

THIS BOOK CONTAINS THE OFFICIAL

ARKANSAS REPORTS

Volume 354

CASES DETERMINED
IN THE

Supreme Court of Arkansas

FROM
September 4, 2003 — November 13, 2003

INCLUSIVE¹

AND

ARKANSAS APPELLATE REPORTS

Volume 83

CASES DETERMINED
IN THE

Court of Appeals of Arkansas

FROM
August 27, 2003 — November 12, 2003

INCLUSIVE²

PUBLISHED BY THE
STATE OF ARKANSAS
2003

¹Arkansas Supreme Court cases (ARKANSAS REPORTS) are in the front section, pages 1 through 721. Cite as 354 Ark. ____ (2003).

²Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 429. Cite as 83 Ark. App. ____ (2003).



ERRATA

351 Ark. at 17; second paragraph, line three:
The word “their” should be “its.”

351 Ark. at 501; first paragraph, line one:
Insert the word “the” between “of” and “State’s.”

351 Ark. at 618; case style:
Add “(Arkansas Bar ID # 81063).”

351 Ark. at 630; headnote 2, line three:
The word “supplies” should be “applies.”

345 Ark. at 347; lines three and four:
The *Griffin* case was cited in error; the citation should be replaced with
“*Zawodniak v. State*, 339 Ark. 66, 3 S.W.3d 292 (1999).”

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STANDARDS FOR PUBLICATION OF OPINIONS

Rule 5-2

RULES OF THE ARKANSAS SUPREME COURT AND
COURT OF APPEALS

OPINIONS

(a) SUPREME COURT — SIGNED OPINIONS. All signed opinions of the Supreme Court shall be designated for publication.

(b) COURT OF APPEALS — OPINION FORM. Opinions of the Court of Appeals may be in conventional form or in memorandum form. They shall be filed with the Clerk. The Opinions need not contain a detailed statement of the facts, but may set forth only such matters as may be necessary to an understandable discussion of the errors urged. In appeal from decisions of the Arkansas Board of Review in unemployment compensation cases, when the Court finds the decision appealed from is supported by substantial evidence, that there is an absence of fraud, no error of law appears in the record and an opinion would have no precedential value, the order may be affirmed without opinion.

(c) COURT OF APPEALS — PUBLISHED OPINIONS. Opinions of the Court of Appeals which resolve novel or unusual questions will be released for publications when the opinions are announced and filed with the Clerk. The Court of Appeals may consider the question of whether to publish an opinion at its decision-making conference and at that time, if appropriate, make a tentative decision not to publish. Concurring and dissenting opinions will be published only if the majority opinion is published. All opinions that are not to be published shall be marked “Not Designated for Publication.”

(d) COURT OF APPEALS — UNPUBLISHED OPINIONS. Opinions of the Court of Appeals not designated for publication shall not be published in the *Arkansas Reports* and shall not be cited, quoted, or referred to by any court or in any argument, brief, or other materials presented to any court (except

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In Re: Committee On Model Jury Instructions—Civil (Per Curiam)

In Re: Arkansas Code Revision Comm'n (Per Curiam)

In Re: Arkansas State Bd. Of Law Exmrs. (Per Curiam)

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ARKANSAS
REPORTS

Volume 354

CASES DETERMINED
IN THE

Supreme Court
of Arkansas

FROM
September 4, 2003 — November 13, 2003
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
DEPUTY
REPORTER OF DECISIONS

VICTORIA M. FREY
EDITORIAL ASSISTANT

PUBLISHED BY THE
STATE OF ARKANSAS
2003

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OF THE
SUPREME COURT OF
ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(September 4, 2003 — November 13, 2003 inclusive)

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W.H. "DUB" ARNOLD	Chief Justice
TOM GLAZE	Justice
DONALD L. CORBIN	Justice
ROBERT L. BROWN	Justice
ANNABELLE CLINTON IMBER	Justice
RAY THORNTON	Justice
JIM HANNAH	Justice

OFFICERS

MIKE BEEBE	Attorney General
LESLIE W. STEEN	Clerk
AVA M. HICKS	Interim Director, Library
WILLIAM B. JONES, JR.	Reporter of Decisions

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*[T]he law is the last result of human
wisdom acting upon human experience
for the benefit of the public.*

— SAMUEL JOHNSON
(1709-1784)



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in continuing or related litigation upon an issue such as res judicata, collateral estoppel, or law of the case). Opinions not designated for publication shall be listed in the *Arkansas Reports* by case number, style, date, and disposition.

(e) COPIES OF ALL OPINIONS — In every case the Clerk will furnish, without charge, one typewritten copy of all of the Court's published or unpublished opinions in the case to counsel for every party on whose behalf a separate brief was filed. The charge for additional copies is fixed by statute.

OPINIONS NOT DESIGNATED FOR PUBLICATION

- Anderson *v.* State, CR 03-512 (PER CURIAM), Pro Se Petition for Writ of Certiorari denied; Pro Se Motions for Access to Record of Sentencing Proceeding and for Extension of Time to File Brief, Motion for Extension of Time to File Brief and Motion to Duplicate Motions at Public Expense moot October 2, 2003.
- Arnold, Vera A. *v.* State, CR 03-675 (PER CURIAM), Motions for Clarification or Development of Law and for Appeal Bond, to Strike Appellee's Response to Motion for Appeal Bond, to Expand Appellant's Brief, and for Return of Seized Property denied; Motion to Reset Briefing Schedule Treated as Motion for Extension of Time to File Brief and granted September 25, 2003.
- Arnold, Vera A. *v.* State, CR 03-675 (PER CURIAM), Pro Se Petition for Writ of Certiorari moot November 6, 2003.
- Bader *v.* Clinger, C 03-869 (PER CURIAM), Pro Se Petition for Writ of Mandamus moot September 11, 2003.
- Barnett *v.* State, CR 02-1166 (PER CURIAM), affirmed November 13, 2003. Rehearing denied December 11, 2003.
- Berger, Russell *v.* State, CR 02-350 (PER CURIAM), Pro Se Motion to Address Points in Trial Court's Written Findings; Pro Se Motion to Include Authorities remanded October 2, 2003.
- Berger, Russell *v.* State, CR 02-350 (PER CURIAM), Pro Se Motion to Expedite Appeal denied September 11, 2003.
- Borel *v.* State, CR 03-1050 (PER CURIAM), Motion for Belated Appeal and Motion to Supplement Record on Motion for Belated Appeal remanded October 9, 2003.
- Boyd *v.* State, 03-247 (PER CURIAM), affirmed October 30, 2003.
- Burchfield *v.* Reynolds, CR 03-983 (PER CURIAM), Pro Se Petition for Writ of Mandamus moot October 2, 2003.
- Campbell, Calvin LaShawn *v.* State, CR 02-953 (PER CURIAM), affirmed October 2, 2003.
- Campbell, Calvin LaShawn *v.* State, CR 02-953 (PER CURIAM), Petition for Rehearing denied November 13, 2003.
- Campbell, Billy Joe *v.* State, CR 03-570 (PER CURIAM), Pro Se Motion for Appointment of Counsel denied September 18, 2003.
- Clem *v.* Burnett, CR 03-894 (PER CURIAM), Pro Se Petition for Writ of Mandamus moot October 2, 2003.
- Cloird *v.* Harmon, 03-272 (PER CURIAM), Pro Se Petition for Rehearing dismissed October 16, 2003.

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- Cobb *v.* State, CR 02-785 (PER CURIAM), affirmed October 9, 2003.
- Conley *v.* State, CR 02-779 (PER CURIAM), affirmed November 13, 2003.
- Cooper *v.* State, CR 02-933 (PER CURIAM), affirmed October 2, 2003.
- Dilworth, Michael *v.* State, CR 02-1016 (PER CURIAM), affirmed October 16, 2003.
- Dilworth, Michael *v.* State, CR 02-1016 (PER CURIAM), Pro Se Motion to Expedite Appeal denied September 18, 2003.
- Dodson *v.* State, CR 02-1221 (PER CURIAM), rebriefing ordered October 2, 2003.
- Dyas *v.* State, CR 02-959 (PER CURIAM), affirmed September 18, 2003.
- Edmond *v.* State, CR 03-871 (PER CURIAM), Pro Se Motion to Forego Briefing and Reverse and Remand to Trial Court, or, in the Alternative, for Extension of Time to File Brief; motion to forego briefing and reverse and remand to trial court granted October 23, 2003.
- Elliott *v.* State, CR 03-552 (PER CURIAM), Pro Se Motion for Petition for Writ of Certiorari and Motion for Appointment of Counsel; petition and motion denied September 25, 2003.
- Enkoff *v.* State, CR 03-975 (PER CURIAM), Pro Se Motion for Rule on Clerk to Proceed with Belated Appeal of Order denied October 30, 2003.
- Freeman *v.* Maggio, CR 03-1171 (PER CURIAM), Pro Se Petition for Writ of Mandamus moot November 6, 2003.
- Gibson *v.* State, CR 03-893 (PER CURIAM), Pro Se Motion for Rule on Clerk to File Motions Without Record dismissed September 11, 2003.
- Gipson *v.* State, CR 03-553 (PER CURIAM), Pro Se Motions for Belated Appeal, to Lodge Record Belatedly, for Rule on Clerk, for Briefing Schedule, to Consolidate Record, to Amend Motion for Rule on Clerk, and Petition for Writ of Certiorari. Motion for belated appeal treated as motion for rule on clerk and denied; all other motions and petition for writ of certiorari moot September 11, 2003.
- Goins *v.* State, CR 02-972 (PER CURIAM), Appellant's Motion for Reconsideration denied October 9, 2003.
- Green *v.* Arnold, CR 03-699 (PER CURIAM), Pro Se Petition for Writ of Mandamus moot September 18, 2003.
- Green *v.* State, CR 02-1243 (PER CURIAM), affirmed; motion to delay appeal denied October 2, 2003.

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- Hall *v.* State, CR 03-537 (PER CURIAM), Pro Se Motion for Belated Appeal of Orders denied October 9, 2003.
- Hendrickson-Atkinson *v.* State, CR 02-1037 (PER CURIAM), Pro Se Motion to Strike Appellee's Brief denied October 16, 2003.
- In the Matter of the Adoption of H.A.P. *v.* Speaker, 03-822 (PER CURIAM), Pro Se Motion to Proceed *In Forma Pauperis* on Motion for Rule on Clerk granted October 30, 2003.
- Jackson *v.* State, CR 03-593 (PER CURIAM), Pro Se Motion for Leave to File a Belated Handwritten Brief moot; appeal dismissed October 30, 2003.
- Johnson, Clyde *v.* State, CR 03-162 (PER CURIAM), reversed and remanded November 13, 2003.
- Johnson, Clyde *v.* State, CR 03-508 (PER CURIAM), Pro Se Motion for Extension of Time to File Brief moot; appeal dismissed October 23, 2003.
- Jones *v.* Arkansas Department of Correction, 02-412 (PER CURIAM), rebriefing ordered September 18, 2003.
- Jones, Emmitt *v.* State, CR 03-491 (PER CURIAM), Motion for Belated Appeal of Order granted October 9, 2003.
- Jones, William Frank *v.* State, 02-412 (PER CURIAM), Pro Se Motion for Extension of Time to File Substituted Brief granted October 9, 2003.
- Kail *v.* State, CR 02-494 (PER CURIAM), affirmed September 25, 2003.
- Kelly *v.* Davis, 03-954 (PER CURIAM), Pro Se Petition for Writ of Mandamus moot September 18, 2003.
- King, Keith Allen *v.* State, CR 02-645 (PER CURIAM), rebriefing ordered September 18, 2003.
- King, Doug Ray *v.* State, CR 03-405 (PER CURIAM), Pro Se Motion to Substitute Record, for Access to Record, and for Extension of Time to File Brief granted September 25, 2003.
- Lacy *v.* State, CR 02-985 (PER CURIAM), rebriefing ordered October 9, 2003.
- Lamar, Anthony D. *v.* State, CR 01-909 (PER CURIAM), Pro Se Motion for Photocopy of Transcript or Access to Transcript at Public Expense denied September 18, 2003.
- Lamar, Anthony D. *v.* State, CR 03-521 (PER CURIAM), Pro Se Motion for Extension of Time to File Brief moot; appeal dismissed October 2, 2003.
- Latta *v.* State, CR 03-494 (PER CURIAM), Pro Se Motion for Extension of Time to File Brief and for Access to Transcript granted October 9, 2003.

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- Leggins *v.* Norris, 02-1018 (PER CURIAM), affirmed September 11, 2003.
- Lenz *v.* Reynolds, CR 03-376 (PER CURIAM), Pro Se Petition for Writ of Mandamus moot September 11, 2003.
- Lukach *v.* State, CR91-279 and CR91-293 (PER CURIAM), Pro Se Motion for Photocopy of Transcripts at Public Expense denied November 13, 2003.
- Marlin *v.* State, CR 03-586 (PER CURIAM), Pro Se Motion for Rule on Clerk to Proceed with Appeal of Postconviction Orders denied September 18, 2003.
- McArty *v.* State, CR 93-1071 (PER CURIAM), Pro Se Petition for Leave to Proceed in Circuit Court with Petition for Writ of Error *Coram Nobis* denied. October 16, 2003.
- McDonald *v.* State, CR 02-1317 (PER CURIAM), affirmed November 6, 2003. Rehearing denied December 4, 2003.
- Middleton *v.* Lockhart, 03-467 (PER CURIAM), Pro Se Motion to Bring to Attention of Court a Fraud denied November 6, 2003.
- Mitchell *v.* State, CR 03-69 (PER CURIAM), affirmed October 30, 2003.
- Moore *v.* State, CR 02-983 (PER CURIAM), Pro Se Motion for Extension of Time to File Reply Brief granted October 23, 2003.
- Nelson *v.* State, CR 03-631 (PER CURIAM), Pro Se Motion for Rule on Clerk treated as motion for belated appeal and denied October 16, 2003.
- Nichols, Billy Mack *v.* Harmon, 02-567 (PER CURIAM), Pro Se Motion to Amend Original Brief, Motion for Findings Disclosure, and Motion for Appointment of Counsel denied October 16, 2003; substituted brief due in fifteen days.
- Nichols, Billy Mack *v.* State, CA CR 99-354 (PER CURIAM), Pro Se Motion and Amended Motion for Photocopy of Transcript at Public Expense denied October 16, 2003.
- Nichols. *v.* Norris, 03-277 (PER CURIAM), Pro Se Motions for Extension of Time to File Appellant's Brief and to Supplement the Record granted; Pro Se Motion for Continuance Until Motion to Supplement Acted on by Court moot October 9, 2003.
- Pickens *v.* State, CR 03-695 (PER CURIAM), Pro Se Motion to File a Belated Brief granted October 30, 2003.
- Pinder *v.* State, CR 02-1289 (PER CURIAM), Pro Se Motions for Leave to File Pro Se Supplemental Brief and for Copy of Transcript at Public Expense moot September 25, 2003.

