

Friday, June 20, 2014

## Judges Order New Bail Rules in Domestic Assault Cases

In a specially convened meeting Friday, Nashville General Sessions judges unanimously ordered that a new procedure be put in place to handle requests for early release of domestic violence suspects, the [Tennessean reports](#). The judges' order comes in response to the action of General Sessions Judge Casey Moreland, who authorized the early release of a domestic violence suspect following his arrest. The new order says that any request to alter a 12-hour hold typically placed on arrested domestic violence suspects must be heard by one of three General Sessions judges designated to take domestic violence cases. All parties — including the District Attorney, the suspect and the victim — must get a chance to be heard before any conditions of the hold can change. **Ben Raybin** of Hollins, Raybin & Weissman PC provides more details on the 12-hour “cooling off” hold in a [recent blog post](#).

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## 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.

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## Legal News

### Acting Federal Prosecutor Nominated for Middle Tenn. Post

David Rivera was nominated yesterday to be U.S. Attorney for the Middle District of Tennessee by President Barack Obama. Rivera has been the acting federal prosecutor since April 2013 when he replaced Jerry Martin, who entered private practice, the [Tennessean reports](#).

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[07 - TN Court of Criminal Appeals](#)

[01 - TN Attorney General Opinions](#)

00 - Judicial Ethics Opinions

00 - Formal Ethics Opinions - BPR

00 - TN Supreme Court - Disciplinary Orders

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## TN Supreme Court

### SUPREME COURT OF TENNESSEE SUPREME COURT DISCRETIONARY APPEALS Grants & Denials List

Court: TN Supreme Court

- [certlist\\_061614.pdf](#)
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## TN Court of Appeals

### IN RE BRENNEN T.

Court: TN Court of Appeals

Attorneys:

Kimberley L. Reed-Bracey, Goodlettsville, Tennessee, for the appellants, Kareena V. and Scott V.

Martin Sir, Jennifer L. Honeycutt, Peggy Smith, Nashville, Tennessee, for the appellees, Nicole S. F. and Kenneth E. T.

Judge: STAFFORD

This is a termination of parental rights case. After the Appellants filed a termination petition against Biological Parents, Mother filed a counter-claim for malicious use of process, kidnapping, and perjury. The trial court dismissed the termination petition, but failed to rule on Mother's counter-claim. Accordingly, we dismiss this appeal for lack of a final judgment.

- [brennent\\_062014.pdf](#)
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### WILLIE CAMPBELL & ULYSSES CAMPBELL, SR. v. MEMPHISSHELBY COUNTY AIRPORT AUTHORITY

Court: TN Court of Appeals

### Judge Dismisses Mosque Cemetery Lawsuit

Senior Judge Paul Summers on Thursday dismissed a lawsuit aimed at stopping the Islamic Center of Murfreesboro from building a cemetery, the [Daily News Journal reports](#). Judge Summers determined that the Rutherford County Board of Zoning Appeals made a proper and thorough decision in approving the ICM cemetery while also providing adequate public notice. His ruling follows a recent decision by the U.S. Supreme Court not to hear an appeal pertaining to a public-notice case from another group of plaintiffs who had sued to stop construction of the Mosque.

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### Motion for Protective Order Filed in UT Lawsuit

Tennessee has filed a motion for a protective order forbidding discovery of information related to former Lady Vols coach Pat Summitt's illness and the circumstances surrounding her departure in the case of former Lady Vols media director Debby Jennings. Jennings is suing the University of Tennessee and athletic director Dave Hart over allegations that age and sex discrimination led to Jennings' forced retirement after working 35 years at the school, [WSMV reports](#).

Attorneys:

Gerald S. Green, Memphis, Tennessee, for the appellants, Willie Campbell and Ulysses Campbell, Jr.

James Creswell, Jr., David I. Feigelson, Memphis, Tennessee, for the appellee, Memphis- Shelby County Airport Authority

Judge: HIGHERS

This case involves a plaintiff who fell outside the Memphis International Airport and sued the Airport Authority for negligence. The trial court granted summary judgment to the defendant Airport Authority, finding, based on the undisputed facts, that the plaintiffs and their witnesses are unable to identify what caused the fall. Plaintiffs appeal. We affirm and remand for further proceedings.

