitioner, James Robert Wilson, of especially aggravated robbery and first degree felony murder, and the trial court sentenced him to an effective sentence of life in prison. The Petitioner appealed, and this Court affirmed the trial court's judgments. *State v. James Robert Wilson*, No. M2000-00760-CCA-R3-CD, 2002 WL 1050259, at *1 (Tenn. Crim. App., at Nashville, May 24, 2002), perm. app. denied (Tenn. Nov. 12, 2002). In 2003, the Petitioner unsuccessfully sought post-conviction relief. *James Robert Wilson v. State*, M2004-00933-CCA-R3-PC, 2005 WL 1378770, at *1 (Tenn. Crim. App., at Nashville, June 10, 2005), perm. app. denied (Oct. 31, 2005). In 2016, the Petitioner filed a petition for habeas corpus relief contending that the trial court "constructively amended the indictment in this case" when it charged the jury using language that did not fully comport with the language used by the grand jury when it indicted him. The habeas corpus court summarily dismissed the petition, and we affirm the habeas corpus court's judgment.

Questions, comments: Email us at TBAToday@tnbar.org

About this publication: Today's News is a compilation of digests of news reports of interest to Tennessee lawyers compiled by TBA staff, links to digested press releases, and occasional stories about the TBA and other activities written by the TBA staff or members. Statements or opinions herein are those of the authors and do not necessarily reflect those of the Tennessee Bar Association, its officers, board or staff.