

APPELLATE UPDATE

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Appellate Update is a service provided by the Administrative Office of the Courts to assist in locating published decisions of the Arkansas Supreme Court and the Court of Appeals. It is not an official publication of the Supreme Court or the Court of Appeals. It is not intended to be a complete summary of each case; rather, it highlights some of the issues in the case. A case of interest can be found in its entirety by searching this website or by going to (Supreme Court - http://courts.arkansas.gov/opinions/sc_opinions_list.cfm or Court of Appeals - http://courts.arkansas.gov/opinions/coa_opinions_list.cfm).

ANNOUNCEMENTS

The Supreme Court published for comment recommendations of the Criminal Practice Committee amending Ark. R. Crim. P. 7.3 and 13.4 and Admin. Orders 2 and 18. The comment period expires August 1, 2014. A copy of the per curiam order was included in the weekly mailout.

On June 26th, the Supreme Court issued the following orders:

Adopted amendments to the Arkansas Rules of Professional Conduct,

Adopted amendments to the Rule Providing for Certification of Court Reporters, Regulations of Certified Court Reporter Examiners, and Ark. Sup. Ct. Rule 3-1.

CRIMINAL

Dewitt v. State, 2014 Ark. App. 369 [**motion to suppress**] 'The law enforcement official who stopped appellant's vehicle to "tell him that he was the one the neighbors had been complaining about" lacked reasonable suspicion pursuant to Rule 3.1 of the Arkansas Rules of Criminal Procedure.

Thus, the trial court erred in denying appellant's motion to suppress the evidence obtained in the search that resulted from the unlawful stop. (Johnson, L; CR-13-748; 6-4-14; Brown, W.)

Clark v. State, 2014 Ark. App. 349 [**motion to suppress**] Appellant's confession was made voluntarily, knowingly, and intelligently. Accordingly, the circuit court's denial of appellant's motion to suppress the confession was not clearly against the preponderance of the evidence. (Jones, B.; CR-13-164; 6-4-14; Walmsley, B.)

Brown v. State, 2014 Ark. 267 [**habeas corpus**] Because appellant's sentence to life imprisonment was discretionary rather than mandatory, the holdings in *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455 (2012) and *Murry v. Hobbs*, 2013 Ark. 64, ___ S.W.3d ___ were not applicable. (Dennis, J.; CV-13-1116; 6-5-14; Baker, K.)

Marcyniuk v. State, 2014 Ark. 268 [**Rule 37**] Appellant failed to establish that the performance of his trial counsel fell below an objective standard of reasonableness or that counsel's performance so prejudiced appellant's defense as to deprive him of a fair trial. Thus, the trial court correctly denied appellant's Rule 37 petition. (Storey, W.; CR-12-1009; 6-5-14; Hart, J.)

Weaver v. State, 2014 Ark. App. 396 [**motion to suppress**] Appellant, who argued that he was under the influence of marijuana at the time that he gave a custodial statement, failed to present evidence at the suppression hearing to establish that he was impaired while giving his statement. Thus, the trial court did not err when it denied appellant's motion to suppress the statement. (Medlock, M.; CR-11-617; 6-18-14; Glover, D.)

Ward v. State, 2014 Ark. App. 408 [**sufficiency of the evidence; rape; sexual indecency**] There was substantial evidence to support appellant's convictions. [**competency of a child witness**] The trial court erred in its finding that the five-year-old child victim, who offered "remarkably incoherent" testimony, was competent to testify at trial. (Halsey, B.; CR-13-1027; 6-18-14; Vaught, L.)

Stover v. State, 2014 Ark. App. 393 [**admission of evidence**] The trial court did not abuse its discretion when during the sentencing phase of appellant's trial, it admitted testimony regarding appellant being arrested and charged with a separate crime after the crimes in the current case occurred because the crimes were similar and the testimony: (1) was relevant as an aggravating circumstance; (2) showed appellant's character; and (3) demonstrated his lack of potential for rehabilitation. (Green, R.; CR-13-682; 6-18-14; Gruber, R.)

Stalnaker v. State, 2014 Ark. App. 412 [**jury instructions**] Because appellant used "deadly physical force" when he struck the victim in the head with a shotgun, the trial court correctly determined that AMCI 705 rather than AMCI 704 was the appropriate self-defense jury instruction in appellant's murder trial. (McCallister, B.; CR-13-1103; 6-18-14; Hixson, K.)

