

A TSBA Publication for School Board  
Attorneys, Board Members, and  
Administration



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### **Donald Crockett v. Sumner County Board of Education November 30, 2016**

Andrew Crockett was thirteen years old in July 2012 when he was attending summer school at T.W. Hunter Middle School. On the final day of summer school, Andrew slipped off of a bleacher seat on which he was walking and fractured his lower leg above the ankle. Andrew was transported by ambulance to a hospital where he underwent surgery. His parents, Melissa and Donald Crockett, filed a complaint on behalf of themselves and Andrew against the Sumner County Board of Education d/b/a T.W. Hunter Middle School (“T.W. Hunter” or “the School”) and William Lowe, who was one of Andrew’s summer school teachers. The Crocketts asserted claims for negligence, negligent infliction of emotional distress, negligence per se, premises liability, and vicarious liability. They subsequently dismissed Mr. Lowe as a named defendant, and the case continued against T.W. Hunter. In its answer, the School asserted that Andrew’s injuries were a result of his own negligence. In the alternative, the School contended that Andrew was more than fifty percent at fault for his accident, and that under the doctrine of comparative fault, the Crocketts were barred from recovering any damages from T.W. Hunter.

The parties engaged in discovery, and when discovery was completed, both the Crocketts and T.W. Hunter filed motions for summary judgment. The trial court granted the School’s motion on the issue of premises liability and dismissed that claim, but it denied both motions with respect to negligence. The parties tried the remaining claims before the court, without a jury, on September 28, 2015.

Based on its findings of fact, the trial court concluded: [A]s Andrew was warned about not using the bleacher seats as steps, and as he knew that such an action could cause injury, the Defendant has rebutted the presumption that Andrew could not be negligent. Andrew’s negligence was the sole cause of his fall on June 28, 2012. The Crocketts appeal, arguing that the evidence preponderates against the trial court’s finding that: (1) Andrew was 100% at fault for his injuries; and (2) T.W. Hunter did not breach its duty of supervision to Andrew.

The Court of Appeals held that the preponderance of the evidence supports the trial court’s judgment that T.W. Hunter is not liable for negligently supervising Andrew when he fell and hurt his leg. The Court affirmed the trial court’s judgment.

[http://www.tsc.state.tn.us/sites/default/files/crockettdonald.opn\\_.pdf](http://www.tsc.state.tn.us/sites/default/files/crockettdonald.opn_.pdf)

## Supreme Court rules Drug-Free School Zone Act Does Not Apply to Facilitation Conviction in *State of Tennessee v. Stanley Bernard Gibson* – November 16, 2016

The Tennessee Supreme Court has ruled that the Drug-Free School Zone Act does not apply when a defendant is convicted of facilitating the sale of drugs in a school zone.

In 2008, police raided a house in Davidson County where Stanley Bernard Gibson was visiting his girlfriend and found two duffel bags with cocaine and weapons. The duffel bags, one of which contained Mr. Gibson's student identification, were on a chair where law enforcement officers had seen Mr. Gibson sitting before the raid. Police found another small bag of cocaine in Mr. Gibson's pocket. His girlfriend's house was within 1,000 feet of a school.

Mr. Gibson was indicted for the knowing possession with intent to deliver a half of a gram or more of cocaine within 1,000 feet of a school, in violation of Tennessee law. A Davidson County jury convicted Mr. Gibson of the lesser charge of facilitation of possession with intent to deliver the drugs within 1,000 feet of a school. The trial court applied the Drug-Free School Zone Act to increase the length of Mr. Gibson's minimum sentence and percentage of service before release eligibility. Mr. Gibson appealed, and the Court of Criminal Appeals affirmed.

The Legislature passed the Drug-Free School Zone Act to create drug-free zones around schools to protect students from illegal drug activities. To carry out this legislative intent, the Act enhances the punishment when a defendant is convicted of possessing or conspiring to possess drugs with intent to deliver or sell drugs within 1,000 feet of a school by increasing the felony classification for a longer sentence and by requiring the defendant to serve the entire minimum sentence.

The Supreme Court granted Mr. Gibson's appeal to consider whether the Act applies when a defendant is convicted of the lesser charge of facilitation rather than the offenses of either possessing with intent to sell or deliver drugs or conspiracy to sell or deliver drugs within 1,000 feet of a school.

The State admitted the trial court erred by applying the Act to require service of the entire minimum sentence but argued the Act is a separate criminal offense and supports the higher felony classification.

In a unanimous opinion, the Court found that the Act does not apply to a conviction for facilitation. The Court reasoned that the Act lists the offenses to which it applies, and facilitation is not a listed offense. The Court concluded it is not at liberty to rewrite or add to a statute. Therefore, based on the plain language of the Act, the Court held that the Act does not include the offense of facilitation, reversed the trial court and the Court of Criminal Appeals, and remanded the case for the trial court to resentence Mr. Gibson. The Court also determined there was sufficient evidence to support the conviction for facilitation and affirmed the conviction.

[http://www.tsc.state.tn.us/sites/default/files/gibsons.opn\\_.pdf](http://www.tsc.state.tn.us/sites/default/files/gibsons.opn_.pdf)



## Tennessee School Law Quarterly

### Published by:

The Tennessee School Boards Association  
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Nashville, TN 37207

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*Disclaimer: The information in this issue represents the opinions of the writers and does not necessarily represent the official position of TSBA*

## TCSBA Update

The Tennessee Council of School Board Attorneys held its annual business meeting on Sunday November 6 at the Opryland Hotel.

The following were elected to officer positions for 2017 and 2018:

**President:** Clifton Miller  
**Vice-President:** Robin Phillips  
**Member-at-Large:** David Sanders

### Winter CLE Event

Friday February 17, 2017  
10:00 a.m - 2:15 p.m

TSBA Office  
525 Brick Church Park Drive  
Nashville, TN

The agenda is as follows:

- Parliamentary Procedure – Navigating Roberts Rules of Order (**1.5 hours**)
- Ethics (**1.0 hour**)
- Working with A.I.A. Model Contracts for School Districts (**1.5 hours**)

The registration fee is \$25 and will be applied to your 2017-18 dues PROVIDED you register and attend the meeting. As a part of the workshop this year, copies of Roberts Rules of Order will be provided to all participants.

To register please click the following link:  
<https://tsbaregistration.wufoo.com/forms/s1dhsefw1xykibp/>