- [campbellw\\_062014.pdf](#)

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### **MARY LISA GASTON LUPLOW v. MARTIN DUANE LUPLOW**

Court: TN Court of Appeals

Attorneys:

Tyree B. Harris, IV, and Katherine A. Brown, Nashville, Tennessee, for the appellant, Mary Lisa Gaston Luplow.

T. J. Cross-Jones and H. David Kittrell, Nashville, Tennessee, for the appellee, Martin Duane Luplow.

Judge: DINKINS

This is an appeal in a divorce case, where Wife appeals the classification and division of marital property and debt, the calculation of the division of the proceeds from the sale of the marital residence, the dismissal of the contempt petition she filed against Husband, and the failure to award her attorney fees. Husband appeals the classification of certain real property and the division of marital debt; he also requests his fees on appeal. We modify the judgment allocating the marital debt and awarding \$16,691 to Wife as alimony in solido; we affirm the judgment in all other respects.

- [luplowm\\_062014.pdf](#)

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### **JEFFREY WADE MYRICK v. GLORIA DENISE MYRICK**

Court: TN Court of Appeals

Attorneys:

Russell E. Edwards, Hendersonville, Tennessee, for the appellant, Gloria Denise Myrick.

Abby R. Rubenfeld, Nashville, Tennessee, for the appellee, Jeffery Wade Myrick.

Judge: STAFFORD

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### **Montgomery County Bar Releases Judicial Poll Results**

A Montgomery County Bar Association straw poll shows support among Clarksville lawyers for turnover in two offices: Circuit Court District III and the district attorney general. The straw poll, required in the Bar Association's bylaws, was voted on Wednesday by association members and shared with [The Leaf-Chronicle](#).

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### **Circuit Court Judge Faulk Returns to Bench**

Circuit Judge Mike Faulk said yesterday he had just completed his fourth round of chemotherapy and was on his way home to Hawkins County to take his place back on the bench. Faulk announced last month that doctors had discovered a sizeable malignant tumor in his esophagus, and that the cancer has spread to his liver. A Church Hill native, Faulk is a former state senator, county commissioner, and longtime Hawkins County-based attorney. [The Times News has more](#).

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### **GOP Lawmakers Call for Education Commissioner's Resignation**

The issue presented in this case is whether alimony in futuro was properly terminated by the trial court. The parties entered into a marital dissolution agreement, which provided that Husband/Appellee would pay Wife/Appellant alimony in futuro until death, remarriage, or "until a third person not the Wife's child, moves into the Wife's residence." The marital dissolution agreement was incorporated, by reference, into the final decree of divorce. Thereafter, Wife's mother moved into Wife's home, and Husband filed a motion to terminate his support obligation based upon the occurrence of the suspending condition. The trial court granted Husband's petition, finding that the parties' agreement for alimony in futuro was contractual in nature and that the unambiguous language mandated cessation of Husband's support obligation when Wife's mother moved into Wife's home. Based upon the provision for attorney's fees in the parties' marital dissolution agreement, the trial court also awarded Husband his attorney's fees and costs. Wife appeals. Discerning no error, we affirm and remand.

- [myrickj\\_062014.pdf](#)
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#### **MORGAN KEEGAN & COMPANY, INC. v. MICHAEL STARNES, ET AL.**

Court: TN Court of Appeals

Attorneys:

Michael A. Brady, Annie T. Christoff and Shepherd D. Tate, Memphis, Tennessee, and Peter S. Fruin, Birmingham, Alabama, for the appellant, Morgan Keegan & Company, Inc.

John James Heflin, III, Memphis, Tennessee, for the appellees, Michael S. Starnes, Laura M. Starnes f/k/a Laura Ann Murchison, The Michael S. Starnes Charitable Remainder Trust and TCX, Inc.

Judge: FARMER

The trial court vacated an arbitration award in favor of Petitioner/Appellant Morgan Keegan & Company, Inc., on the basis of "evident partiality" and remanded the matter for re-arbitration before a different panel. We reverse and remand for further proceedings consistent with this Opinion.

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## **TN Court of Criminal Appeals**

#### **STATE OF TENNESSEE v. DARRELL RAY BEENE**

Court: TN Court of Criminal Appeals

Attorneys:

Kara Everett, Nashville, Tennessee, for the appellant, Darrell Ray Beene.