- Ramaker *v.* Clinger, CR 03-664 (PER CURIAM), Pro Se Petition for Writ of mandamus moot September 11, 2003.
- Reese *v.* State, CR 02-1364 (PER CURIAM), affirmed November 6, 2003.
- Rhodes *v.* State, CR 03-497 (PER CURIAM), Pro Se Motion for Rule on Clerk to Proceed With Appeal of Postconviction Order denied October 2, 2003.
- Risher *v.* State, CR 03-311 (PER CURIAM), Pro Se Motion for Rule on Clerk to File Belated Reply Brief granted; Pro Se Motion to Preserve Evidence, for Leave to Submit Supplemental Abstract and Addendum in the Event that Abstract Found Deficient, and to Note Error in Prior Opinion denied October 9, 2003.
- Robinson *v.* State, CR 03-657 (PER CURIAM), dismissed; motion moot November 13, 2003.
- Sanders *v.* State, CR 02-1116 (PER CURIAM), affirmed October 16, 2003. Rehearing denied December 4, 2003.
- Sherman *v.* State, CR 03-533 (PER CURIAM), Pro Se Motion for Rule on Clerk to Lodge Record Belatedly denied October 16, 2003.
- Smith *v.* State, CR 03-338 (PER CURIAM), Pro Se Motions for Extensions of Time to File Appellant's Brief moot; appeal dismissed October 9, 2003.
- Standridge *v.* Davis, 03-933 (PER CURIAM), Pro Se Motion for Rule on Clerk to File Mandamus Petition Without Record dismissed November 6, 2003.
- State *v.* Hagan-Sherwin, Debbie, CR 03-249 (PER CURIAM), Pro Se Motion for Appointment of Counsel and Motion for Extension of Time to File Brief granted November 13, 2003.
- State *v.* Sherwin-Hagan, Debbie, CR 03-249 (PER CURIAM), Pro Se Motion for Appointment of Counsel and Motion for Extension of Time to File Brief remanded September 18, 2003.
- Stephenson *v.* Maggio, CR 03-616 (PER CURIAM), Pro Se Petition for Writ of Mandamus dismissed October 9, 2003.
- Terrell *v.* State, CR 03-907 (PER CURIAM), Pro Se Motion for Belated Appeal treated as motion for rule on clerk and denied October 23, 2003.
- Thomas *v.* State, CR 02-1347 (PER CURIAM), rebriefing ordered October 9, 2003.
- Tinkes *v.* Yeagan, CR 03-934 (PER CURIAM), Pro Se Petition for Writ of Mandamus dismissed November 13, 2003.

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- Trotter *v.* State, CR 03-363 (PER CURIAM), Pro Se Motion for Extension of Time to File Brief granted October 2, 2003.
- Warren *v.* State, CR 03-21 (PER CURIAM), Pro Se Motion to Reverse Appeal (sic) treated as motion to permit appeal and denied; Pro Se Motion for Appointment of Counsel denied October 23, 2003.
- Watkins *v.* State, CR 03-636 (PER CURIAM), Pro Se Petition for Writ of Certiorari moot; appeal dismissed October 9, 2003.
- Weaver *v.* State, CR 02-737 (PER CURIAM), affirmed September 25, 2003.
- Whitfield *v.* State, CR 00-1139 (PER CURIAM), Pro Se Petition and Amended Petitions to Reinvest Jurisdiction in the Trial Court to Consider a Petition for Writ of Error *Coram Nobis*, Motion for Oral Argument, and Motion for Injunction to Compel Release of Arkansas Department of Correction Records denied October 30, 2003.
- Whitham *v.* State, CR 01-528 (PER CURIAM), affirmed September 11, 2003.
- Williams *v.* Burnett, CR 03-857 (PER CURIAM), Pro Se Motion to Dismiss Petition for Writ of Mandamus Without Prejudice granted September 18, 2003.
- Williams *v.* State, CR 03-873 (PER CURIAM), Pro Se Motion for Extension of Time to File Brief granted; Motion for Appointment of Counsel denied November 13, 2003.
- Williams *v.* Wade, 03-573 (PER CURIAM), Pro Se Motion for Order Directing Arkansas Department of Correction to Make Certain Corrections in Appellant's Brief-in-Chief denied October 23, 2003.
- Wright, Edward Charles *v.* State, CA CR 02-419 (PER CURIAM), Pro Se Motion for Copy of Transcript at Public Expense denied October 30, 2003.
- Wright, Almer Willis *v.* State, CR 03-121 (PER CURIAM), Pro Se Motions for Extension of Time to File Appellant's Brief; initial motion for extension of time granted and subsequent motion moot October 2, 2003.

APPENDIX

Rules Adopted
or Amended by
Per Curiam Orders

IN RE: APPOINTMENT of COUNSEL in CRIMINAL CASES

Supreme Court of Arkansas
Delivered September 18, 2003

PER CURIAM. Because appellants in criminal cases are entitled to counsel on direct appeal from a judgment of conviction, this Court on occasion must appoint attorneys to represent indigent appellants. Attorneys who are desirous of such appointments should register with Sue Newbery, Criminal Justice Coordinator, Arkansas Supreme Court, Justice Building, Box 1300, 625 Marshall St., Little Rock, AR 72201. Counsel will be paid a fee after determination of the case upon a proper motion.

IN RE: ARK. R. CIV. P. 55(c)

Supreme Court of Arkansas
Delivered October 2, 2003

PER CURIAM. The Supreme Court Committee on Civil Practice has presented the Court with a proposed amendment to Ark. R. Civ. P. 55(c), which is explained in the Reporter's Note set out below. We endorse the Committee's recommendation and amend Rule 55(c), effective immediately, as follows¹:

¹ To illustrate the change in the rule, the new language is underlined: (c) *Setting Aside Default Judgments*. The court may, upon motion, set aside a default judgment previously entered for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) the judgment is void; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or (4) any other reason justifying

(c) *Setting Aside Default Judgments.* The court may, upon motion, set aside a default judgment previously entered for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) the judgment is void; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or (4) any other reason justifying relief from the operation of the judgment. The party seeking to have the judgment set aside must demonstrate a meritorious defense to the action; however, if the judgment is void, no other defense to the action need be shown.

Addition to Reporter's Notes, 2003 Amendment: Subdivision (c)(3) of the rule has been amended by inserting a parenthetical phrase, "whether heretofore denominated intrinsic or extrinsic," after the word "fraud." Although the prior version of the rule was not by its terms limited to extrinsic fraud, the Court of Appeals has construed it in that fashion. *Graves v. Stevison*, 98 S.W.3d 848 (Ark. App. 2003). The amendment has the effect of overturning *Graves* and makes subdivision (c)(3) consistent with Rule 60(c)(4).

IN RE: ARKANSAS RULES of CRIMINAL PROCEDURE,
RULES 8.2(b) AND 24.3(b)

Supreme Court of Arkansas
Delivered October 2, 2003

PER CURIAM. The Supreme Court Committee on Criminal Practice has submitted two proposed amendments to the Rules of Criminal Procedure. We agree with the Committee's

relief from the operation of the judgment. The party seeking to have the judgment set aside must demonstrate a meritorious defense to the action; however, if the judgment is void, no other defense to the action need be shown.

recommendations with respect to Rule 8.2(b) and in part with respect to Rule 24.3(b). The amendments which we accept are explained below in the Reporter's Notes which accompany each proposal, and the changes are illustrated in the footnotes. We express our gratitude to the members of the Criminal Practice Committee for their work.

At this time, we adopt the amendments to Rule 8.2 (b)¹ and Rule 24.3(b)², effective immediately, and republish the Rules and Reporter's Notes as set out below.

RULES OF CRIMINAL PROCEDURE

RULE 8.2. APPOINTMENT OF COUNSEL

(b) Whenever an indigent is charged with a criminal offense and, upon being brought before any court, does not knowingly and intelligently waive the appointment of counsel, the court shall appoint counsel to represent the indigent, unless the indigent is charged with a misdemeanor and the court has determined that under no circumstances will incarceration be imposed as a part of the punishment if the indigent is found guilty. A suspended or probationary sentence to incarceration shall be considered a sentence to incarceration if revocation of the suspended or probation-

¹ Rule 8.2 (b) [new language in italics] Whenever an indigent ~~accused~~ is charged with a criminal offense and, upon being brought before any court, does not knowingly and intelligently waive the appointment of counsel ~~to represent him~~, the court shall appoint counsel to represent ~~him~~ *the indigent*, unless ~~he~~ *the indigent* is charged with a misdemeanor and the court has determined that under no circumstances will ~~imprisonment~~ *incarceration* be imposed as a part of the punishment if ~~he~~ *the indigent* is found guilty. *A suspended or probationary sentence to incarceration shall be considered a sentence to incarceration if revocation of the suspended or probationary sentence may result in the incarceration of the indigent without the opportunity to contest guilt of the offense for which incarceration is imposed.*

² 24.3(b) [new language in italics] With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review of an adverse determination of a pretrial motion to suppress *seized evidence or a custodial statement*. If the defendant prevails on appeal, ~~he~~ *the defendant* shall be allowed to withdraw ~~his~~ *the* conditional plea.

ary sentence may result in the incarceration of the indigent without the opportunity to contest guilt of the offense for which incarceration is imposed.

Reporter’s Note, 2003 Amendments: The amendments made two changes to subsection (b). The word “imprisonment” was replaced with the word “incarceration” to avoid any implication that the right to counsel attaches only when the defendant faces confinement in state prison. The final sentence was added to incorporate the United States Supreme Court holding in *Alabama v. Shelton*, 535 U.S. 654, 122 S.Ct. 1764, 152 L.Ed.2d 888 (2002).

RULE 24.3. PLEADING BY DEFENDANT

(b) With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review of an adverse determination of a pretrial motion to suppress seized evidence or a custodial statement. If the defendant prevails on appeal, the defendant shall be allowed to withdraw the conditional plea.

Reporter’s Note, 2003 Amendment: Subsection (b) was amended to clarify that a defendant may reserve the right to appeal following an adverse determination on a motion to suppress a custodial statement as well as a motion to suppress seized evidence.

IN RE: RULES GOVERNING ADMISSION
to the BAR of ARKANSAS

Supreme Court of Arkansas
Delivered October 9, 2003

PER CURIAM. The Arkansas State Board of Law Examiners (Board) has recommended that we reinstate admission to the Bar of Arkansas by motion. By per curiam order of June 12, 2003, we sought comment from the bench and the bar on the Board's recommendation.

We have received comments from members of the State and Federal Judiciary, many attorneys across the State, as well as attorneys from other states who plan to return to Arkansas sometime in the future. Without exception, all written submissions were supportive of an admission on motion provision.

A number of suggestions were offered which, if adopted, would materially alter the proposed rule. One observer suggested addition of a requirement that an applicant for admission on motion be required to establish that he or she had passed the Multistate Professional Responsibility Examination (MPRE). There are several other similar suggestions which merit further study.

We refer this matter back to the Board with directions that it consider the suggested changes in the admission on motion rule. We ask that the Board return to us with a final version of an admission on motion provision for disposition by this Court.

IN RE: ADMINISTRATIVE ORDER NUMBER 14—
ADMINISTRATIVE PLANS

Supreme Court of Arkansas
Opinion delivered October 16, 2003

PER CURIAM. In our *per curiam* order dated July 3, 2003, *In re: Administrative Order Number 14 — Administration Plans*, we remanded several proposed administrative plans back to the applicable administrative judge for revision or clarification. These plans have been resubmitted, and the Court has reviewed them.

We approve the administrative plans, as amended upon resubmission, of the following judicial circuits: 2nd, 3rd, 5th, 9th-W, and 21st. The 23rd Judicial Circuit requested to amend its approved plan, and the amended plan is approved.

In our earlier *per curiam* order, we asked the 6th and 12th Judicial Circuits to submit an explanation for the reasons why particular judges were hearing domestic relations and probate cases exclusively. We now approve the 6th Circuit's administrative plan for 2004 based upon the explanation related to the current building limitations and the construction that is to be undertaken in 2004. We also approve the seniority proposal submitted by the 6th Circuit. Similarly, we approve the 12th Circuit's amended plan for 2004 based on the current building limitations and the plan to promptly seek quorum-court funding for the modification of the old chancery courtroom for jury trials.

The plans submitted by the 7th and 13th Judicial Circuits need further clarification as to the manner in which cases will be randomly assigned. Although it is not necessary that cases be assigned by a computer, a "mechanical" method of some sort, such as marbles or chips, is required to insure the random distribution of cases. A method that is predictable and relies on the clerk's silence is not acceptable.

The Court also wants to take this opportunity to acknowledge the circuit judges who have assumed the position of administrative judge. Their names appear below. We express our appre-

ciation for their willingness to assume these duties in addition to their regular caseload.

Circuit	Administrative Judge
1	Hon. Bentley Story
2	Hon. David Burnett
3	Hon. Harold Erwin
4	Hon. Kim Smith
5	Hon. Dennis Sutterfield
6	Hon. Vann Smith
7	Hon. Phillip Shirron
8-N	Hon. Jim Gunter
8-S	Hon. Joe Griffin
9-W	Hon. Ted Capeheart
10	Hon. Jerry Mazzanti
11-W	Hon. Leon Jamison
12	Hon. Harry Foltz
13	Hon. Edward Jones
14	Hon. Roger Logan
15	Hon. Paul Danielson
16	Hon. Stephen Choate
17	Hon. Robert Edwards
18-E	Hon. Tom Smitherman
19-W	Hon. John Scott
20	Hon. Charles Clawson
21	Hon. Gary Cottrell
22	Hon. Gary Arnold
23	Hon. Lance Hanshaw

IN RE: RULE PROVIDING for CERTIFICATION of COURT REPORTERS; REGULATIONS of the BOARD of CERTIFIED COURT REPORTER EXAMINERS

Supreme Court of Arkansas

Delivered October 30, 2003

PER CURIAM. The Board of Certified Court Reporter Examiners has recommended amendments to the Rule and to the Regulations. We have considered the Board's proposals and agree with them. We thank the Board for its work.

We hereby amend, effective immediately, and republish Sections 1(A) and 7(a) of the Rule, and Sections 3(b), 9, and 14(d) of the Regulations. We adopt and publish, effective immediately, Section 23 of the Regulations. The changes made are illustrated in the endnote.¹

¹ *(Added language has been underlined; deleted language has been stricken)*

RULE PROVIDING FOR CERTIFICATION OF COURT REPORTERS

Section 1. Members of the board.

