

SUPREME COURT OF TENNESSEE  
 SUPREME COURT DISCRETIONARY APPEALS  
 December 17, 2001

STYLE/APPEAL NUMBER	COUNTY TRIAL JUDGE TRIAL COURT NO.	APPELLATE JUDGE JUDGMENT	NATURE OF APPEAL	ACTION
<b>Julia Sledge Leach Bryan</b> vs. <b>James Wendell Leach</b> <b>M1998-00922-SC-R11-CV</b>	Maury Chancery Jim Hamilton 91-540	Cottrell, J. Affirmed as modified and remanded	Rule 11	<b>Denied</b> - Application of James Wendell Leach; publication of the Court of Appeals opinion is recommended.
<b>Darrell D. Cannon</b> vs. <b>Dept. of Correction, State of TN, et al</b> <b>M2000-01950-SC-R11-CV</b>	Davidson Chancery Irvin H. Kilcrease, Jr. 99-1076-I	Farmer, J. Affirmed and remanded	Rule 11	<b>Denied</b> - Application of Darrell D. Cannon
<b>Tarrance Robinson</b> vs. <b>Cpl. Neil Clement, et al</b> <b>M2001-00365-SC-R11-CV</b>	Davidson Chancery Ellen H. Lyle 00-2928-III	Koch, J. Affirmed	Rule 11	<b>Denied</b> - Application of Tarrance Robinson
<b>State of TN Dept. of Children's Svcs.</b> Vs. <b>Niki Lynn Crawford Thomas</b> <b>M2000-01655-SC-R11-JV</b>	Cannon Juvenile John B. Melton, III 847	Highers, J. Affirmed	Rule 11	<b>Denied</b> - Application of Niki Lynn Crawford Thomas
<b>Christina Mae Stroud (Read)</b> vs. <b>Jimmy Ray Stroud</b> <b>M1999-02239-SC-R11-CV</b>	Davidson Circuit Muriel Robinson 90D-2910	Cottrell, J. Affirmed and remanded	Rule 11	<b>Denied</b> - Application of Christina Mae Stroud; opinion of the Court of Appeals is designated "Not for Citation" in accordance with Supreme Court Rule 4, § F
<b>Warbington Construction, Inc.</b> vs. <b>Franklin Landmark, LLC</b> <b>M2000-00676-SC-R11-CV</b>	Davidson Chancery Irvin H. Kilcrease, Jr. 99-3459-I	Highers, J. Reversed and remanded	Rule 11	<b>Denied</b> - Application of Franklin Landmark LLC

<b>State of Tennessee vs. Russell Allen M2000-01656-SC-R11-CD</b>	Maury Circuit Robert Jones 11192	Ogle, J. Affirmed	Rule 11	<b>Denied</b> - Application of Russell Allen
<b>State of Tennessee vs. Nicholas Williams M1999-00780-SC-R11-CD</b>	Giles Circuit Jim Hamilton 9649-8652	Wedemeyer, J. Affirmed in part and reversed in part	Rule 11	<b>Denied</b> - Application of Nicholas Williams
<b>Allan Preston Brooks vs. State of Tennessee M2000-00909-SC-R11-PC</b>	Davidson Criminal Walter Kurtz 90-W-80	Smith, J. Affirmed	Rule 11	<b>Denied</b> - Application of Allan Preston Brooks
<b>Deborah Louise Reese vs. State of Tennessee M2000-02553-SC-R11-PC</b>	Rutherford Circuit J.S. Steve Daniel 48592	Ogle, J. Affirmed	Rule 11	<b>Denied</b> - Application of Deborah Louise Reese
<b>Rick Roelke vs. William Hickerson, et al W2000-00455-SC-R11-CV</b>	Shelby Circuit Karen R. Williams 303415-3 T.D.	Lillard, J. Affirmed	Rule 11	<b>Denied</b> - Application of Rick Roelke
<b>Barbara White vs. John Albritton, et al W2000-03068-SC-R11-CV</b>	Shelby Circuit James F. Russell 62414-2	Highers, J. Affirmed	Rule 11	<b>Denied</b> - Application of Barbara White

<b>State of Tennessee vs. Christopher M. Flake W2000-01131-SC-R11-CD</b>	Shelby Criminal Bernie Weinman 97-09256	Riley, J. Reversed and remanded; modified sentence to not guilty by reason of insanity	Rule 11	<b>Granted</b> - Application of State of Tennessee <sup>1</sup>
<b>State of Tennessee vs. James R. Hankins W1999-00529-SC-R11-PC</b>	Shelby Criminal W. Fred Axley P-19859	Witt, J. Affirmed in part; reversed in part	Rule 11	<b>Denied</b> - Application of James R. Hankins
<b>State of Tennessee vs. Albert Johnson W2000-01694-SC-R11-CD</b>	Shelby Criminal W. Fred Axley 98-06889	Riley, J. Affirmed	Rule 11	<b>Denied</b> - Application of Albert Johnson
<b>State of Tennessee vs. Marcus Polk W2000-01057-SC-R11-PC</b>	Shelby Criminal Joseph B. Dailey P-20491	Ogle, J. Affirmed	Rule 11	<b>Denied</b> - Application of Marcus Polk
<b>State of Tennessee vs. Reginald D. Terry W2000-00090-SC-R11-CD</b>	Shelby Criminal W. Fred Axley 98-03934	Wedemeyer, J. Affirmed	Rule 11	<b>Granted</b> - Application of Reginald Terry <sup>2</sup>

---

<sup>1</sup>The Court is particularly interested in, and the parties are directed to brief, the following issue: How does the burden of proof on the issue of insanity affect the standard of review of the jury’s findings on insanity? This statement of the issues for oral argument does not prevent the parties from raising additional issues pursuant to Rule 13(a), Tenn. R. App. P.