Robert E. Cooper, Jr., Attorney General and Reporter; Nicholas W.

Spangler, Assistant Attorney General; Victor S. Johnson III, District

Fifteen Republican lawmakers have asked for the immediate resignation of state Commissioner of Education Kevin Huffman. In a letter sent to Gov. Bill Haslam on Thursday, the legislators -- including several with tea party affiliations -- accuse Huffman of withholding scores to conceal low results on the TCAP test. They also raise the possibility the department, in performing "post-equating," removed questions from tests to alter and improve results. Haslam spokesman Dave Smith accused the group of playing politics and denies the allegation of tampering and altering scores. [The Tennessean has more.](#)

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#### **Madison County Jail Fails State Inspection**

The Madison County Criminal Justice Complex and Jail Annex failed an inspection of the jail facilities last month by the Tennessee Corrections Institute, the [Jackson Sun reports](#). The annual surprise inspection took place on May 8; the county has until July 7 to fix the problems found in the inspection, which included overcrowding that led to some inmates sleeping on the floor at the justice complex.

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Attorney General; and Jeff Burks, Assistant District Attorney General, for the appellee, State of Tennessee.

Judge: BIVINS

Darrell Ray Beene (“the Defendant”) was convicted by a jury of one count of robbery and one count of criminal attempt to commit especially aggravated kidnapping. The trial court sentenced the Defendant to an effective term of forty-two years’ incarceration. In this direct appeal, the Defendant challenges the sufficiency of the evidence and his consecutive sentences. Upon our thorough review of the record and applicable law, we affirm the trial court’s judgments.

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### **STATE OF TENNESSEE v. DEAUNDR A BROOKS**

Court: TN Court of Criminal Appeals

Attorneys:

Gerald L. Melton, District Public Defender; and Russell N. Perkins, Assistant District Public Defender, Murfreesboro, Tennessee, for the appellant, Deandra Brooks.

Robert E. Cooper, Jr., Attorney General and Reporter; Brent C. Cherry, Senior Counsel; William C. Whitesell, Jr., District Attorney General; and Shawn Puckett, Assistant District Attorney General, for the appellee, State of Tennessee.

Judge: PAGE

Appellant, Deandra Brooks, entered guilty pleas to two counts of robbery and received the agreed-upon sentence of five years on each count. The parties requested a sentencing hearing for determination of sentence alignment and alternative sentencing. Following the hearing, the trial court aligned the sentences concurrently but denied alternative sentencing and ordered appellant to serve the sentences in the Tennessee Department of Correction. Appellant now appeals the denial of alternative sentencing. Following our review, we affirm the judgments of the trial court.

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### **STATE OF TENNESSEE V. MICHAEL WARREN FULLER**

Court: TN Court of Criminal Appeals

Attorneys:

Joshua L. Brand (on appeal and at hearing on motion for new trial); and Dumaka Shabazz (at trial), Nashville, Tennessee, for the appellant, Michael Warren Fuller.

## **Upcoming**

### **Volunteers Needed for Incarcerated Veterans Clinic June 21**

The Memphis Bar Association Access to Justice Committee is sponsoring a legal clinic Saturday from 8 a.m. to noon and volunteers are needed. The legal clinic, which will be held at the Shelby County Jail, will provide help to incarcerated veterans who have civil legal questions about issues such as disability compensation, child support issues, advance directives, eligibility for benefits and outstanding debts. Those interested in volunteering should contact [Mark Berryhill](#) at (901) 222-4819.

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### **Campaign Finance Seminar in Memphis**

The Memphis Lawyers’ Chapter of the Federalist Society will present a [seminar on campaign finance regulation](#) on Tuesday at The Madison Hotel. Lunch is from 11:30 a.m. to 12 p.m. with programming to follow. Tickets are \$25 for Federalist Society members, \$30 for non-members. To register, contact [Greg Grisham](#) at (901) 462-2616.

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Robert E. Cooper, Jr., Attorney General and Reporter; Rachel Harmon, Senior Counsel; Victor S. (Torry) Johnson III, District Attorney General; and Sarah Davis, Assistant District Attorney General, for the appellee, State of Tennessee.