A. The Board of Certified Court Reporters Examiners hereafter referred to as the "Board", shall be composed of seven members who shall be appointed by this Court. Four of the members shall be judges of the Circuit, ~~Chancery~~, or Appellate Courts and shall be appointed for terms of three years. Initially, one of the four shall be appointed for a term of one year, one for a term of two years, and two for a term of three years. Three of the Board members shall have been court reporters in and citizens of Arkansas for at least five years prior to their appointment. Of the court reporters appointed to the board, at least one shall be a machine shorthand writer, at least one shall be a mask dictation/voice writer, at least one shall be an official court reporter, and at least one shall be a freelance court reporter. Initially, one of the three shall be appointed for a term of one year, one for a term of two years, and one for a term of three years. Members of the Board shall serve without compensation but shall be reimbursed for their travel and other expenses in the performance of their duties.

* * *

Section 7. Revocation or suspension.

(a) Generally. The Board for good cause shown after a hearing by the Board, may revoke or suspend any certificate issued by the Board. ~~The Board's decision may be appealed de novo to Circuit Court.~~

Within thirty (30) days of receipt of written findings of the Board suspending or revoking a certificate, the aggrieved court reporter may appeal said findings to the Supreme Court of Arkansas for review de novo

RULE PROVIDING FOR CERTIFICATION OF COURT REPORTERS

Section 1. Members of the board.

A. The Board of Certified Court Reporters Examiners hereafter referred to as the "Board", shall be composed of seven members who shall be appointed by this Court. Four of the members shall be judges of the Circuit or Appellate Courts and shall be appointed for terms of

upon the record. Such appeal shall be prosecuted by filing a written notice of appeal with the Clerk of the Supreme Court of Arkansas with a copy thereof to the Chair of the Board. The notice of appeal shall specify the party taking the appeal; shall designate the order of the Board from which appeal is sought; and, shall designate the contents of the record on appeal. The notice shall also contain a statement that the transcript, or specific portions thereof, have been requested from the Executive Secretary. The Executive Secretary shall certify the record as being a true and correct copy of the record as designated by the parties and it shall be the responsibility of the appellant to transmit such record to the Supreme Court Clerk. The record on appeal shall be filed with the Supreme Court Clerk within ninety (90) days from filing of the first notice of appeal, unless the time is extended by order of the Board. In no event shall the time be extended more than seven (7) months from the date of entry of the initial order of the Board. Such appeals shall be processed in accord with pertinent portions of the Rules of the Supreme Court and Court of Appeals of the State of Arkansas.

* * *

REGULATIONS OF THE BOARD OF CERTIFIED COURT REPORTER EXAMINERS

Section 3. The Board shall set the following fees for the administration of these regulations:

* * *

b. ~~\$50.00~~ ~~\$20.00~~ certificate renewal fee.

* * *

Section 9. A reporter's certification will immediately expire if the ~~\$20.00~~ certificate renewal fee is not remitted to the Clerk of the Supreme Court on or before January 1 of each year. An expired certificate shall be reinstated without examination, within 120 days of the date the certificate expired for failure to timely renew, upon application and payment of a \$100.00 penalty fee as well as the ~~\$20.00~~ renewal fee. . . .

* * *

Section 14. The tests shall be as follows:

* * *

(d) If an applicant shall pass one part of the test but fail the other part, the applicant will not be required to take the part passed at the next successive examination given, but only that part failed. If the applicant does not pass the previously failed part at the next successive examination, the applicant shall be required to retake the entire examination. All parts of the dictation test must be passed at the same time.

three years. Initially, one of the four shall be appointed for a term of one year, one for a term of two years, and two for a term of three years. Three of the Board members shall have been court reporters in and citizens of Arkansas for at least five years prior to their appointment. Of the court reporters appointed to the board, at least one shall be a machine shorthand writer, at least one shall be a mask dictation/voice writer, at least one shall be an official court reporter, and at least one shall be a freelance court reporter. Initially, one of the three shall be appointed for a term of one year, one for a term of two years, and one for a term of three years. Members of the Board shall serve without compensation but shall be reimbursed for their travel and other expenses in the performance of their duties.

* * *

Section 7. Revocation or suspension.

(a) Generally. The Board for good cause shown after a hearing by the Board, may revoke or suspend any certificate issued by the Board.

Within thirty (30) days of receipt of written findings of the Board suspending or revoking a certificate, the aggrieved court reporter may appeal said findings to the Supreme Court of Arkansas for review de novo upon the record. Such appeal shall be prosecuted by filing a written notice of appeal with the Clerk of the Supreme Court of Arkansas with a copy thereof to the Chair of the Board. The notice of appeal shall specify the party taking the appeal; shall designate the order of the Board from which appeal is sought; and, shall designate the contents of the record on appeal. The notice shall also contain a statement that the transcript, or specific portions thereof, have been requested from the Executive Secretary. The Executive Secretary shall certify the record as being a true and correct copy of the record as designated by the parties and it shall be the responsibility of the appellant to transmit such record to the Supreme Court Clerk. The record on appeal shall be filed with the Supreme Court Clerk within ninety (90) days from filing of the first notice of appeal, unless the time is extended by order of the Board. In no event shall the time be

* * *

Section 23. A Certified Court Reporter may administer oaths to witnesses in court proceedings, depositions, grand jury proceedings, or as otherwise authorized by a court of record.

extended more than seven (7) months from the date of entry of the initial order of the Board. Such appeals shall be processed in accord with pertinent portions of the Rules of the Supreme Court and Court of Appeals of the State of Arkansas.

* * *

REGULATIONS OF THE BOARD OF CERTIFIED COURT REPORTER EXAMINERS

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* * *

b. \$50.00 certificate renewal fee.

* * *

Section 9. A reporter's certification will immediately expire if the certificate renewal fee is not remitted to the Clerk of the Supreme Court on or before January 1 of each year. An expired certificate shall be reinstated without examination, within 120 days of the date the certificate expired for failure to timely renew, upon application and payment of a \$100.00 penalty fee as well as the renewal fee. . . .

* * *

Section 14. The tests shall be as follows:

* * *

(d) If an applicant shall pass one part of the test but fail the other part, the applicant will not be required to take the part passed at the next successive examination given, but only that part failed. If the applicant does not pass the previously failed part at the next successive examination, the applicant shall be required to retake the entire examination. All parts of the dictation test must be passed at the same time.

* * *

Section 23. A Certified Court Reporter may administer oaths to witnesses in court proceedings, depositions, grand jury proceedings, or as otherwise authorized by a court of record.

Appointments to
Committees

IN RE: SUPREME COURT COMMITTEE
on CIVIL PRACTICE

Supreme Court of Arkansas
Delivered September 4, 2003

PER CURIAM. The Honorable Henry Wilkinson, Circuit Judge Retired, of Cardwell, the Honorable Don Glover, Circuit Judge, 10th Judicial Circuit, Randy Philhours, Esq., of Paragould, and Mariam Hopkins, Esq., of Little Rock are appointed to the Civil Practice Committee for three-year terms to expire on July 31, 2006. We thank these new members for their willingness to serve on this important Committee.

The Honorable Richard Moore, Circuit Judge, Sixth Judicial Circuit, is reappointed to the Committee for a three-year term to expire on July 31, 2006, and we thank him for his continued service.

We designate Judge Wilkinson to serve as the chair of the Committee.

The Court thanks Judge Andree Roaf, Price Marshall, Esq., Russell Berry, Esq., and Scotty Shively, Esq., whose terms have expired, for their years of valuable service to the Committee.

IN RE: COMMITTEE on MODEL JURY INSTRUCTIONS—
CIVIL

Supreme Court of Arkansas
Delivered September 18, 2003

PER CURIAM. Don R. Elliott, Jr., Esq., of Fayetteville, is reappointed to the Committee on Model Jury Instructions—Civil for a three-year term to expire on April 30, 2006. Edwin L. Lowther, Jr., Esq., of Little Rock, and Kent J. Rubens, Esq., of West Memphis are appointed to the Committee for three-year terms to expire on April 30, 2006.

The Court thanks Mr. Elliott for accepting reappointment, and Mr. Lowther and Mr. Rubens for their willingness to serve on this important Committee.

The Court expresses its gratitude to Scott Emerson of Jonesboro and William Wiggins of Fort Smith, whose terms have expired, for their dedicated service to the Committee.

THORNTON, J., not participating.

IN RE: ARKANSAS CODE REVISION COMMISSION

Supreme Court of Arkansas
Delivered October 30, 2003

PER CURIAM. The following persons are reappointed to the Arkansas Code Revision Commission: William H. Sutton, Esq., of Little Rock; Douglas O. Smith, Jr., Esq., of Fort Smith; and

William G. Wright, Esq., of Arkadelphia. The Court thanks them for accepting reappointment to this Commission. Each appointment is for a term to end November 7, 2007.

IN RE: ARKANSAS STATE BOARD of LAW EXAMINERS

Supreme Court of Arkansas

Delivered October 30, 2003

PER CURIAM. The Court appoints Ronald D. Harrison of Fort Smith to the Arkansas State Board of Law Examiners. Mr. Harrison shall be an at large appointee and will serve a six-year term concluding on September 30, 2009. Mr. Harrison succeeds Terry M. Poynter of Mountain Home.

The Court appoints Jim Gresham of Harrison to the Arkansas State Board of Law Examiners. Mr. Gresham shall be a representative from the Third Congressional District and will likewise serve a six-year term concluding on September 30, 2009. Mr. Gresham succeeds Jerry D. Pinson of Harrison.

The Court thanks Mr. Harrison and Mr. Gresham for accepting appointment to this important Board. The Court extends its sincere appreciation to Mr. Pinson and Mr. Poynter for their many years of service on this Board.

IN RE: COMMITTEE on AUTOMATION

Supreme Court of Arkansas
Delivered November 6, 2003

PER CURIAM. The Honorable Barry Sims of North Little Rock, Ms. Jeanette Hamilton of North Little Rock, Mr. Reed Edwards of Little Rock, and Ms. Carol Ray of Van Buren, are hereby reappointed to the Committee on Automation for three-year terms to expire October 2006. Ms. Karen Sharp Halbert, of Little Rock, is appointed to the Committee on Automation for a three-year term ending October 31, 2006. Ms. Halbert is replacing Ms. Margaret Newton, of Little Rock, whose term expires October 31, 2003.

The Court extends its appreciation to Judge Sims, Ms. Hamilton, Mr. Edwards, and Ms. Ray for accepting these reappointments to this committee. The Court also extends its appreciation to Ms. Sharp for accepting this appointment and wishes to thank Ms. Newton for her service on this committee.

Professional Conduct
Matters

✓

IN RE: Donald Eugene PERVIS,
Arkansas Bar ID # 81213

03-1015

Supreme Court of Arkansas
Opinion delivered September 18, 2003

PER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the surrender of the law license of Donald Eugene Pervis of Sarasota, Florida, to practice law in the State of Arkansas. Mr. Pervis's name shall be removed from the registry of licensed attorneys, and he is barred and enjoined from engaging in the practice of law in this state.

It is so ordered.

THORNTON, J., not participating.

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- Appellate review, evidence given strongest probative force in favor of administrative agency. *Id.*
- Expert testimony, agency's prerogative to believe or disbelieve. *Id.*
- Standard of review, what constitutes arbitrary or capricious decision. *Id.*
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- Risk assessment, appellants presented only bare assertions that unidentified products of incomplete combustion would cause pollution. *Id.*
- Appellee commission's decision supported by substantial evidence, decision cannot be arbitrary where substantial evidence is found. *Id.*
- Appellants failed to show that appellee commission erred in affirming air & hazardous-waste permits, appellants did not show any further conditions were needed. *Id.*
- Permits would adequately protect public health & environment, no adverse impact on minorities & low-income persons. *Id.*
- Interpretation of statute by agency, highly persuasive. *Id.*
- Request for hearing, appellants' claims not properly raised for review where not mentioned specifically. *Id.*

APPEAL & ERROR:

- Motion for rule on clerk, good cause for granting. *Morgan v. State*, 5
- Motion for rule on clerk, good cause for granting. *Patrick v. State*, 6
- Motion for rule on clerk, good cause for granting. *Rogers v. State*, 7
- Motion for rule on clerk, good cause for granting. *Thrailkill v. State*, 8
- Motion for stay of sanctions during appeal, granted. *Gillaspie v. Ligon*, 9
- Argument not raised below, argument not considered on appeal. *South Cent. Ark. Elec. Coop. v. Buck*, 11
- Motion for rule on clerk treated as motion for belated appeal, when granted. *McDonald v. State*, 28
- Motion for rule on clerk treated as motion for belated appeal, denied. *Id.*
- Petition for review, appeal reviewed as if originally filed in supreme court. *Arkansas Gas Consumers, Inc. v. Arkansas Pub. Serv. Comm'n*, 37
- Mootness doctrine, exceptions. *Id.*
- Mootness doctrine, case fell within exceptions where it was not only matter of public interest but was also capable of repetition. *Id.*
- Appeal by State, criminal cases. *State v. Sola*, 76
- Issue of sentencing in DWI cases where multiple DWI offenses are involved has statewide significance, appeal accepted where it satisfied criteria of Ark. R. App. P.—Crim. 3(c). *Id.*

- Case relied upon by appellee concerned differently worded statute, statute here properly construed. *Id.*
- Appellant failed to mention that case cited in support of his constitutional argument acknowledged exceptions to rule that every crime contains mens rea element, argument without merit. *Gaines v. State*, 89
- Argument not convincing, argument not considered. *Id.*
- Movant's burden to obtain ruling, unresolved questions & objections waived. *Anderson v. State*, 102
- Trial court failed to rule on appellant's objection, appellant's argument procedurally barred. *Id.*
- Invited error, one cannot be heard to complain of that for which he was responsible. *Id.*
- Failure to file appeal, proximate cause for failure to file question of law. *Southern Farm Bureau Cas. Ins. Co. v. Daggett*, 112
- Use of summary judgment by trial court, trial court disposed of matter using vehicle of summary judgment. *Id.*
- Argument made without citation to authority, argument not considered. *Id.*
- Request to remand case rejected, trial court not required to give detailed reasons for its action. *Id.*
- Cumulative error, prerequisites for argument. *Id.*
- Preservation of argument for appellate review, judicial bias argument not properly preserved. *Id.*
- Point on appeal not reached, no demonstration of prejudice or citation to authority made. *Stivers v. State*, 140
- Request that court overrule prior decision, burden of proof. *Id.*
- Request to overrule prior decision declined, appellant failed to meet his burden of proof. *Id.*
- Preservation of issue for appeal, must be raised at trial. *Raymond v. State*, 157
- Preservation of issue for appeal, appellant must obtain ruling. *Id.*
- Record on appeal, burden on appellant. *Id.*
- General objection citing constitutional provisions, not sufficient to preserve constitutional issues on appeal. *Id.*
- Issue developed for first time on appeal, not addressed. *Id.*
- Petition for review, matter considered as if originally filed in supreme court. *Ward v. Williams*, 168
- Obiter dictum, supreme court not bound by. *Id.*
- Obiter dictum, what constitutes. *Id.*
- Obiter dictum, appellate court "findings" were not binding on circuit court. *Id.*
- Obiter dictum, not relied on where circuit court undertook independent review of evidence. *Id.*
- Obiter dictum, circuit court did not abdicate role as factfinder. *Id.*
- Bench trials, standard of review. *Id.*
- Mootness, appeal was not moot. *Id.*
- Arguments made for first time on appeal. *Barrett v. State*, 187
- Argument not considered for first time on appeal, point precluded from review. *Smith v. State*, 226
- No argument that model instruction misstated law, argument without merit. *Id.*
- Appeal by State, when accepted. *Id.*
- Application of statutory sentencing procedures requires uniformity & consistency, appeal by State accepted. *Id.*