Pedraza v. State, 2014 Ark. 298 [**voir dire**] The trial court did not abuse its discretion when after a plea agreement as to appellant's guilt had been reached, it refused to permit appellant to conduct additional voir dire of the jurors, who had been selected prior to the agreement and would be responsible for determining appellant's sentence. (Gibson, B.; CR-13-991; 6-26-14; Corbin, D.)

Maiden v. State, 2014 Ark. 294 [**Arkansas Rules of Evidence 608**] Rule 608 of the Arkansas Rules of Evidence permits inquiries on cross-examination into conduct that is clearly probative of truthfulness or untruthfulness but does not allow cross-examination into specific instances that are merely probative of dishonesty. Evidence about a witness's prior theft is not probative of truthfulness. [**Arkansas Rules of Evidence 613**] Once a witness acknowledges having made a prior inconsistent statement, the witness's credibility has successfully been impeached. [**discovery violation**] The circuit court, which had fashioned a remedy pursuant to the language in Rule 19.7 of the Rules of Criminal Procedure, did not abuse its discretion when it denied appellant's motion for a new trial, which was based upon the prosecutor's discovery violations. (Griffen, W.; CR-13-686; 6-26-14; Hannah, J.)

Nooner v. State, 2014 Ark. 296 [**recalling mandate**] The Supreme Court will recall a mandate and reopen a case only to address an error in the appellate process that the appellate court made or overlooked while reviewing a case in which the sentence of death was imposed. Such an error is to be distinguished from an error that should have been raised to the trial court and could not be considered as falling within one of the *Wicks* exceptions or within the appellate court's independent review of death cases pursuant to Rule 4-3 of the Arkansas Supreme Court Rules and Rule 10 of the Arkansas Rules of Appellate Procedure—Criminal. [**overruling prior case law**] In its consideration of appellant's case, the Supreme Court specifically overruled *Williams v. State*, 2011 Ark. 534, __ S.W.3d __ in its entirety. (CR-94-358; 6-26-14; Corbin, D.)

James v. Pulaski County Circuit Court, 2014 Ark. 305 [**contempt**] The plain language of Ark. Code Ann. § 16-10-108 provides that to summarily hold someone in contempt, the citation must be issued without delay; otherwise, the contemnor must be given notice and reasonable opportunity to defend himself. (Griffen, W.; CR-14-242; 6-26-14; Baker, K.)

State v. Rainer, 2014 Ark. 306 [**Rule 37**] The trial court clearly erred when it granted Rainer's Rule 37 petition because Rainer failed to establish that his trial counsel was ineffective for failing to renew a challenge to the circuit court's decision to grant the State's pretrial motion in limine regarding certain evidence of the victim's prior acts of violence. (Fogleman, J.; CR-13-927; 6-26-14; Goodson, C.)

Cases in which the Arkansas Court of Appeals concluded that there was substantial evidence to support the appellant's conviction(s):

Whitfield v. State, 2014 Ark. App. 380 (residential burglary) CR-13-743; 6-18-14; Walmsley, B.

Whitfield v. State, 2014 Ark. App. 384 (failure to appear) CR-13-747; 6-18-14; Harrison, B.

Wimbley v. State, 2014 Ark. App. 405 (second-degree battery) CR-14-60; 6-18-14; Whiteaker, P.

Cases in which the Arkansas Court of Appeals concluded that the circuit court's decision to revoke appellant's probation or suspended sentence was not clearly against the preponderance of the evidence:

Haynes v. State, 2014 Ark. App. 363 (suspended sentence) CR-13-1039; 6-4-14; Vaught, L.

Hooten v. State, 2014 Ark. App. 375 (suspended sentence) CR-12-1080; 6-18-14; Pittman, J.

CIVIL

Acceptance Indemnity Co. v. SW. Ark. Electric Coop., 2014 Ark. App. 364 [**insurance**] There are two possible interpretations of the policy at issue. The first is that there is no ambiguity, but this interpretation fails to give meaning and effect to the entire policy and the stated object of the policy is not accomplished. The second approach gives meaning and effect to all provisions and allows for the coverage that the general policy claimed to provide. It is well settled that where an interpretation that would justify coverage is reasonable, it is the court's duty to interpret it that way. In this case, when the "Action Over Exclusion" and the "insured contract" provisions of the contract are read together, they create an ambiguity, which must be construed in favor of the insured. (Griffen, J.; CV-13-1061; 6-4-14; Vaught, L.)