Judge: BIVINS

Michael Warren Fuller (“the Defendant”) was convicted by a jury of aggravated robbery. The trial court subsequently sentenced the Defendant to thirty years’ incarceration. Following a hearing on the Defendant’s motion for new trial, the trial court reduced the Defendant’s sentence to twenty-eight years. On appeal, the Defendant challenges the sufficiency of the evidence supporting his conviction. He also contends that his sentence is improper. After a thorough review of the record and the applicable law, we affirm the Defendant’s conviction. We remand, however, for the trial court to sentence the Defendant pursuant to the 2005 Amendments to the Tennessee sentencing statutes.

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## STATE OF TENNESSEE v. EDWARD LEPHANNA KILCREASE

Court: TN Court of Criminal Appeals

Attorneys:

Jeremy W. Parham, Manchester, Tennessee, for the appellant, Edward Lephanna Kilcrease

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel E. Willis, Assistant Attorney General; Mickey Lane, District Attorney General; Felecia Walkup, Assistant District Attorney General, for the appellee, State of Tennessee.

Judge: SMITH

In 2011, the Coffee County Grand Jury indicted Appellant, Edward Kilcrease, for aggravated burglary, employment of a firearm during commission of a dangerous felony, possession of a firearm during commission of a dangerous felony, aggravated assault, and vandalism. Prior to trial, the State dismissed the charges of employment of a firearm during commission of a dangerous felony and possession of a firearm during commission of a dangerous felony and amended the aggravated assault charge to simple assault. A jury convicted Appellant of attempted aggravated burglary and vandalism. On appeal, Appellant argues that the evidence presented by the State at trial is insufficient to support his conviction for attempted aggravated burglary. After a thorough review of the record, we conclude that the evidence presented at trial was sufficient to support Appellant’s conviction for attempted aggravated burglary because proof that Appellant actually completed the criminal offense does not render the evidence insufficient to sustain a conviction

## Congressional News

### Corker Proposal Would Help Rescue Abducted Children

Sen. Bob Corker introduced legislation yesterday to bolster the government’s ability to help parents rescue children abducted overseas, the [Tennessean reports](#). The bill, introduced by the Tennessee Republican along with Democratic Sen. Robert Menendez of New Jersey, is named the Sean and David Goldman International Child Abduction Prevention and Return Act. David Goldman was a New Jersey parent who waged a five-year battle to get his son Sean back from Brazil.

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## General Assembly News

### Committee to Examine Ethics Complaint and Judicial Board

A specially appointed “Ad Hoc Committee on Judicial Accountability” of the Tennessee Senate is scheduled to meet Tuesday. While the [notice fails to indicate the purpose of the meeting](#), it appears to be a legislative effort to investigate Sen. Mike Bell’s ethics complaint against Tennessee Supreme Court Chief Justice Gary Wade and/or

for an attempt of the same offense. Consequently, the judgment of the trial court is affirmed.

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## STATE OF TENNESSEE v. JEROME ANTWAUNE PERKINS

Court: TN Court of Criminal Appeals

Attorneys:

Gregory D. Smith (on appeal), Clarksville, Tennessee; and Adam W. Parrish (at trial), Lebanon, Tennessee, for the appellant, Jerome Antwaune Perkins.

Robert E. Cooper, Jr., Attorney General and Reporter; Caitlin Smith, Assistant Attorney General; Tom P. Thompson, Jr., District Attorney General; and Linda D. Walls and Thomas Harwell Swink, Assistant District Attorneys General, for the appellee, State of Tennessee.

Judge: PAGE

A jury found appellant, Jerome Antwaune Perkins, guilty of possession of 0.5 grams or more of cocaine, a Schedule II controlled substance, with intent to sell or deliver. He pleaded guilty to the accompanying charge of driving on a revoked license, third offense. He was sentenced to fifteen years as a multiple offender for the drug conviction and the agreed-upon concurrent eleven months, twenty-nine days for the driving conviction. In this appeal, he challenges the sufficiency of the convicting evidence underlying the drug conviction. Following our review, we affirm the judgments of the trial court.