- Void or illegal sentence, when issue may be raised. *Id.*
- Cases cited by appellant did not place affirmative duty on voter to examine ballot for accuracy before voting, argument made without citation to authority not considered. *Whitley v. Cranford*, 253
- Motion for new trial denied, no abuse of discretion found. *Id.*
- Facts of case decidedly different from those relied upon by State, argument without merit. *Brazwell v. State*, 281
- No citation to authority or convincing argument, argument not considered. *Martin v. State*, 289
- Motions for rule on clerk, good cause for granting. *Welch v. State*, 303
- Petition to review, standard on review. *D'Arbonne Constr. Co. v. Foster*, 304
- Issue raised for first time on appeal, issue not considered. *London v. State*, 313
- Argument raised for first time on appeal, supreme court would not address. *Id.*
- Appellant's argument not raised below, argument not considered. *Id.*
- Invited-error doctrine, appellant failed to limit his testimony pursuant to trial court's ruling limiting admissibility of previous conviction. *McCoy v. State*, 322
- Preservation of issue for appeal, specific objection at trial necessary. *Ellison v. State*, 340
- Argument not raised below, point not preserved for review. *Id.*
- No citation to authority or convincing argument, issue not considered. *Rikard v. State*, 345
- Record on appeal, full & complete record not necessary. *Lewis v. State*, 359
- Record on appeal, appellant's duty to demonstrate prejudice results from state of record. *Id.*
- Record on appeal was sufficient, constitutional arguments rendered moot. *Id.*
- No motion for dismissal made at close of evidence, sufficiency challenge not preserve for appellate review. *McClina v. State*, 384
- Case relied upon distinguishable, appellant's argument failed. *Id.*
- Postconviction relief, addressed on direct appeal if it was first raised during trial or in motion for new trial. *Id.*
- Postconviction proceedings, no right to counsel. *Id.*
- Appellant failed to show that he had been denied counsel on appeal, argument made without citation to authority not addressed. *Id.*
- Motion to accept transcript & record, granted. *Cranfill v. Union Planters Bank, N.A.*, 397
- Motion for rule on clerk, good cause for granting. *Lowry v. State*, 398
- Motion to review record, granted. *State v. Roberts*, 399
- Supreme court does not lightly overrule cases, presumption in favor of prior decisions. *Echols v. State*, 414
- Preservation of issue, objection must be made at first opportunity. *Mezquita v. State*, 433
- Contemporaneous objection, differs from objecting at first opportunity. *Id.*
- Objection made at first opportunity, issue of in-court identification preserved for appeal. *Id.*
- Appellant never asked for or obtained ruling as to whether or not he was detained, unresolved questions waived. *Id.*
- Appellant's failure to obtain ruling on issue of detention resulted in waiver, remaining arguments regarding scope of VCCR & remedy for its violation were moot. *Id.*
- Argument raised for first time on appeal, argument not addressed. *Id.*
- Appellee's argument misplaced, detention for illegal period of time is precisely what writ of *habeas corpus* is designed to correct. *Taylor v. State*, 450
- New argument raised in reply brief, argument not considered on appeal. *Id.*
- Ark. R. App. P.—Crim. 16, matter remanded for findings of fact. *Bankston v. State*, 473
- Motion for rule on clerk, good cause for granting. *Fleming v. State*, 476
- Lower court stayed from further proceedings, writ of certiorari issued. *Valley v. Simes*, 482

Motion to expedite appeal, granted. *Id.*
Traditional equity matters, common-law principles on review. *Blivin v. Weber*, 483
Motions to strike & for supplemental brief, denied. *Id.*
Cumulative error, supreme court does not recognize doctrine in ineffective-assistance allegations. *Echols v. State*, 530
Arguments made for first time in reply brief, not addressed. *Id.*
Unsupported argument, merits not considered on appeal. *Pine Bluff for Safe Disp. v. Arkansas Poll. Control & Ecol. Comm'n*, 563
Argument made without citation to authority or convincing legal argument, case will be affirmed. *City of Greenbrier v. Roberts*, 591
No case law or other authority given for appellant's contentions, case affirmed. *Id.*
Motion for attorney's fees collateral to trial court's judgment on substantive issues, earlier summary judgment not brought up for purposes of appeal. *Stacks v. Marks*, 594
Extension of time for filing notice of appeal, posttrial motions must be timely filed. *Id.*
Motion for attorney's fees did not extend time within which appellant was required to file notice of appeal, supreme court without jurisdiction to hear appeal from order. *Id.*
Timely filing of notice of appeal jurisdictional, supreme court required to raise issue of subject-matter jurisdiction on its own motion. *Id.*
Notice of appeal untimely, supreme court lacked jurisdiction to hear appeal on summary judgment. *Id.*
Assignments of error must be argued in original brief, arguments not so raised will not be considered on appeal. *Id.*
Improper issues of error raised in motion for fees & costs, issue not addressed. *Id.*
Motion to dismiss, granted. *Id.*
Argument made without citation to authority, argument not addressed. *Stoltze v. Arkansas Valley Elec. Coop. Corp.*, 601
Chancery cases, de novo review. *Carson v. Drew County*, 621
Chancery cases, deference to chancellor's superior position. *Id.*
Chancery cases, when finding is erroneous. *Id.*
Preservation of arguments for appeal, appellant must obtain ruling below. *Id.*
Unsupported argument, not considered. *Owens v. State*, 644
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Argument not raised at trial, may not be raised for first time on appeal. *Id.*
Petition for review, case treated as though originally filed in supreme court. *Barnett v. Monumental Gen. Ins. Co.*, 692
Record on appeal, appellant's responsibility to bring forward sufficient record. *Id.*
Record on appeal, dismissed where order in question was not in record. *Id.*
Petition for review, standard of review. *Dovers v. Stephenson Oil Co.*, 695
Failure to obtain ruling at trial, procedural bar to consideration of issue on appeal. *Id.*
Right result reached for wrong reason, trial court will be affirmed. *Id.*
Appellant may not change grounds for objection on appeal, limited by scope & nature of arguments presented at trial. *Id.*
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Probable cause to arrest without warrant, reasonable-person standard. *Brazwell v. State*, 281

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Rules governing admission to bar, Rule XIV has been applied to govern appearances of counsel in appeals. *McKenzie v. State*, 2

- Motion to be relieved & for appointment of new counsel, amended motion requested. *Collins v. State*, 25
- Motion to withdraw as attorney, granted. *Jordan v. State*, 27
- Malpractice, standard of review. *Southern Farm Bureau Cas. Ins. Co. v. Daggett*, 112
- Failure to object to first-degree battery conviction, issue remanded to trial court for specific findings of fact & conclusions of law. *Fudge v. State*, 148
- Failure to present evidence in mitigation, matter remanded where order did not address five mitigating factors. *Id.*
- Failure to conduct investigation for mitigating evidence, trial court ordered to address issue on remand. *Id.*
- Conflict of interest, trial court's refusal to admit certain documents offered by appellant reversed & matter remanded. *Id.*
- Professional conduct, "serious misconduct" defined. *In Re: Starken*, 274
- Professional conduct, application for readmission to bar. *Id.*
- Motion for reinstatement to bar, denied. *Id.*
- Motion to be relieved & for appointment of counsel on appeal, granted. *O'Neal v. State*, 280
- Claim of ineffective assistance, issue must have been considered at trial. *McClina v. State*, 384
- Motion to withdraw as attorney on direct appeal, denied. *Walters v. State*, 403
- Ineffective-assistance claim, defendant must show counsel actively represented conflicting interests. *Echols v. State*, 530
- Disqualification, standard of review. *Id.*
- Right to counsel, right to representation free from conflicts of interest. *Id.*
- Conflict of interests, appellant unable to show any adverse effect from agreement to allow trial to be filmed & interviews to be conducted. *Id.*
- Conflict of interests, appellant failed to show that counsel actively represented conflicting interests involving contract to make documentary film. *Id.*
- Conflict of interests, appellant failed to demonstrate prejudice resulting from any alleged conflict arising from appellant's attorney's connection to victim's father in civil suit. *Id.*
- Conflict of interests, contents of contract between filmmakers & victim's father irrelevant to issue. *Id.*
- Ineffective-assistance claim, proof required. *Id.*
- Ineffective-assistance claim, rebuttable presumption on review. *Id.*
- Decision to call witness, outside purview of Rule 37. *Id.*
- Decision not to call witness, must be supported by reasonable professional judgment. *Id.*
- Judicial review of counsel's performance, must be highly deferential. *Id.*
- Decision not to call additional experts, based on reasonable professional judgment. *Id.*
- Ineffective-assistance claim, petitioner bears heavy burden of overcoming presumption that jurors are unbiased. *Id.*
- Ineffective-assistance claim, petitioner must show actual bias to overcome presumption that jurors are unbiased. *Id.*
- Ineffective-assistance claim, appellant did not meet burden of showing counsel was deficient for failing to attempt to keep expert's testimony out under *Daubert*. *Id.*
- Ineffective-assistance claim, continuance issue not subject to ruling on remand where not raised & argued on appeal. *Id.*
- Ineffective-assistance claim, decision whether to seek continuance was matter of trial strategy & tactics. *Id.*
- Ineffective-assistance claim, decision whether to seek change of venue was matter of trial strategy. *Id.*

Testimony regarding portions of appellant's mental-health records, issue could be raised for first time if prejudice was conclusively shown. *Id.*

Ineffective-assistance claim, even unsuccessful trial strategy is matter of professional judgment. *Id.*

Ineffective-assistance claim, failure to conduct investigation to ascertain mitigating evidence may constitute error. *Id.*

Ineffective-assistance claim, totality of evidence viewed when supreme court reviews claim based upon failure to present adequate mitigating evidence. *Id.*

Ineffective-assistance claim, supreme court could not say that counsel failed to properly present mitigating evidence. *Id.*

Appellants' action for breach of implied warranty of fitness & habitability was action in contract, trial court properly awarded attorney's fees. *Curry v. Thornsberry*, 631

Practice of law, filing of complaint on behalf of appellants in Arkansas court constitutes. *Preston v. University of Ark.*, 666

Unauthorized practice of law, constitutes contempt of court. *Id.*

Unlicensed attorney, may not practice law in Arkansas. *Id.*

Principle of comity, Rule XIV of Rules Governing Admission to Bar. *Id.*

Motions for admission *pro hac vice* were filed too late for attorneys to receive permission to practice in this state under Rule XIV, clear intent of Rule XIV is that written statement be submitted before attorneys engage in practice of law in Arkansas. *Id.*

Circuit court concluded that Oklahoma attorneys failed to comply with our rule of comity, trial court's conclusion was not abuse of discretion. *Id.*

Unauthorized practice of law, actions by party not licensed to practice are rendered nullity. *Id.*

Right of litigant to act in court, must do so for himself. *Id.*

Attorneys signed complaint, appellants did not appear pro se. *Id.*

AUTOMOBILES:

Evidence of insurance coverage, generally improper to illicit. *Dovers v. Stephenson Oil Co.*, 695

CIVIL PROCEDURE:

Appeal from final order, Ark. R. App. P.—Civ. 2(b). *Stacks v. Marks*, 594

Nonexistent complaint, cannot be corrected. *Preston v. University of Ark.*, 666

Complaint filed by non-licensed attorneys, cause of action null. *Id.*

CONSTITUTIONAL LAW:

Sovereign immunity, suits against State forbidden. *University of Ark. for Med. Sci. v. Adams*, 21

Sovereign immunity, jurisdictional. *Id.*

Sovereign immunity, can be waived. *Id.*

Sovereign immunity, suit against state university barred. *Id.*

Sovereign immunity, barred appellee's action where finding in appellee's favor would necessarily subject State to financial liability. *Id.*

Sovereign immunity, proper avenue for redress is to file claim with Arkansas Claims Commission. *Id.*

Ark. Code Ann. § 5-14-102 furthers state's interest in protecting children, appellant failed to demonstrate that statute violated his due process rights & right to fair trial as guaranteed by U.S. & Arkansas Constitutions. *Gaines v. State*, 89

Double jeopardy, sufficiency issue considered first. *Raymond v. State*, 157

Equal protection clause, requirements. *Smith v. State*, 226

Equal protection challenge to statute, role of court. *Id.*

Ark. Code Ann. § 5-14-120(a) did not violate appellant's right to equal protection, State has interest in making laws that punish school district employees who abuse their positions of trust & authority to facilitate inappropriate relationships with children. *Id.*

Due process, duty to disclose evidence favorable to accused. *Id.*

Brady violation, nondisclosure of map did not constitute. *Id.*

Brady violation, nondisclosure of note did not constitute. *Id.*

Guarantee of Article 3, section 2 of Arkansas Constitution, elections that are not free & equal voided by court. *Whitley v. Cranford*, 253

Federal Fourth Amendment protection, Arkansas Constitution on occasion provides more. *Rikard v. State*, 345

Compulsory process, criminal defendant must show testimony would be material & favorable. *Holder v. State*, 364

Compulsory process, appellant showed no prejudice from trial court's decision not to order witnesses' appearance & testimony. *Id.*

Fourth Amendment rights personal, challenger must show standing. *Gaylord v. State*, 511

Search & seizure, legitimate expectation of privacy required. *Id.*

Ineffective-assistance claim, what defendant alleging Sixth Amendment violation must demonstrate. *Echols v. State*, 530

Selective-prosecution claim, some selectivity in enforcement of laws is not constitutional violation in & of itself. *Owens v. State*, 644

Selective-prosecution claim, must be supported by specific factual allegations that take motion past frivolous phase & raise reasonable doubt as to prosecutor's purpose. *Id.*

Selective-prosecution claim, denial of appellant's motion for evidentiary hearing affirmed where no specific facts were offered to satisfy two-pronged *Wilson* test. *Id.*

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Show-cause hearing, required. *McKenzie v. State*, 479

Motion for reconsideration denied, show-cause order issued. *McDonald v. State*, 680

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Formation, objective indicators required. *Ward v. Williams*, 168

Formation, objective indicators found. *Id.*

Formation, essential elements. *Id.*

Formation, principles considered in determining whether contract has been entered into. *Id.*

Formation, circuit court did not clearly err in deciding oral contract had been established. *Id.*

Implied warranty, arises by operation of law. *Curry v. Thomsberry*, 631

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Jurisdiction, loss of jurisdiction always open & cannot be waived. *Gavin v. State*, 425

Jurisdiction, lack of subject-matter jurisdiction may be raised by supreme court on its own motion. *Id.*

Jurisdiction, trial court loses jurisdiction to modify or amend sentence once it is put into execution. *Id.*

Jurisdiction, trial court was without jurisdiction to modify appellant's original sentences that were placed into execution. *Id.*

Jurisdiction, circuit court has jurisdiction to correct illegal sentence. *Id.*

Jurisdiction, power of court to hear & determine subject matter in controversy. *Pederson v. Stracener*, 716

Subject-matter jurisdiction, always open. *Id.*

Subject-matter jurisdiction, trial court was without jurisdiction. *Id.*

CRIMINAL LAW:

DWI, fourth offense. *State v. Sola*, 76

Determining when offense occurs, two-step process. *Id.*

Appellants fourth arrest not offense until conviction, after conviction offense related back to date violation was committed. *Id.*

Violation at issue, became appellee's fourth offense for DWI that had occurred within five years of first offense. *Id.*

Prior DWI convictions are elements of crime of DWI, fourth offense, proof of prior convictions must come in punishment phase of bifurcated trial to protect defendant from possible prejudice during guilt phase. *Id.*

Multiple DWI's, critical point for counting DWI offenses is at sentencing phase of DWI case, not date that crime was committed. *Id.*

Rape, carnal abuse is not lesser-included offense. *Gaines v. State*, 89

Lesser-included offenses, statute determinative. *Id.*

Determining whether offense is included in another offense, Ark. Code Ann.