<sup>2</sup>The application is hereby granted for the sole purpose of remanding the case to the Court of Criminal Appeals for reconsideration in light of this Court’s opinion in *State v. Ely*, 43 S.W.3d 710 (Tenn. 2001). In *Ely*, this Court held that failure to instruct on lesser-included offenses implicates the constitutional right to trial by jury. We, therefore, remand this case to the Court of Criminal Appeals to consider whether this issue is “plain error” warranting review despite the defendant’s failure to include it in his Motion for New Trial.

<b>State of Tennessee vs. Shawn Tolliver W2000-00834-SC-R11-PC</b>	Shelby Criminal Chris Craft P-20924	Williams, J. Affirmed	Rule 11	<b>Denied</b> - Application of Shawn Tolliver
<b>Bobby J. Armstrong vs. State of Tennessee W2000-02598-SC-R11-PC</b>	Madison Circuit Roy B. Morgan, Jr. C00-237	Hayes, J. Affirmed	Rule 11	<b>Denied</b> - Application of Bobby J. Armstrong
<b>Teresa Deion Smith Harris vs. State of Tennessee W2000-02611-SC-R11-PC</b>	Henry Circuit Julian P. Guinn 13023	Riley, J. Affirmed	Rule 11	<b>Denied</b> - Application of Teresa Deion Smith Harris <sup>3</sup>
<b>Tarran Kyles vs. State of Tennessee W2000-02152-SC-R11-PC</b>	Madison Circuit Roy B. Morgan, Jr. C00-247	Hayes, J. Affirmed	Rule 11	<b>Denied</b> - Application of Tarran Kyles
<b>Jerry L. Luster vs. J. Larry Craven W2000-02217-SC-R11-CO</b>	Madison Circuit Roy B. Morgan, Jr. C00-238-I	Clark, J. Affirmed	Rule 11	<b>Denied</b> - Application of Jerry L. Luster
<b>State of TN Dept. of Children's Svcs. vs. Jacqueline Diana Rucker In re: S.D.R., d/o/b 10/1/97 E2001-01163-SC-R11-JV</b>	Roane Juvenile Thomas A. Austin Dennis W. Humphrey 10117	Franks, J. Affirmed	Rule 11	<b>Denied</b> - Application of Jacqueline Diana Rucker

---

<sup>3</sup>Appellant's Motion to Grant the Rule 11 Application and Consider the Merits or Vacate the Court of Criminal Appeals' Opinion and Remand for Further Proceedings and Appellant's Motion to Vacate the Court of Criminal Appeals' Order Preventing Use of the Direct Appeal Record are denied.

<b>State of Tennessee vs. Harold Green E2000-00616-SC-R11-CD</b>	Anderson Criminal James B. Scott, Jr. 99CR0068	Tipton, J. Reversed	Rule 10	<b>Granted</b> - Application of Harold Green
<b>State of Tennessee vs. Steve Hilliard E2000-02819-SC-S09-CD</b>	Hamilton Criminal Douglas A. Meyer 224113 & 224114	Wedemeyer, J. Affirmed	Rule 11	<b>Denied</b> - Application of Steve Hilliard
<b>State of Tennessee vs. Takeita M. Locke E2000-00923-SC-R11-CD</b>	Knox Criminal Richard R. Baumgartner 67739	Glenn, J. Affirmed	Rule 11	<b>Granted</b> - Application of Takeita M. Locke <sup>4</sup>
<b>State of Tennessee vs. Charles E. Mitchell E2001-00373-SC-R11-PC</b>	Knox Criminal Ray Jenkins 71076	Glenn, J. Affirmed	Rule 11	<b>Denied</b> - Application of Charles E. Mitchell
<b>State of Tennessee vs. Larry D. Upshaw E2000-02262-SC-R11-CD</b>	Knox Criminal Ray L. Jenkins 67242	Wade, J. Affirmed	Rule 11	<b>Denied</b> - Application of Larry D. Upshaw

---

<sup>4</sup>The Court, having considered all errors set out in the application, is particularly interested in the following issues at oral argument: 1) Whether the Court of Criminal Appeals applied a diluted constitutional harmless error standard when it concluded that “any error was harmless beyond a reasonable doubt, because it more probably than not did not affect the judgment to the prejudice of the defendant.” 2) Whether the failure of the trial court to instruct the jury on reckless homicide and criminally negligent homicide as lesser included offenses of felony murder was harmless error under *State v. Williams*, 977 S.W.2d 101 (Tenn. 1998), because the jury had the opportunity to convict of facilitation of felony murder. 3) Whether the trial court erred by failing to instruct any lesser included offenses of especially aggravated robbery.