- [perkinsj\\_062014.pdf](#)
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## STATE OF TENNESSEE v. CHRISTOPHER LEE RICHARDSON

Court: TN Court of Criminal Appeals

Attorneys:

Gregory D. Judkins, Shelbyville, Tennessee (on appeal); and Catherine Hatcher Hickerson (at trial), Assistant District Public Defender, for the appellant, Christopher Lee Richardson.

Robert E. Cooper, Jr., Attorney General and Reporter; Lacy Wilber, Assistant Attorney General; Charles Crawford, District Attorney General; and Richard Cawley, Assistant District Attorney General, for the appellee, State of Tennessee.

Judge: WITT

The defendant, Christopher Lee Richardson, appeals his Bedford County Circuit Court jury convictions of attempted theft of property valued at \$1,000 or more but less than \$10,000; disorderly conduct; simple possession of a Schedule IV controlled substance; resisting arrest;

to examine the legality of the composition of the state's Judicial Performance Evaluation Commission, [Gavel to Gavel reports](#).

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## Passages

### Services Pending for Longtime Public Defender

Longtime Ninth District Public Defender Joe Walker died Wednesday (June 18) at a West Knoxville hospital. He was 69. Walker was named public defender in September 1989 and was first elected to the position in August 1990. In May 1991, he and his son were involved in a car wreck that left them both quadriplegics. The accident did not stop him from doing his job, Assistant Ninth Judicial District Public Defender Walter Johnson [told Knoxville](#). Funeral services are pending.

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## BPR Actions

### Hamilton County Lawyer Placed on Disability Inactive Status

The law license of John Alley was transferred to disability inactive status on June 19. Alley cannot practice law while on disability inactive status. He may return to the practice of law after reinstatement by the Tennessee Supreme Court upon showing of clear and convincing evidence that the disability has

simple possession of a Schedule VI controlled substance; and attempted promotion of the manufacture of methamphetamine, claiming that the trial court erred by failing to grant his motion to sever the counts of the indictment; that the trial court erred by refusing to disqualify a juror; that the evidence is insufficient to support his convictions of attempted theft of property and attempted promotion of the manufacture of methamphetamine; and that the sentence is excessive. Discerning no error, we affirm the judgments of the trial court.

- [richardsonc\\_062014.pdf](#)
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### **STATE OF TENNESSEE v. MARKREO QUINTEZ SPRINGER and WILLIAM MOZELL COLEY**

Court: TN Court of Criminal Appeals

Attorneys:

Rob McKinney, Nashville, Tennessee, for the appellant, Markreo Quintez Springer.

Ana Escobar (at trial) and Peter D. Heil (on appeal), Nashville, Tennessee, for the appellant, William Mozell Coley.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel Harmon, Senior Counsel; Victor S. Johnson, District Attorney General; and Rob McGuire and Sarah Davis, Assistant District Attorneys General, for the appellee, State of Tennessee.

Judge: WILLIAMS

A jury convicted the defendants, Markreo Quintez Springer and William Mozell Coley, of first degree (felony) murder; second degree murder, a Class A felony; and especially aggravated robbery, a Class A felony. On appeal, the defendants launch challenges against: (1) the sufficiency of the evidence; (2) the admission of a witness's recorded prior inconsistent statement; (3) the chain of custody for DNA evidence; (4) the admission into evidence of a recording of the defendants discussing the events in the back of a police vehicle; (5) the exclusion of a recorded statement from a deceased witness; (6) the admission of testimony regarding threats against a witness made by one of the defendants; and (7) the trial court's refusal to grant a severance. After a thorough review of the record and issues raised, we affirm the judgments of the trial court.

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## **TN Attorney General Opinions**

### **Trigger-Point Dry Needling and the Practice of Physical Therapy**

Court: TN Attorney General Opinions

Date: 2014-06-19

been removed and he is fit to resume. [View the BPR notice.](#)

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## **Member Benefits**

### **ABA Offers Retirement Benefits for the Legal Sector**

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The ABA Retirement Fund provides unique, full service 401(k) plans specifically for the legal community. By leveraging the assets of its 3,800 client firms, the ABA plan offers packages typically available only to large corporations. For more information contact a regional representative at (800) 826-8901 or visit [www.abaretirement.com](http://www.abaretirement.com).

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

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