§ 5-1-110(b)(1) inapplicable. *Id.*

Determining whether offense is included in another offense, Ark. Code Ann.

§ 5-1-110(b)(2) inapplicable. *Id.*

Determining whether offense is included in another offense, Ark. Code Ann.

§ 5-1-110(b)(3) inapplicable. *Id.*

Appellant failed to demonstrate that carnal abuse in third degree was lesser-included offense of rape under any of three tests under § 5-1-110(b), trial court properly refused to instruct jury on carnal abuse in third degree. *Id.*

Rape of person fourteen or younger, strict-liability crime. *Id.*

Rape of victim less than fourteen, appellant's belief as to age of victim irrelevant. *Id.*

Self-defense claim, decedent's character as aggressive person not essential element of defendant's self-defense claim. *Anderson v. State*, 102

Self-defense claim, trial court did not abuse discretion by excluding testimony about specific instances of violent conduct by victim. *Id.*

Self-defense claim, not tenable where appellant was unaware of threat. *Id.*

Flight following commission of offense, factor that may be considered in determining guilt. *Id.*

Flight following commission of offense, witness's testimony probative to prove appellant's behavior inconsistent with self-defense claim. *Id.*

Defendant's improbable explanation of suspicious circumstances, may be admissible as proof of guilt. *Barrett v. State*, 187

Intent or state of mind, must usually be inferred. *Id.*

Capital murder, premeditation need not exist for particular length of time. *Id.*

Premeditation, may be inferred from type & character of weapon & other circumstances. *Id.*

Efforts to conceal crime, can be considered as evidence of consciousness of guilt. *Id.*

Capital murder, sufficient evidence to support conviction. *Id.*

Imposition of concurrent or consecutive sentences, discretionary with trial judge. *Smith v. State*, 226

Appellant convicted of more than one offense, Ark. Code Ann. § 5-4-403(a) applicable. *Id.*

- Appellant suspected of committing misdemeanor that did not involve a danger of forcible injury to persons or damage to property, appellant's stop & detention impermissible under Ark. R. Crim. P. 3.1. *Brazwell v. State*, 281
- Sexual crimes against children, time of crime generally not of critical significance. *Martin v. State*, 289
- Rape, evidence sufficient if victim gives full & detailed account of defendant's actions. *Id.*
- Sexual crimes against children, lack of exact dates not prejudicial to defendant where defense is that sexual acts never occurred. *Id.*
- Sexual crimes against children, appellant suffered no prejudice where exact dates of sexual acts were immaterial to offenses. *Id.*
- Rape, victim's testimony alone constituted substantial evidence to support rape conviction. *Id.*
- Rape-shield statute, provisions. *Id.*
- Rape-shield statute, purpose. *Id.*
- Rape-shield statute, appellant offered improper character evidence to show that victim was immoral person. *Id.*
- Accomplice testimony, corroboration required. *Holder v. State*, 364
- Capital murder, substantial evidence supported jury verdict. *Id.*
- Sentencing, allegations of void or illegal sentence may be addressed for first time on appeal. *Banks v. State*, 404
- Sentencing, prior offense is element properly proven during sentencing phase of bifurcated proceeding. *Id.*
- Sentencing, enhancement of sentence pursuant to habitual-offender statute resulted in illegal sentence. *Id.*
- Sentencing, matter reversed & remanded for correction of illegal sentence. *Id.*
- Sentencing, Act 1569 of 1999 not applicable in appellant's case. *Gavin v. State*, 425
- Sentencing, trial court may not impose probation & suspended sentence simultaneously. *Id.*
- Sentencing, matter remanded for trial court to correct illegal sentences imposed on appellant following revocation of suspended sentences. *Id.*
- Sentencing, entirely matter of statute. *Taylor v. State*, 450
- Court lacked authority to suspend imposition of sentence, judgment & commitment order were facially invalid. *Id.*
- Proof of guilt, improbable explanations of suspicious circumstances admissible as proof of guilt. *Haynes v. State*, 514
- Circumstantial evidence, alternative explanation for presence of DNA unreasonable. *Id.*
- Lesser-included offense, three statutory tests. *Owens v. State*, 644
- Lesser-included offense, requirements. *Id.*
- Lesser-included offenses, lesser charge of operation of vehicle without license plate was not included in greater offense of willfully attempting to evade or defeat payment of tax. *Id.*
- Lesser-included offenses, trial court did not err in refusing to instruct jury on offense of operating vehicle without license. *Id.*

CRIMINAL PROCEDURE:

- Determination of voluntariness of confession, standard of review. *Brown v. State*, 30
- Custodial statement, effect of false promise of leniency on confession. *Id.*
- False promise of leniency, first step necessary for determination. *Id.*
- False promise of leniency, second step necessary for determination. *Id.*
- Custodial statement, officers' statements were ambiguous promises. *Id.*

- Custodial statements, appellant not so vulnerable that custodial statement was involuntary, motion to suppress properly denied. *Id.*
- Postconviction relief, Ark. R. Crim. P. 37.5(i) imposes more exacting duty on trial court than Ark. R. Crim. P. 37.3. *Fudge v. State*, 148
- Ark. R. Crim. P. 37.5(i), petitioner determines issues that must be addressed by trial court in written order. *Id.*
- Ark. R. Crim. P. 37.5(i), purpose. *Id.*
- Sentencing, additional relevant evidence. *Smith v. State*, 226
- Evidence pertained to aggravating circumstances, allowing testimony not abuse of discretion. *Id.*
- Sentencing, sentence must be authorized by statute. *Id.*
- Sentence illegal, case reversed & remanded for resentencing. *Id.*
- Reasonable suspicion, must be tied to commission of felony or misdemeanor involving forcible injury. *Brazwell v. State*, 281
- Probable cause to arrest, existence of after-acquired knowledge irrelevant. *Id.*
- Officer had no reasonable suspicion to arrest appellant for loitering, State's argument without merit. *Id.*
- Speedy trial, applicable speedy-trial period. *Swartz v. Piazza*, 334
- Speedy trial, burdens of proof. *Id.*
- Speedy trial, state has burden of justifying delay. *Id.*
- Defendant considered unavailable pursuant to Ark. R. Crim. P. 28.3, speedy-trial rights not violated. *Id.*
- Speedy trial, automatic reversal not warranted for failure to make docket entry or written order on excludable periods. *Id.*
- Speedy trial, clerk's records sufficiently memorialized fact that petitioner failed to appear for trial in order to satisfy requirements of Rule 28.3. *Id.*
- Challenge to pretrial photographic identification, contemporaneous objection to in-court identification required. *Lewis v. State*, 359
- Ark. R. Crim. P. 33.1, strictly construed. *McClina v. State*, 384
- Contemporaneous objection rule, one purpose served by. *Id.*
- Contemporaneous objection rule, second purpose served by. *Id.*
- Contemporaneous objection rule has clear purposes, appellant's argument without merit. *Id.*
- Writ of error *coram nobis*, when allowed. *Echols v. State*, 414
- Writ of error *coram nobis*, presumption of validity of judgment of conviction. *Id.*
- Writ of error *coram nobis*, four categories of error addressed. *Id.*
- Writ of error *coram nobis*, when supreme court will grant permission for circuit court to entertain petition. *Id.*
- Writ of error *coram nobis*, due diligence required in making application for relief. *Id.*
- Writ of error *coram nobis*, requirements of due diligence. *Id.*
- Writ of error *coram nobis*, waiting ten years to raise competency issue was not exercise of due diligence. *Id.*
- Postconviction relief, petitioner had ample opportunity to pursue ineffective-assistance claim. *Id.*
- Writ of error *coram nobis*, claim of newly discovered evidence requires showing of fundamental error. *Id.*
- Writ of error *coram nobis*, petitioner failed to show reasonable probability that conviction would not have been rendered or would have been prevented had testimony been made known to defense. *Id.*

Writ of error *coram nobis*, petitioner entitled to no relief on third-party claim. *Id.*
Pretrial identification, when due process violated. *Mezquita v. State*, 433
In-court identification, when ruling on admissibility reversed. *Id.*
In-court identification, determining admissibility. *Id.*
Pretrial identification, factors used to determine reliability. *Id.*
Pretrial corporeal identification, dangers inherent when conducted in absence of counsel. *Id.*
Appellant was represented by counsel at time of pretrial identification, appellant's Sixth Amendment rights protected. *Id.*
In-court identification admitted, no error found. *Id.*
Conflicting judgments of sentence, election by operation of law. *Taylor v. State*, 450
Appellant had two sentences entered in two separate cases, completion of sentence in one case did not operate to relieve appellant from serving valid sentence for crime to which he plead guilty in second case. *Id.*
Conditional plea of guilty, general rule & exception. *Berry v. City of Fayetteville*, 470
Conditional plea of guilty, Ark. R. Crim. P. 24.3(b) permits appellate review solely as to adverse rulings on motions to suppress illegally obtained evidence. *Id.*
Strict compliance with Ark. R. Crim. P. 24.3(b) required, in absence of compliance supreme court without jurisdiction. *Id.*
Issues on review did not involve motion to suppress illegally obtained evidence, appellate court without jurisdiction & appeal dismissed. *Id.*
Continued representation of criminal defendant by counsel, right to appeal may be waived by failure to timely inform counsel of desire to appeal. *Bankston v. State*, 473
Postconviction relief, trial court fulfilled supreme court's instructions in written order. *Echols v. State*, 530
Postconviction relief, appellant's "due process" argument rejected where supreme court's directive did not provide for any further hearing or "due process." *Id.*
Postconviction relief, when denial reversed. *Id.*

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Punitive damages, when justified. *D'Arbonne Constr. Co. v. Foster*, 304
Award of punitive damages, standard of review. *Id.*
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Punitive-damage award, evidence sufficient to support. *Id.*
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Distinction between actions in tort & contract, damages differentiated. *Id.*
Damages sought for costs of correcting defects in home, complaint stated cause of action in contract. *Id.*

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Prescriptive easement, seven-year statutory period for adverse possession applies. *Id.*
Prescriptive easement, mere permissive use cannot ripen into adverse claim without clear action. *Id.*
Prescriptive easement, whether use is adverse or permissive is fact question. *Id.*
Permissive easement, use of wild, unenclosed, & unimproved land is presumed permissive. *Id.*
Prescriptive easement, appellants failed to rebut proof that public's use of road & related areas was sufficiently adverse to establish prescriptive rights. *Id.*

Prescriptive easement, community's use of property satisfied requirements for prescriptive easement. *Id.*

Prescriptive easement, general public acquired right-of-way over area in question. *Id.*

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Voter may testify that he was wrongfully prevented from voting, votes that were never cast may not be counted. *Id.*

"Election contest", use of term. *Id.*

Court reluctant to void elections, narrow limits must be followed. *Id.*

Test for voiding, wrong must be clear & flagrant. *Id.*

Voiding of election may be done in absence of fraud, wrong must render result doubtful. *Id.*

It was impossible to determine how many of voters who received faulty ballot would have voted in race & of that number how many would have voted for which candidate, because result of election was uncertain, entire vote must be held for naught. *Id.*

Argument that wrong was slight and must be ignored without merit, where outcome was uncertain election was void. *Id.*

Void election is nullity, argument meritless. *Id.*

Vacancy defined. *Id.*

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Right to challenge eligibility of candidate provided by statute, only pre-election challenges allowed. *Id.*

Usurpation of office, statutory remedy is petition for writ *quo warranto* to be initiated by State. *Id.*

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Relevant evidence, defined. *Id.*

Witness's testimony did not prejudice jury, trial court did not err in allowing witness's testimony. *Id.*

Prior statement by witness, not hearsay if consistent with testimony & if offered to rebut express or implied charge of recent fabrication or improper influence or motive. *Id.*

Prior statement by witness, State entitled to rebut allegation of recent fabrication with evidence that witness made same challenged statement immediately after offense. *Id.*

Evidentiary errors, abuse-of-discretion standard. *Southern Farm Bureau Cas. Ins. Co. v. Daggett*, 112

Trial court's impeachment ruling incorrect, credibility of witness may be attacked by any party. *Id.*

Trial court's exclusion of mechanic's testimony improperly thwarted admission of relevant & probative evidence, error found. *Id.*

Accident reconstruction using expert witness viewed with disfavor, exception to general rule consistently recognized. *Id.*

Accident reconstruction by expert, application of general rule or exception thereto within trial court's discretion. *Id.*

Evidentiary matters, trial judge has wide discretion. *Id.*

Expert witnesses, testimony allowed. *Id.*

Expert's testimony would have assisted jury in determining ultimate issue, whether truck's brakes failed, trial court's ruling oversimplified matter & was erroneous. *Id.*

General rule, trial court's decision on relevance. *Id.*

Test or experiment, requirements for admissibility. *Id.*

Test or experiment done out of presence of opposing counsel, no abuse of discretion in finding test results inadmissible. *Id.*

Trial court found that attempt to repeat earlier test would not be sufficient reenactment of original occurrence, trial court's conclusion not abuse of discretion. *Id.*

Trial court found that air board system was not substantially similar to events existing at time of original occurrence, trial court's conclusion not abuse of discretion. *Id.*

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Appellate review, only evidence supporting verdict considered. *Id.*

Relevancy, trial court's ruling not disturbed absent abuse of discretion. *Id.*

Relevancy, requirement. *Id.*

Relevancy, test of admissibility. *Id.*

Admissibility, trial court erred in admitting .22 caliber rifle. *Id.*

Overwhelming evidence of guilt & slight error, supreme court can declare error harmless and affirm conviction. *Id.*