Anderson's Taekwondo, Inc. v. Landers Auto Group, 2014 Ark. App. 399 [**unlawful detainer**] Unlawful detainer was proper as tenant's possession was nothing more than an at-will occupancy of the property, and tenant did not timely demonstrate that owner was not entitled to possession of the property, or that it had a right to remain on the property after the dispute arose. [**promissory estoppel**] With the undisputed existence of an agreement or promise of some sort, and with the undisputed existence of expenditures of some level being made, allegedly in reliance thereon, summary judgment was improper on the claim of promissory estoppel/detrimental reliance. Whether the tenant actually relied upon the owner's agreement or promises; whether such reliance, if found, was reasonable; what improvements were actually made; and what amount was actually and reasonably spent on the improvements, are all questions for the trier of fact. (Fox, T.; CV-13-813; 6-18-14; Glover, D.)

Shelby County Health Care Corp. v. Teague, 2014 Ark. App. 382 [**default judgment**] Default judgment was in error. Proper application was not made as party had appeared; therefore, written notice of the application for judgment must be given at least three days prior to the hearing on such application. Here, the moving party merely made an oral motion to strike the answer because its attorney was not licensed to practice law in Arkansas. No motion for default judgment was ever made as the request for an order of default judgment was made only in a posttrial brief. In addition, three days notice was not given. (Philhours, R.; CV-13-867; 6-18-14; Walmsley, B.)

Ukegbu v. Daniels, 2014 Ark. App. 422 [**odometer reading**] Odometer Fraud Act and Deceptive Trade Practices Act were violated in sale of auto with an inaccurate odometer reading. (Williams, L.; CV-13-966; 6-18-14; Wood, R.)

Asset Acceptance, LLC v. Newby, 2014 Ark. 280 [**arbitration**] Parties briefed the issues of assent, mutuality, and waiver. Therefore, the circuit court's blanket denial of the motion to compel arbitration constitutes a ruling on all of the issues raised by the parties. Because the circuit court has ruled on the threshold issue of mutual assent, this case is distinguishable from *Bank of the Ozarks*. In this case, there is a failure to show that a written agreement to arbitrate existed. (Fox, T.; CV-13-319; 6-19-14; Goodson, C.)

Ballard Group, Inc. v. BP Lubricants, Inc. 2014 Ark. 276 [**Rule 12 (b) (6)**] The first amended complaint alleges specific events occurring on at least three different occasions to support allegation that defendants acquired and used trade secrets to formulate and prepare a bid to divert business from plaintiff. The circuit court abused its discretion in dismissing the trade-secrets cause of action for failure to allege facts that BP "acquired, disclosed or used" Ballard's trade secrets. Circuit court also erred in dismissing claim for tortious interference because complaint's allegations were sufficient. [**rule 41 (b)**] Two Rule 12(b)(6) dismissals, the second of which is granted after the plaintiff has been given the opportunity to plead further under Rule 12(j), combine to trigger the two-dismissal rule in Rule 41(b). (Scott, J.; CV-13-976; 6-19-14; Corbin, D.)

Early v. Crockett, 2014 Ark. 278 [**1983 claims/immunity**] Section 1983 individual-capacity claims are subject to a deliberate indifference standard when prisoner asserts a failure to protect by prison officials. (Dennis, J.; CV-13-357; 6-19-14; Danielson, P.)

J-McDaniel Const. Co. v. Dale Peters Plumbing LTD, 2014 Ark. 282 [**contribution/Act 1116**] Act 1116 of 2013 overruled *St. Vincent Infirmary Med. Ctr. v. Shelton* to the extent that they conflict, and the Act is given retroactive effect. A claim for contribution remains a valid cause of action subsequent to the enactment of the CJRA. (Fox, T.; CV-13-950; 6-19-14; Hoofman, C.)

Lipsey v. Giles, 2014 Ark. 309 [**sua sponte dismissal**] The circuit court's sua sponte dismissal of appellants' complaint, despite the fact that appellants maintained that there were disputed issues of fact outstanding, deprived them of their day in court. Because appellants were not given notice of the court's intentions and had no opportunity to meet proof with proof and show that a material issue of fact existed, the circuit court erred in dismissing their complaint sua sponte. (Weaver, T.; CV-14-9; 6-26-14; Goodson, C.)