Test to determine if error was slight, prejudice to defendant. *Id.*

Admission of .22 caliber rifle, error was slight under circumstances. *Id.*

Admission of .22 caliber rifle, harmless error. *Id.*

Admission of .22 caliber ammunition, affirmed where it would help prove appellant possessed means to kill victim. *Id.*

Other crimes, wrongs, or acts, ruling on admissibility not reversed absent manifest abuse of discretion. *Id.*

Other crimes, wrongs, or acts, admissible to show motive. *Id.*

Other crimes, wrongs, or acts, circuit court did not abuse discretion in allowing drug-use testimony. *Id.*

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Hearsay exception, when present-sense-impression exception not available. *Id.*

Hearsay exception, state-of-mind, emotion, or physical-condition exception not applicable. *Id.*

Hearsay exception, factors to consider for excited-utterance exception. *Id.*

Other crimes, wrongs, or acts, no abuse of discretion in allowing evidence of prior violence suffered by victim at hands of appellant. *Id.*

Other crimes, wrongs, or acts, evidence probative of intent or absence of mistake or accident allowed. *Id.*

Other crimes, wrongs, or acts, independently relevant evidence admissible. *Id.*

Other crimes, wrongs, or acts, victim's earlier injuries were consistent with those suffered contemporaneously with gunshot wound. *Id.*

Husband-wife privilege, when waived. *Id.*

Husband-wife privilege, trial court did not err in finding waiver of privilege. *Id.*

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Student's credibility in issue, corroborating evidence of existence of relationship allowed. *Id.*

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Evidence held relevant, no abuse of discretion found. *Id.*

Cumulative evidence, not prejudicial. *Id.*

- Admission of electronic messages, no abuse of discretion found. *Id.*
- Failure to proffer evidence of minor's sexual conduct, no way to determine relevance. *Id.*
- Evidence of aggravating & mitigating circumstances, admissible during sentencing. *Id.*
- Sufficiency, test for determining. *Martin v. State*, 289
- Criminal appeal, evidence viewed in light most favorable to State. *Id.*
- Admission or exclusion, trial court's discretion. *Id.*
- Relevancy, trial court's ruling entitled to great weight. *Id.*
- Proffered testimony not probative of issue of victim's veracity or bias, appellant failed to show he was prejudiced. *Id.*
- Relevancy, standard of review. *Id.*
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- Introduction of evidence of another crime, wrong or act, relevance required. *Id.*
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- Appellant indicated that incident was mistake or accident, evidence of prior conviction for domestic battering was properly introduced to show absence of mistake or accident. *Id.*
- Jury's verdict supported by substantial evidence, conviction affirmed. *Id.*
- Question of admissibility, left to discretion of trial court. *Ellison v. State*, 340
- Attacking witness's credibility, evidence allowed. *Id.*
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- Circumstantial evidence, rule for use. *Id.*
- Circumstantial evidence, jury's duty & factors on review. *Id.*
- Circumstantial evidence, appellant's argument without merit. *Id.*
- Circumstantial evidence distinguishable from *Standridge*, jury could have reasonably concluded that appellant had worn mask & gloves inside victim's house when he raped her, & had thrown them next to nearby dumpster as he fled from her house. *Id.*
- Circumstantial evidence distinguishable from *Standridge*, abundant evidence placed appellant near scene of crime. *Id.*
- Inevitable-discovery rule. *Id.*
- DNA match eventually would have been lawfully discovered, trial court's denial of appellant's suppression motion affirmed. *Id.*
- Acts of officials, presumption. *Id.*
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Testimony did not raise issue of appellees' financial status, trial court did not abuse its discretion in refusing to allow appellant to elicit testimony concerning insurance coverage. *Id.*
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Testimony not hearsay, trial court erred in ruling trooper's testimony to be hearsay. *Id.*
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Issue of fact existed as to whether appellee was on notice that its employee might harm female customers, summary judgment on negligent-supervision & negligent-retention claims reversed. *Id.*
Appellant failed to meet proof with proof on negligent-hiring issue & failed to demonstrate that material issue of fact existed, grant of summary judgment on negligent hiring claim affirmed. *Id.*
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Verdict rendered on general form, court will not speculate as to basis for verdict. *South Cent. Ark. Elec. Coop. v. Buck*, 11

Argument based on assumption as to basis for jury's conclusion, court refused to speculate on what jury found where general verdict form used. *Id.*

Objection to empaneled juror, preservation of. *Southern Farm Bureau Cas. Ins. Co. v. Daggett*, 112

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No basis existed to excuse juror for cause, appellant's argument without merit. *Id.*

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No model instruction existed for charged offense, trial court did not err in rejecting nonmodel instruction that incorrectly stated law. *Id.*

Instruction, failed to show prejudice in refusal to admonish jury not to consider sexual act that occurred when victim was over age of fourteen. *Martin v. State*, 289

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Batson challenge, when issue of prima facie case becomes moot. *Id.*

State allowed to offer race-neutral explanations for jury selection, preliminary issue of prima facie case moot. *Id.*

Batson challenge, explanations offered by State were not mere denials of racial discrimination & met requirement of step two. *Id.*

Batson challenge, reliance on numbers alone is not sufficient to prove discriminatory intent. *Id.*

Batson challenge, appellant did no more than point to number of African-American jurors struck from venire panel, appellant failed to show trial court erred in denying his *Batson* motion. *Id.*

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Batson challenge, three-step process. *Id.*

Batson challenge, establishing prima facie case of discriminatory intent. *Id.*

Batson challenge, issue of prima facie case becomes moot where party striking jurors offers race-neutral explanation & trial court rules on ultimate issue of intentional discrimination. *Id.*

Batson challenge, review of trial court's ruling. *Id.*

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Batson challenge, findings clearly against preponderance of evidence. *Id.*
Batson error not subject to harmless-error analysis, matter reversed. *Id.*
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Peremptory challenges, error to hold biased juror competent when defendant's peremptory challenges are exhausted. *Id.*
Excusing for cause, trial court's discretion. *Id.*
Bias, abuse of discretion not to excuse for cause juror who had received dun letters & threats of eviction from appellant's attorney. *Id.*
Appellant failed to show actual bias, not error to fail to *voir dire* juror that has already been struck. *Echols v. State*, 530
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Implied bias, liberal construction of statutory provision for juror challenge. *Id.*
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Venire, showing of prejudice necessary for reversal of trial court's decision to strike prospective juror. *Id.*
Venire, appellant failed to show trial court abused discretion in excusing two prospective jurors for implied bias. *Id.*
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Ark. Code Ann. § 16-56-112(a), General Assembly's purpose in enacting. *Id.*
Running of statute of limitations as defense, shifting burden. *Id.*
Fraudulent concealment, suspends running of statute of limitations. *Id.*
Tolling of statute of limitations, proof required. *Id.*
Appellants offered no evidence that would indicate that appellee engaged in positive act of fraud, statute of limitations not tolled. *Id.*
Prosecutions of offenses arising under any state tax law, six-year limitations period applied in appellant's case. *Owens v. State*, 644
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Duty rests on employer to select skilled & competent contractor, liability to third persons for negligent or wrongful acts of independent contractor. *Id.*
Theory of negligent selection in hiring independent contractor, burden of proof on party alleging negligence. *Id.*
Contract provisions insufficient to show that appellee retained right to control, right to control clearly rested with independent contractor. *Id.*

Safety violations by independent contractor alleged to be fault of appellee, negligence by appellee never shown. *Id.*

Safety training given by independent contractor to appellee and others, appellant's argument without merit. *Id.*

Ark. Code Ann. § 11-2-117 applicable only when employer-employee relationship exists, statute not applicable here. *Id.*

Contract clearly made contractor responsible for hiring qualified workers, contractor had responsibility to warn workers of inherent dangers. *Id.*

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Potential prejudice cured by cautionary instruction, no abuse of discretion found. *Id.*

No prejudice shown, trial court did not abuse discretion in denying motion for mistrial. *Id.*

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Motion to withdraw as counsel, denied because deficient. *Id.*

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Directed verdict, denial affirmed where evidence demonstrated that appellant occupied position of trust or authority over victim. *Id.*

Denial of motion for directed verdict, standard of review. *D'Arbonne Constr. Co. v. Foster*, 304

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No proof offered that created fact question related to positive act of fraud, appellee's motion for directed verdict properly granted. *Id.*
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Jurisdiction, trial court correctly ruled that Arkansas was not home state of child. *Id.*
Jurisdiction, UCCJEA applied where other jurisdictions had potential interest in child. *Id.*

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Judicial review, courts decide whether PSC has abused discretion. *Id.*

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Statutory authority, PSC is empowered to make changes to rules pertaining to rates of public utilities. *Id.*

Rate, statutory definition. *Id.*

Statutory authority, general ratemaking authority did not grant PSC power to initiate Policy. *Id.*

Statutory authority, Policy & surcharge not result of utility request as contemplated by statute. *Id.*

Statutory authority, Policy was not result of legislative or regulatory requirement relating to existing facility. *Id.*

Statutory authority, PSC previously recognized it had no authority to provide low-income assistance. *Id.*

Statutory authority, General Assembly added no new power regarding natural gas in Act 204 of 2003. *Id.*

Statutory authority, PSC did not have statutory authority to develop & mandate policy. *Id.*

Sliding-scale statute, discussed. *Id.*

Sliding-scale statute, focal point on gas production & not on rate adjustments to fund new social programs. *Id.*

Sliding-scale statute, Policy could not be salvaged under Ark. Code Ann. § 23-4-108. *Id.*

Double recovery of bad-debt expenses, supreme court refrained from reversing on issue where it was unable to glean from record extent of double recovery. *Id.*

Statutory authority, matter reversed where PSC lacked statutory authority to mandate program such as Policy. *Id.*

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Whether subjective expectation of privacy is objectively reasonable, question of law. *Id.*

Dwelling & curtilage, normally considered free from government intrusion. *Id.*

Dwelling & curtilage, expectation of privacy in driveways & walkways not generally considered reasonable. *Id.*

Expectation of privacy, what one knowingly exposes to public not subject of Fourth Amendment protection. *Id.*

Expectation of privacy, appellant did not exhibit reasonable expectation of privacy in driveway. *Id.*

Warrantless search, per se unreasonable unless exception applies. *Id.*

Warrantless search, plain-view doctrine. *Id.*

Expectation of privacy, no reasonable expectation of privacy in VIN number. *Id.*
“Knock-&-talk”, constitutionally sound. *Id.*
Plain view, cursory inspection of vehicle not “search” in contravention of Fourth Amendment. *Id.*
Recording of vehicle’s VIN number, no seizure took place. *Id.*
Warrantless search, requirements for plain-view seizure. *Id.*
No seizure took place when officer recorded vehicle’s VIN number, officer did not need to have probable cause to believe vehicle was fruit of crime. *Id.*
Inevitable-discovery doctrine, lawful discovery that vehicle was stolen would have inevitably led to discovery that other vehicle was stolen. *Id.*
Inevitable-discovery doctrine, rule stated. *Id.*
Inevitable-discovery doctrine, State established by preponderance of evidence that police would have inevitably discovered evidence by lawful means. *Id.*
Warrantless searches, standard of review. *Rikard v. State*, 345
What person knowingly exposes to public is not subject of Fourth Amendment protection, appellants were afforded no relief under Fourth Amendment. *Id.*
Warrantless search of trash or garbage, not viewed differently from federal courts. *Id.*
Warrantless search of trash or garbage, Fourth Amendment analysis under *California v. Greenwood* provided adequate protection against searches of garbage container left at curb of residence. *Id.*
City ordinance cannot render search reasonable under Arkansas Constitution, societal understanding as to privacy rights in garbage applicable to state as whole. *Id.*
Curtilage argument, rejected where officers testified they obtained trash while standing in street. *Id.*
Search of garbage container, denial of motion to suppress affirmed. *Davis v. State*, 475
Evidence secured by search of third person’s residence, Fourth Amendment rights not violated. *Gaylord v. State*, 511
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Appellant lacked standing to bring constitutional challenge to search, denial of motion to suppress affirmed. *Id.*
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Ark. Code Ann. § 5-65-111(b)(3), construed just as it reads. *Id.*
Court’s analysis consistent with intent of General Assembly, to convict appellee of DWI, third offense, for the June 14, 2001 violation would have thwarted plain language of § 5-65-111(b)(3). *Id.*
Interpretation of Ark. Code Ann. § 5-65-111(b)(3), model jury instruction not controlling. *Id.*
Presumed constitutional, burden of proof on challenger. *Gaines v. State*, 89
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Criminal statutes, basic rules of construction. *Id.*

Statute did not enunciate particular mental state, mandatory language in statute was clear indication that accident-causing driver's mental state was irrelevant. *Id.*

Construction of Ark. Code Ann. § 27-53-101 by placing it next to other statutes relevant to subject matter, legislature clearly intended to dispense with any intent requirement. *Id.*

Trial court did not err in declining to engraft element of intent into statute, no error in refusing appellant's proffered instruction. *Id.*

Interpretation, *de novo* review. *Greenhough v. Goforth*, 502

Criminal statutes, strictly construed. *Burnette v. State*, 584

Construction, basic rule. *Id.*

Interpretation of statutory phrase, adherence to commentary. *Id.*

Commentary to Ark. Code Ann. § 5-27-203 (Repl. 1997), commentary suggests intention to criminalize conduct where person charged with care of child leaves child with intent to abandon. *Id.*

Meaning of term "desert," gleaned by referring to affirmative defense set out in Ark. Code Ann. § 5-27-203. *Id.*

Term "desert" as used in Ark. Code Ann. § 5-27-203, requires State to show that defendant had no intent to return for child. *Id.*

Conflicting provisions, general must yield to specific. *Owens v. State*, 644

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Construction, penal statutes strictly construed. *Id.*

Ark. Code Ann. § 5-1-102(6), device made for purpose of expelling projectile by action of explosive meets statutory definition of firearm. *Id.*

Ark. Code Ann. § 5-1-102(6), appellant's rifle in degraded condition was firearm within ordinary meaning of word. *Id.*

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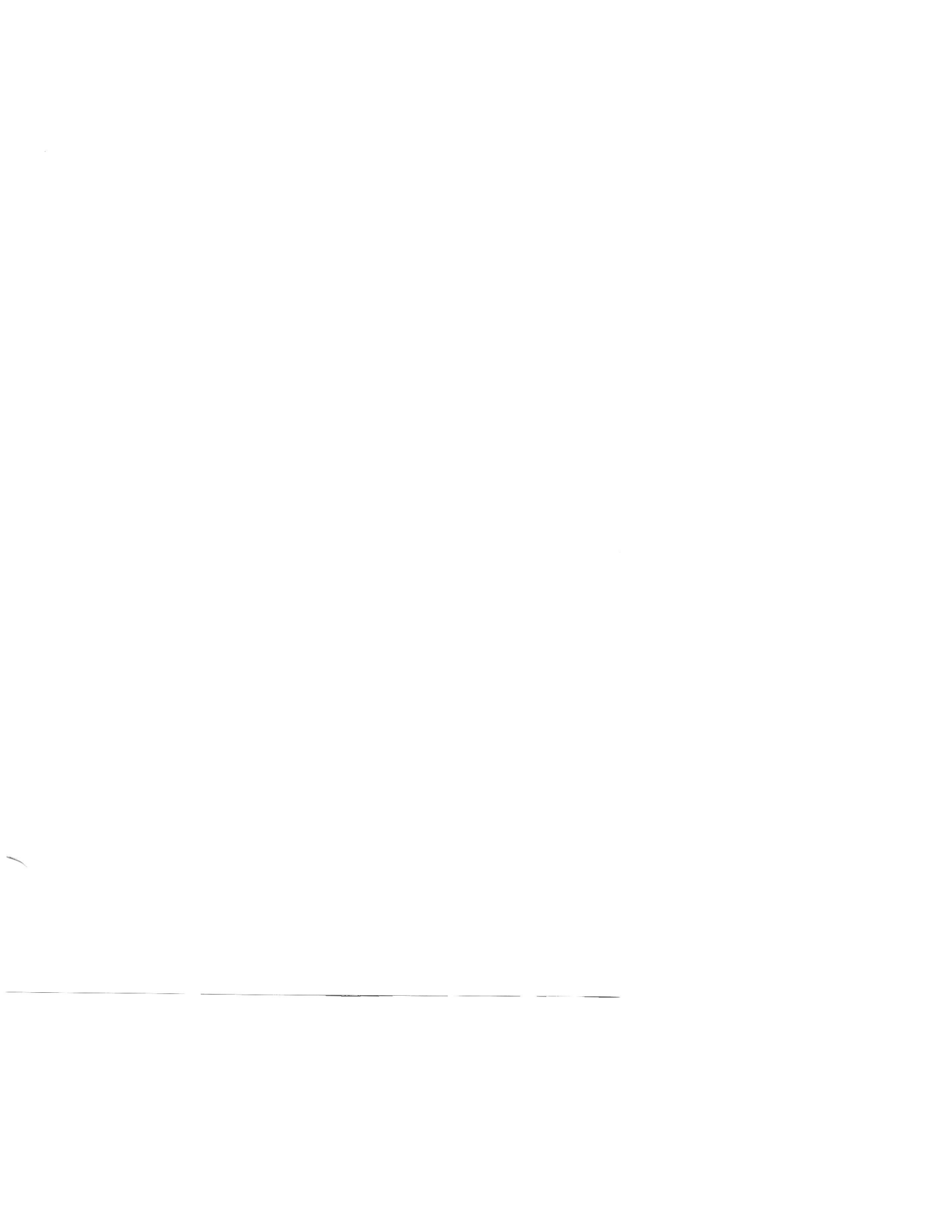
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ARKANSAS
APPELLATE
REPORTS

Volume 83

CASES DETERMINED
IN THE

Court of Appeals
of Arkansas

FROM
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INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
DEPUTY
REPORTER OF DECISIONS

VICTORIA M. FREY
EDITORIAL ASSISTANT

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for the administration of justice,
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is just, is the principle of order in
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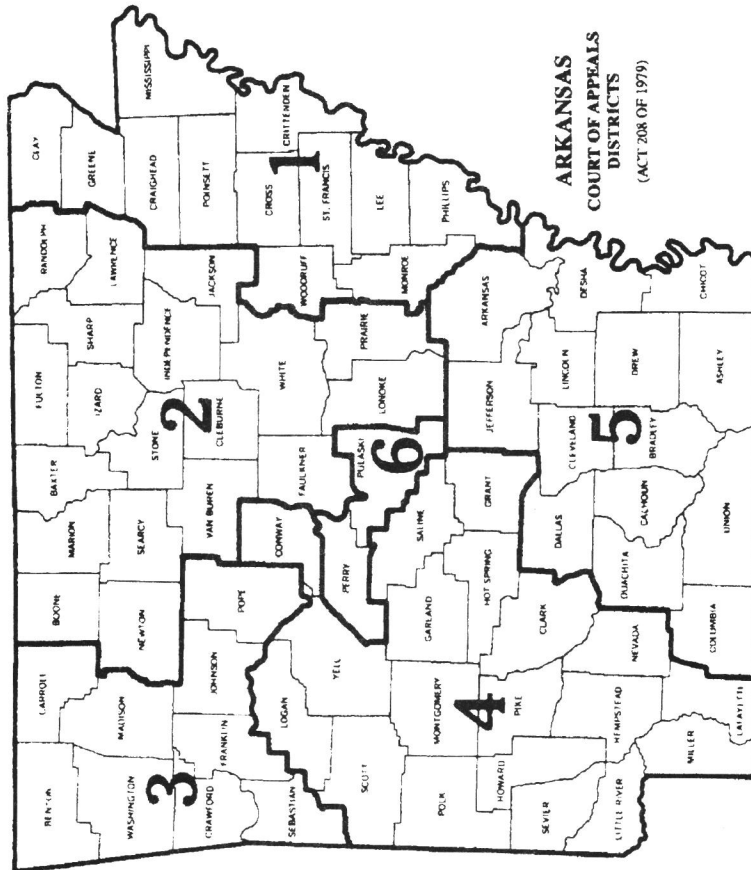
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DURING THE PERIOD COVERED
BY THIS VOLUME
(August 27, 2003 — November 12, 2003 inclusive)

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JOHN MAUZY PITTMAN	Judge ²
JOSEPHINE LINKER HART	Judge ³
ROBERT J. GLADWIN	Judge ⁴
JOHN B. ROBBINS	Judge ⁵
SAM BIRD	Judge ⁶
WENDELL L. GRIFFEN	Judge ⁷
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ANDREE LAYTON ROAF	Judge ¹²

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² District 1.

³ District 2.

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OPINIONS DELIVERED BY THE RESPECTIVE
JUDGES OF THE ARKANSAS COURT OF APPEALS
DURING THE PERIOD COVERED BY THIS VOLUME
AND DESIGNATED FOR PUBLICATION

JOHN F. STROUD, JR., CHIEF JUDGE:

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JOHN B. ROBBINS, JUDGE:

E-Ton Dynamics Indus. Corp. v. Hall	35
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SAM BIRD, JUDGE:

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WENDELL L. GRIFFEN, JUDGE:

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OLLY NEAL, JUDGE:

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LARRY D. VAUGHT, JUDGE:

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ANDREE LAYTON ROAF, JUDGE:

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PER CURIAM

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STANDARDS FOR PUBLICATION OF OPINIONS

Rule 5-2

RULES OF THE ARKANSAS SUPREME COURT AND
COURT OF APPEALS

OPINIONS

(a) SUPREME COURT — SIGNED OPINIONS. All signed opinions of the Supreme Court shall be designated for publication.

(b) COURT OF APPEALS — OPINION FORM. Opinions of the Court of Appeals may be in conventional form or in memorandum form. They shall be filed with the Clerk. The Opinions need not contain a detailed statement of the facts, but may set forth only such matters as may be necessary to an understandable discussion of the errors urged. In appeal from decisions of the Arkansas Board of Review in unemployment compensation cases, when the Court finds the decision appealed from is supported by substantial evidence, that there is an absence of fraud, no error of law appears in the record and an opinion would have no precedential value, the order may be affirmed without opinion.

(c) COURT OF APPEALS — PUBLISHED OPINIONS. Opinions of the Court of Appeals which resolve novel or unusual questions will be released for publications when the opinions are announced and filed with the Clerk. The Court of Appeals may consider the question of whether to publish an opinion at its decision-making conference and at that time, if appropriate, make a tentative decision not to publish. Concurring and dissenting opinions will be published only if the majority opinion is published. All opinions that are not to be published shall be marked “Not Designated for Publication.”

(d) COURT OF APPEALS — UNPUBLISHED OPINIONS. Opinions of the Court of Appeals not designated for publication shall not be published in the *Arkansas Reports* and shall not be cited, quoted, or referred to by any court or in any argument, brief, or other materials presented to any court (except

in continuing or related litigation upon an issue such as res judicata, collateral estoppel, or law of the case). Opinions not designated for publication shall be listed in the *Arkansas Reports* by case number, style, date, and disposition.

(e) COPIES OF ALL OPINIONS — In every case the Clerk will furnish, without charge, one typewritten copy of all of the Court's published or unpublished opinions in the case to counsel for every party on whose behalf a separate brief was filed. The charge for additional copies is fixed by statute.

OPINIONS NOT DESIGNATED FOR PUBLICATION

- Alford Contrs. *v.* Kirk, CA 03-215 (GLADWIN, J.), affirmed September 10, 2003.
- Allen *v.* State, CA CR 03-475 (VAUGHT, J.), affirmed November 5, 2003.
- Arkansas Dep't of Human Servs. *v.* Darrough, CA 03-419 (GRIFFEN, J.), reversed October 29, 2003.
- Atkins, John E. *v.* Fewell, CA 02-1286 (ROBBINS, J.), reversed and remanded October 22, 2003.
- Atkins, John E. *v.* Fewell, CA 03-242 (GLADWIN, J.), affirmed in part; reversed and remanded in part October 22, 2003. Rehearing denied November 19, 2003.
- Austin *v.* State, CA CR 02-1344 (CRABTREE, J.), affirmed September 17, 2003.
- Bakeries *v.* Pate, CA 03-479 (HART, J.), affirmed November 5, 2003.
- Blakely *v.* State, CA CR 03-174 (GRIFFEN, J.), affirmed October 22, 2003.
- Bledsoe *v.* Lackey, CA 03-64 (BIRD, J.), affirmed August 27, 2003.
- Box *v.* State, CA CR 02-751 (BIRD, J.), affirmed September 10, 2003.
- Bradley *v.* State, CA CR 03-360 (ROAF, J.), reversed and remanded October 8, 2003.
- Branscumb *v.* Freeman, CA 02-1030 (PER CURIAM), dismissed September 17, 2003.
- Bridges *v.* Cater, CA 03-45 (PITTMAN, J.), affirmed October 22, 2003.
- Brown *v.* Bush, CA 03-100 (ROAF, J.), affirmed September 3, 2003.
- Brown *v.* State, CA CR 02-1076 (BAKER, J.), affirmed August 27, 2003.
- Buck *v.* State, CA CR 03-238 (BIRD, J.), affirmed October 29, 2003.
- Buie *v.* State, CA CR 02-1195 (PITTMAN, J.), reversed and remanded November 5, 2003.
- Burke *v.* State, CA CR 02-233 (PER CURIAM), Show Cause Order issued October 22, 2003.
- Carson *v.* Black, Inc., CA 03-297 (PER CURIAM), appeal dismissed November 5, 2003.
- Carter *v.* State, CA CR 02-948 (VAUGHT, J.), affirmed October 8, 2003.

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- Carwell Elevator Co. *v.* Taylor, CA 03-500 (BIRD, J.), affirmed in part; remanded in part November 12, 2003.
- Chambers *v.* Davenport, CA 02-993 (VAUGHT, J.), reversed and remanded September 10, 2003.
- City of Fort Smith *v.* Pense Enters., CA 02-1196 (PER CURIAM), appeal dismissed September 3, 2003.
- Clark *v.* Hall, CA 03-206 (BAKER, J.), affirmed November 5, 2003. Rehearing denied December 10, 2003.
- Cummings *v.* Arkansas Dep't of Human Servs., CA 03-385 (NEAL, J.), affirmed October 22, 2003.
- Curtis *v.* State, CA CR 03-106 (GLADWIN, J.), affirmed September 24, 2003.
- Ebbs *v.* Ozment, CA 03-339 (NEAL, J.), affirmed October 1, 2003.
- Elmore *v.* State, CA CR 03-91 (CRABTREE, J.), affirmed October 29, 2003.
- Emberson *v.* State, CA CR 03-96 (GRIFFEN, J.), affirmed October 22, 2003.
- Everett *v.* State, CA CR 03-42 (GRIFFEN, J.), affirmed September 10, 2003.
- Ezekiel *v.* State, CA CR 03-288 (ROAF, J.), affirmed November 12, 2003.
- Finney *v.* State, CA CR 02-1272 (GLADWIN, J.), affirmed September 17, 2003.
- Flamer *v.* State, CA CR 02-1309 (PITTMAN, J.), affirmed October 29, 2003.
- FM Structural Plastic Tech, Inc. *v.* Hoy, CA 03-253 (ROBBINS, J.), affirmed September 24, 2003.
- Forrest *v.* Arkansas Dep't of Human Servs., CA 03-125 (GLADWIN, J.), affirmed September 3, 2003.
- Franklin *v.* State, CA CR 03-175 (GRIFFEN, J.), affirmed November 12, 2003.
- Fulmer *v.* State, CA CR 02-932 (NEAL, J.), affirmed October 1, 2003.
- Gaylord *v.* State, CA CR 02-1370 (PITTMAN, J.), remanded to settle record September 3, 2003.
- Gibson *v.* Gibson, CA 03-268 (BIRD, J.), affirmed on both direct appeal and on cross-appeal October 29, 2003. Rehearing denied December 3, 2003.
- Gill *v.* Sevier Healthcare, Inc., CA03-329 (ROBBINS, J.), affirmed October 22, 2003.
- Green *v.* State, CA CR 02-1025 (NEAL, J.), affirmed August 27, 2003.

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- Hampton *v.* State, CA CR 02-1313 (CRABTREE, J.), reversed and remanded November 12, 2003.
- Hardiman *v.* State, CA CR 03-14 (GRIFFEN, J.), reversed and remanded in part; reversed and dismissed in part September 24, 2003.
- Hardin *v.* St. Joseph's Mercy Health Ctr., CA 03-151 (HART, J.), affirmed September 24, 2003.
- Harness *v.* Curtis, CA 02-1143 (HART, J.), appeal dismissed October 8, 2003.
- Harris *v.* J.B. Hunt Transport, Inc., CA 03-422 (CRABTREE, J.), affirmed in part; reversed and remanded in part October 8, 2003.
- Harris *v.* Regions Bank, CA 03-316 (PER CURIAM), dismissed October 1, 2003.
- Head *v.* State, CA CR 02-999 (STROUD, C.J.), affirmed August 27, 2003.
- Healthsouth Rehab. Hosp. *v.* Reese, CA 03-256 (GRIFFEN, J.), affirmed in part; reversed and remanded in part October 1, 2003.
- Henley *v.* Britton, CA 02-1373 (ROAF, J.), affirmed October 1, 2003.
- Hollister *v.* State, CA 03-447 (CRABTREE, J.), affirmed October 22, 2003.
- Holub *v.* Colinger, CA 03-436 (CRABTREE, J.), affirmed November 12, 2003.
- Hudspeth *v.* Crawford & Co., CA 02-1329 (GLADWIN, J.), affirmed August 27, 2003.
- Hulsey *v.* State, CA CR 01-1342 (GRIFFEN, J.), affirmed September 10, 2003.
- Humphrey *v.* State, CA CR 02-1265 (PITTMAN, J.), reversed and remanded September 3, 2003.
- Hyland *v.* State, CA CR 03-335 (STROUD, C.J.), affirmed October 8, 2003.
- Indiana Lumbermen's Mut. Ins. Co. *v.* Phoenix Surety Group, Inc., CA 03-202 (PITTMAN, J.), affirmed October 8, 2003.
- Jackson *v.* State, CA CR 03-35 (HART, J.), affirmed August 27, 2003.
- Jennings *v.* State, CA CR 02-158 (GRIFFEN, J.), affirmed September 10, 2003. Rehearing denied October 22, 2003.
- Johnson *v.* State, CA CR 02-1210 (BIRD, J.), affirmed September 24, 2003.
- Keck *v.* City of Bonanza, CA 02-843 (NEAL, J.), affirmed September 17, 2003.