Davis v. Deen, 2014 Ark. 313 [**foia/crime lab**] Arkansas Code Annotated section 12-12-312(a)(1)(A)(ii) states that "information shall be released only under and by the direction of a court of competent jurisdiction, the prosecuting attorney having criminal jurisdiction over the case, or the public defender appointed or assigned to the case." The statute also states in subsection (a)(1)(B)(I) that nothing in the section is to "diminish the right of a defendant or his or

her attorney to full access to all records pertaining to the case.” Thus, the duty of the circuit court, prosecuting attorney, and public defender to grant permission to release information is discretionary as it relates to releasing information to the public; however, the statute is clear that a defendant has a right to access all records pertaining to his case. The language of the statute also mandates that “[t]he laboratory shall disclose to a defendant or his or her attorney all evidence in the defendant’s case that is kept, obtained, or retained by the laboratory.” (Pope, S.; CV-14-9; 6-26-14; per curiam)

DOMESTIC RELATIONS

Duvall v. Liang, 2014 Ark. App. 359 [**order of protection; notice**] The appellant was not given notice of the final hearing at which a 10-year order of protection was entered against him. The Court of Appeals reversed the circuit court’s order denying his motion to set aside and dismiss the order of protection, and it vacated the January 32, 2013 order of protection. The court said that because the service requirements for the notice of the final hearing were not satisfied—and he was not present at the hearing—the court was without authority to act, which rendered the final order void. (McCain, M.; No. CV-13-965; 6-4-14; Glover, D.)

Foley v. Foley, 2014 Ark. App. 351 [**child custody--relocation**] The appellant argued on appeal that *Hollandsworth* should be overruled because it conflicts with the “best interest of the child” standard and that the trial court misapplied the presumption. The appellant did not preserve the arguments for appeal so the court did not consider them. She did not argue below that the *Hollandsworth* presumption was invalid or that it was misapplied in this case. She also did not request specific findings of fact and conclusions of law, as she could have done under Arkansas Rule of Civil Procedure 52, so she cannot now complain that the trial court did not specifically state that relocation was in the children’s best interests. The Court of Appeals held that the trial court properly applied the *Hollandsworth* presumption in granting the appellee’s relocation request and that its decision was not clearly erroneous. (Smith, V.; No. CV-12-1102; 6-4-14; Walmsley, B.)

Spaletta v. Williams, 2014 Ark. App. 352 [**child custody--relocation; visitation**] Appellant contended on appeal that the circuit court’s decision granting the appellee’s petition to relocate from Crittenden County to Washington County was clearly erroneous because the appellee’s real reason for relocating was to separate him from the parties’ 3-year-old child. He also argued that the modified visitation order hinders his relationship with the child by eliminating all weekday and half of his weekend visits. The Court of Appeals found that the trial court was in the best position to observe and assess the parties’ motives, and the court held that the circuit court’s decision granting relocation was not clearly erroneous. On the issue of the modified visitation schedule, the Court of Appeals did not address his argument because the court said it does not appear that the court ordered such a schedule. The decision was affirmed. (Halsey, B.; No. CV-14-28; 6-4-14; Walmsley, B.)

Goodloe v. Goodloe, 2014 Ark. 300 [**child custody**] The Supreme Court granted the appellee's petition for review after the Court of Appeals reversed the circuit court's order which left primary custody with the appellee mother while granting the appellant father with educational and medical decision-making authority for the parties' two children. The Supreme Court remanded the case to the circuit court and vacated the Court of Appeals's decision. Because additional issues arose after entry of the appeal, the circuit court had granted temporary custody to the father. The Supreme Court said that because of the unique procedural history of the case, it was remanding for the circuit court to consider any pending matters related to the custody of the two children. (Smith, V.; No. CV-13-1000; 6-26-14; Corbin, D.)

PROBATE

Smith v. Lovelace, 2014 Ark. App 345 [**termination of guardianship of a child**] This is the second appeal of a guardianship case in which the maternal grandfather of a five-year-old child is contesting the appointment of the child's paternal aunt and uncle as guardians. *Smith v. Lovelace*, 2011 Ark. App. 74, 380 S.W.3d 514. This is an appeal from the appellant's petition to have the guardianship terminated. Both of the child's parents are deceased, natural and putative father having died after the guardianship was entered. The appellant claimed that his death was a material change in circumstances and that it was in the best interest of the child to be in his custody, since he was the child's closest blood relative and because the child's half-sibling resides with him. The circuit court denied the petition, finding it in the child's best interest to remain in the care of the appellees. The Court of Appeals set out the standard to be used in termination of guardianship cases: (1) whether the guardianship is no longer necessary, or (2) whether termination is in the best interest of the ward. The court said that the problem with the appellant's argument on appeal is that the circuit court considered those arguments when the original guardianship was established. He did not show that the court's finding was erroneous that it was in the child's best interest to remain in the guardianship of the appellees. The decision was affirmed. (McGowan, M.; No. CV-13-452; 6-4-14; Gladwin, R.)

JUVENILE

Cole v. Ark. Dep't of Human Servs., 2014 Ark. App. 395 [**DN Adjudication**] The circuit court adjudicated appellant's nine-month old child dependent-neglected due to parental unfitness, abandonment and abuse. [**aggravated circumstances**] The circuit court also found aggravated circumstances based on abandonment, little likelihood that services would result in reunification, and that the child had been subject to extreme cruelty. Appellant appealed the finding of aggravated circumstances and argued that abandonment cannot be inferred, but rather must be expressed as verbal intent to abandon. The court's finding of aggravated circumstances based on abandonment was not clearly erroneous, where appellant left her infant in a trash can at night with the understanding that no one might find the child. Appellant also argued that there was no evidence introduced regarding the nature of her previous case to support the court's finding that there was little likelihood that services would result in reunification. There was evidence that her two –year-old twins had been removed at birth due to substance

abuse, appellant admitted continuous cocaine and cannabis use, and her psychological profile reported that appellant “did not present with capability to manage independent care of her children and had lowered stress tolerance and difficulty responding to parenting training.” The appellate court did not address appellant’s challenge of extreme cruelty since it upheld two of the findings supporting aggravated circumstances. (Brown, E.; CV 13-1126, 6-18-2014; Gruber, R.)

Dornan v. Ark. Dep’t of Human Servs. 2014 Ark. App. 295 [TPR]

Appellant, the non-offending parent, argued that three (failure to remedy, failure to maintain meaningful contact and subsequent issues) of the four grounds alleged in the termination petition did not apply to her. These grounds applied to appellant’s ex-husband who voluntarily relinquished his rights midway through the termination hearing. [notice] Due process demands that a parent be notified of the basis for termination. It requires notice reasonably calculated to afford a parent the opportunity to be heard prior to the termination of his/her rights. The appellate court agreed that the first three statutory grounds could not sustain a termination as to appellant because she was not placed on notice that she must defend them. [aggravated circumstances] Appellant argued that the only ground that applied was aggravated circumstances, but that it did not specify the basis which applied to her. The court of appeals affirmed based on little likelihood that services would result in successful reunification. The petition specifically alleged that appellant did not have regular visits with her children since they came into care. Evidence by the children’s counselor included the lack of contact between appellant and her children for three years; that her children were not bonded; that the children would need to be reintroduced to appellant slowly; and an extended time would be needed. Appellant did not object to this testimony, but put on testimony of her efforts to visit that the court did not find credible. (Smith, T.; CV-13-944; 6-4-2014; Gruber, R.)

Perkins. Ark. Dep’t of Human Servs., 2014 Ark. App. 374 [TPR]

Appellant appealed the circuit court’s termination of her parental rights to her son. DHS filed for termination in November 2012, but filed a dismissal February 12, 2013. The AAL filed a petition to terminate on February 25, 2013 and the court terminated appellant’s parental rights. The court of appeals issued a memorandum opinion finding that the quantum of evidence supported the termination. (Branton, W.; CV-13-865; 6-18-2014; Gladwin, R.)

T.M. v. State, 2014 Ark. App. 420 [Delinquency - Probation Revocation]

Appellant appealed his probation revocation resulting in an order of commitment to DYS by arguing extenuating circumstances. The State only needs to show that appellant committed one violation to sustain a revocation. There was testimony from appellant’s case manager, therapist and probation officer that he failed to comply with his counseling appointment. While appellant offered an excuse for his failure to attend counseling, the court was not required to believe him or excuse his failure to comply. (Fergus, L. CV-14-119; 6-18-2014; Brown, W.)

Cases in which the Court of Appeals Affirmed No-Merit TPR and Motion to Withdraw Granted:

Olszewski Ark. Dep't of Human Servs., 2014 Ark. App. 348 (Zimmerman, S.; CV-13-869; 6-4-2014; Pittman, J.)

Adams v. Ark. Dep't of Human Servs., 2014 Ark. App. 361 (Thyer, C.; CV-13-646; 6-4-2014; Whiteaker, P.)