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- Keistler *v.* State, CA CR 03-40 (STROUD, C.J.), affirmed September 24, 2003.
- Keniston *v.* State, CA CR 03-88 (ROBBINS, J.), affirmed September 17, 2003.
- Kiesling *v.* Smith, CA 03-177 (STROUD, C.J.), rebriefing ordered September 17, 2003.
- King *v.* State, CA CR 03-98 (HART, J.), affirmed September 3, 2003.
- Kinzalow *v.* State, CA CR 02-1085 (ROAF, J.), affirmed August 27, 2003.
- Lee *v.* State, CA CR 03-158 (ROBBINS, J.), affirmed October 29, 2003.
- Leslie *v.* Leslie, CA 03-37 (CRABTREE, J.), affirmed in part; remanded in part September 3, 2003.
- Looney *v.* State, CA CR 01-1308 (BIRD, J.), affirmed October 22, 2003.
- Lord *v.* State, CA CR 02-945 (ROBBINS, J.), affirmed August 27, 2003.
- Loughridge *v.* Loughridge, CA 03-119 (STROUD, C.J.), reversed and remanded August 27, 2003.
- Love Box Co. *v.* Salley, CA 03-87 (BIRD, J.), affirmed September 3, 2003.
- Loy *v.* State, CA CR 02-1376 (VAUGHT, J.), affirmed October 29, 2003.
- Loyd *v.* Riverside Furniture Corp., CA 03-65 (BAKER, J.), affirmed September 17, 2003.
- Lynn *v.* Cox, CA 02-848 (STROUD, C.J.), reversed and remanded on direct appeal; affirmed in part and remanded in part on cross-appeal September 17, 2003.
- Massey *v.* Massey, CA 03-138 (PITTMAN, J.), affirmed September 17, 2003.
- Maughn *v.* State, CA CR 02-1356 (ROAF, J.), appeal dismissed September 17, 2003.
- Mays *v.* Mays, CA 03-172 (GLADWIN, J.), affirmed October 29, 2003.
- McDonald *v.* Reliant Entergy Gas Trans. Co., CA 02-1330 (PITTMAN, J.), affirmed September 10, 2003.
- Meyer's Bakeries *v.* Pate, CA 03-479 (HART, J.), affirmed November 5, 2003.
- Moore *v.* State, CA CR 03-101 (BIRD, J.), affirmed October 8, 2003.
- Morris *v.* State, CA CR 03-115 (STROUD, C.J.), affirmed October 22, 2003.

- Mullins *v.* Ward, CA 03-34 (CRABTREE, J.), affirmed October 8, 2003.
- Murphy *v.* State, CA CR 02-1300 (NEAL, J.), affirmed September 17, 2003.
- Nesterenko *v.* Board of Chiropractic Exmns., CA 02-1074 (ROAF, J.), affirmed September 24, 2003.
- Nichols *v.* State, CA CR 03-190 (NEAL, J.), affirmed November 12, 2003.
- Nicholson *v.* Teague Chevrolet, Inc., CA 02-1220 (VAUGHT, J.), affirmed October 22, 2003.
- Nugent *v.* Nugent, CA 02-1338 (BIRD, J.), affirmed on direct appeal and cross-appeal September 10, 2003.
- O'Dell *v.* Arkansas Dep't of Human Servs., CA 02-957 (BAKER, J.), affirmed October 22, 2003.
- Orr *v.* Arkansas Nat'l Bank, CA 02-1095 (GRIFFEN, J.), affirmed September 17, 2003. Rehearing denied October 22, 2003.
- Parker *v.* Parker, CA 03-181 (HART, J.), affirmed August 27, 2003.
- Perez-Herrera *v.* State, CA CR 03-239 (STROUD, C.J.), affirmed October 1, 2003.
- Perkins *v.* Director, E 02-346 (STROUD, C.J.), affirmed September 24, 2003.
- Perry *v.* Baptist Health, CA 02-1067 (GRIFFEN, J.), affirmed September 17, 2003.
- Phipps *v.* State, CA CR 02-692 (ROAF, J.), affirmed October 22, 2003.
- Priola Brothers Enters., L.P. *v.* Hawkins, CA 03-225 (ROBBINS, J.), affirmed October 29, 2003.
- Qualls *v.* Foster, CA 03-66 (BAKER, J.), reversed and remanded October 8, 2003.
- Ray *v.* Burns, CA 03-213 (ROBBINS, J.), affirmed September 17, 2003.
- Ray Townsend Farms, Inc. *v.* Smith, CA 03-06 (ROBBINS, J.), dismissed September 10, 2003.
- Reeder *v.* State, CA CR 02-422 (NEAL, J.), Petition for Rehearing denied and Supplemental Opinion issued September 10, 2003.
- Remer *v.* Tom January Floors, Inc., CA 02-1051 (ROBBINS, J.), affirmed August 27, 2003.
- Rice *v.* Rice, CA 02-1303 (BAKER, J.), affirmed September 24, 2003.
- Riddle *v.* Kaelin, CA 03-167 (BAKER, J.), affirmed September 3, 2003.

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- Roberts *v.* State, CA CR 02-1298 (CRABTREE, J.), affirmed October 8, 2003.
- Rogers *v.* Rogers, CA 02-699 (BAKER, J.), affirmed August 27, 2003.
- Schneider *v.* State, CA CR 02-771 (ROBBINS, J.), reversed and remanded September 3, 2003.
- Shepherd *v.* State, CA CR 02-754 (BIRD, J.), dismissed August 27, 2003.
- Shrable *v.* Allison, CA 03-435 (CRABTREE, J.), affirmed October 29, 2003. Rehearing denied December 10, 2003.
- Simmons *v.* State, CA CR 03-164 (NEAL, J.), affirmed in part; rebriefing ordered November 5, 2003.
- Smith, Melton Oscar *v.* State, CA CR 02-1108 (ROAF, J.), affirmed September 3, 2003.
- Smith, Jacquelyn *v.* State, CA CR 03-30 (GRIFFEN, J.), affirmed November 5, 2003.
- Soto *v.* Soto, CA 03-163 (HART, J.), appeal dismissed October 22, 2003.
- Spann *v.* State, CA CR 03-113 (ROBBINS, J.), affirmed October 22, 2003.
- Spiller *v.* State, CA CR 02-1070 (VAUGHT, J.), affirmed August 27, 2003.
- Springdale Diagnostic Clinic *v.* Northwest Physicians, L.L.C., CA 03-103 (HART, J.), affirmed September 17, 2003.
- Starks *v.* State, CA CR 03-259 (VAUGHT, J.), affirmed October 1, 2003.
- Stocks *v.* Affiliated Foods Southwest, Inc., CA 02-1248 (PER CURIAM), dismissed September 24, 2003.
- Stuart *v.* Killion, CA 03-85 (ROAF, J.), affirmed October 29, 2003.
- Stubbs *v.* Stubbs, CA 02-1276 (ROBBINS, J.), affirmed November 5, 2003.
- Swaims *v.* Greenway, CA 03-31 (GLADWIN, J.), reversed November 5, 2003. Rehearing denied December 10, 2003.
- Thorn *v.* State, CA CR 02-820 (GLADWIN, J.), affirmed August 27, 2003.
- Van Buren Tire Co. *v.* Bean, CA 03-92 (PITTMAN, J.), affirmed September 10, 2003.
- Vincent *v.* State, CA CR 03-95 (ROBBINS, J.), affirmed October 8, 2003.
- Von Holt *v.* State, CA CR 03-15 (BAKER, J.), rebriefing ordered October 8, 2003.
- Waldron Nursing Ctr. *v.* Rose, CA 03-295 (VAUGHT, J.), affirmed on direct appeal and on cross-appeal November 12, 2003.

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- Walker *v.* First Fin. Ins. Co., CA 02-1325 (PITTMAN, J.), affirmed October 1, 2003.
- Walters *v.* State, CA CR 02-1252 (PITTMAN, J.), affirmed September 10, 2003.
- Washington *v.* State, CA CR 03-90 (CRABTREE, J.), affirmed September 10, 2003.
- Waterloo Indus., Inc. *v.* Palmer, CA 03-108 (PITTMAN, J.), affirmed October 8, 2003.
- Wausau Ins. Co. *v.* Bassett Servs., Inc., CA 03-546 (BIRD, J.), affirmed November 5, 2003.
- Wayne *v.* State, CA CR 03-79 (GLADWIN, J.), affirmed October 29, 2003.
- Weatherford *v.* State, CA CR 02-415 (BAKER, J.), affirmed October 29, 2003. Rehearing denied December 3, 2003.
- Weilenman *v.* State, CA CR 03-141 (NEAL, J.), affirmed October 22, 2003. Rehearing denied November 19, 2003.
- Wells *v.* State, CA CR 02-996 (STROUD, C.J.), affirmed September 3, 2003.
- Wicker *v.* State, CA CR 02-1161 (VAUGHT, J.), affirmed September 3, 2003.
- Williams *v.* Williams, CA 02-776 (NEAL, J.), affirmed October 1, 2003. Rehearing denied October 29, 2003.
- Williams, Harmon *v.* State, CA CR 02-1075 (CRABTREE, J.), affirmed September 3, 2003.
- Williams, Lucretia *v.* Blissard Mngmt. & Realty, Inc., CA 02-1339 (STROUD, C.J.), affirmed September 3, 2003.
- Wilson, Kathy *v.* Noble Food Servs., Inc., CA 03-456 (PITTMAN, J.), affirmed November 5, 2003.
- Wilson, Michael S. *v.* State, CA CR 03-211 (ROAF, J.), reversed and dismissed November 5, 2003.
- Wingmead, Inc. *v.* Lee, CA 02-1263 (ROAF, J.), appeal dismissed—September 17, 2003.
- Woodall *v.* Woodall, CA 03-33 (VAUGHT, J.), affirmed September 3, 2003.
- Woods *v.* Dub Clenney Constr. Co., CA 03-19 (NEAL, J.), affirmed September 3, 2003.
- Young *v.* State, CA CR 02-934 (BAKER, J.), affirmed September 24, 2003.

CASES AFFIRMED BY THE ARKANSAS
COURT OF APPEALS WITHOUT WRITTEN
OPINION PURSUANT TO RULE 5-2(B),
RULES OF THE ARKANSAS SUPREME COURT
AND COURT OF APPEALS

- Adams *v.* Director of Labor, E 03-177, November 5, 2003.
Alcorn *v.* Director of Labor, E 03-89, September 3, 2003.
Allen *v.* Director of Labor, E 03-79, September 3, 2003.
Areas *v.* Director of Labor, E 03-196, November 12, 2003.
Baker *v.* Director of Labor, E 03-135, October 8, 2003.
Ball *v.* Director of Labor, E 03-160, October 22, 2003.
Baptist Health *v.* Director of Labor, E 03-198, November 12, 2003.
Barens *v.* Director of Labor, E 03-194, November 12, 2003.
Barnes, Martha J. *v.* Director of Labor, E 03-109, September 24,
2003.
Barnes, Glenda M. *v.* Director of Labor, E 03-148, October 22,
2003.
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- Custody, prohibition against separating siblings does not apply with equal force in case of half-siblings. *Id.*
- Custody, appellate court was unable to determine there was evidence sufficient to warrant change. *Id.*

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Child support, exception to general rule where child is disabled at age of majority. *Id.*

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Affidavit, does not have to contain facts establishing veracity & reliability of nonconfidential informants. *Id.*

Affidavit, failure to establish bases of knowledge of confidential informants not fatal if affidavit as whole provides substantial basis for finding of reasonable cause. *Id.*

Affidavit, provided substantial basis for finding of reasonable cause to believe drugs would be found at appellant's residence. *Id.*

Affidavit, must support reasonable probability that criminal activity is "likely" being carried on at time of issuance of warrant. *Id.*

Affidavit, no error in concluding it was likely criminal activity was occurring at appellant's residence at time search warrant was issued. *Id.*

Warrantless entry presumptively unreasonable, burden of proof. *Baird v. State*, 392

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General statements regarding concern for other victims insufficient to establish reasonable cause in light of contradictory evidence, warrantless entry into residence could not be sustained based on exigent circumstances. *Id.*

Initial entry into appellant's home unlawful, evidence obtained directly from unlawful entry excluded. *Id.*

Consent to search obtained after illegal search had begun, not valid. *Id.*

Search preceded by Fourth Amendment violation may still be valid if defendant's consent to search was voluntary under totality of circumstances, factors used in reviewing totality of circumstances. *Id.*

Search not constitutionally permissible, trial court erred in denying appellant's motions to suppress. *Id.*

Appellant challenged admission of all physical evidence, warrant was included in challenge. *Id.*

Any statement made from suspect following unlawful arrest is "fruit of the poisonous tree" & subject to suppression, appellant's statements should have been suppressed. *Id.*

Affidavit for search warrant based on tainted statements of appellant, search warrant must fail. *Id.*

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Public policy, reserves are to be used for benefit of persons unemployed through no fault of their own. *Id.*

Resignation letter, Board of Review could have viewed as clear & unequivocal manifestation of appellant's intention to leave job. *Id.*

Prospective resignation, employee whose reason for resignation is his inability to perform job within framework determined by employer need not be retained. *Id.*

Conditions of employment, appellant not immune from imposition of restrictions by governor or staff. *Id.*

Prospective resignation, at-will employee may not resign prospectively & defeat employer's authority to terminate employee "at will." *Id.*

Resignation from employment, substantial evidence supported Board's conclusion that appellant voluntarily left employment without good cause. *Id.*

Conditions of employment, Board could have reasonably reached decision that preponderance of evidence indicated interpretation of Act 1042 of 2001 by governor's office was neither unreasonable nor illegal. *Id.*

Conditions of employment, appellant did not present sufficient evidence to show that requested limitation had detrimental effect on ability to perform work. *Id.*

Witness credibility, determined by Board of Review. *Id.*

Determination of good cause to quit work, taking appropriate steps to prevent perceived misconduct from continuing is element to be considered. *Id.*

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