Freeman v. Ark. Dep't of Human Servs., 2014 Ark. App. 366 (Halsey, B.; CV-14-148; 6-4-2014; Hixson, K.)

Horton v. Ark. Dep't of Human Servs., 2014 Ark. App. 370 (Sullivan, T.; CV-14-79; 6-4-2014; Brown, W.)

Eldridge v. Ark. Dep't of Human Servs., 2014 Ark. App. 385 (Zimmerman, S.; CV-13-922; 6-18-2014; Harrison, B.)

Chapman v. Ark. Dep't of Human Servs., 2014 Ark. App. 387 (Branton, W.; CV-1-52; 6-18-2014; Harrison, B.)

Dodge v. Ark. Dep't of Human Servs., 2014 Ark. App. 386 (Coker, K.; CV-13-1097; 6-18-2014; Harrison, B.)

Villanueva v. Ark. Dep't of Human Servs., 2014 Ark. App. 401 (Zimmerman, S.; CV-14-134; 6-18-2014; Glover, D.)

Collins v. Ark. Dep't of Human Servs., 2014 Ark. App. 409 (James, P.; CV-14-162; 6-18-2014; Vaught, L.)

Thompkins v. Ark. Dep't of Human Servs., 2014 Ark. App. 413 (Sullivan, T.; CV-14-223; 6-18-2014; Hixson, K.)

Peoples v. Ark. Dep't of Human Servs., 2014 Ark. App. 417 (Johnson, K.; CV-14-190; 6-18-2014; Wood, R.)

DISTRICT COURT

Murchison v. State, 2014 Ark. App. 397 [**DWI**] [**Motion to suppress**]. An appeal of a DWI conviction in district court was taken to circuit court and a motion to suppress evidence of intoxication was filed. The circuit court denied the motion and appellant entered a conditional plea of no contest under ARCr.P. Rule 24.3(b). On appeal, it is argued that the trial court erred in denying the motion to suppress because there was no probable cause to stop the vehicle. It was held that the Court of Appeals did not have to interpret Ark. Code Ann. §27-51-403 which the officer relied upon

for the traffic stop. In assessing the existence of probable cause, the appellate court's review is liberal rather than strict. Whether the officer has probable cause to make a stop does not depend on whether the driver was actually guilty of the violation that the officer believed occurred. It was held that a person of reasonable caution could believe that in this case a traffic offense had been committed. (Hearnsberger, M.; CR-13-714; 6/18/2014; Walmsley, B.)

Rule v. State: 2014 Ark. App. 390 [DWI] [sufficiency of the evidence]. Appellant was convicted in district court of DWI, violation of the implied-consent law, improper land usage and failure to use a turn signal. An appeal was taken to circuit court. After a bench trial, appellant made a motion for directed verdict on the DWI charge, arguing that the evidence was insufficient to support a conviction and that he was entitled to a directed verdict based on the following: there was no breath test; the only evidence of a traffic infraction was the failure to use a turn signal, while there were multiple examples of appellant driving correctly; the State had not 'introduced any inconsistent stories'; the officer testified that appellant performed the HGN test correctly; and "the agency that administers and regulates the field sobriety tests has stated that its tests are not certified for individuals over age sixty-five." After the trial court issued a letter opinion finding appellant guilty of DWI, the appeal followed. A motion to dismiss at a bench trial is considered a challenge to the sufficiency of the evidence. It was held that it is within the province of the finder of fact to determine the weight of the evidence. Viewing the evidence in the light most favorable to the State, the Court of Appeals found the evidence sufficient to support appellant's conviction. (Storey, W.; CR-13-1087; 6/18/2014; Wynne, R.)

U.S. SUPREME COURT

Riley v. California [search/arrest/cellphone] Riley was stopped for a traffic violation, which eventually led to his arrest on weapons charges. An officer searching Riley incident to the arrest seized a cell phone from Riley's pants pocket. The officer accessed information on the phone and noticed the repeated use of a term associated with a street gang. At the police station two hours later, a detective specializing in gangs further examined the phone's digital contents. Based in part on photographs and videos that the detective found, the State charged Riley in connection with a shooting that had occurred a few weeks earlier and sought an enhanced sentence based on Riley's gang membership. Riley moved to suppress all evidence that the police had obtained from his cell phone. The trial court denied the motion, and Riley was convicted. The California Court of Appeal affirmed.

Held: The police generally may not, without a warrant, search digital information on a cell phone seized from an individual who has been arrested. (#13-132; 6-25-14)