

# The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

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Statewide Jury Verdict Coverage - Published Monthly

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*Alabama's Jury Verdict Reporter Since 2001*

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## Civil Jury Verdicts

Complete and timely coverage of civil jury verdicts in Alabama including circuit, presiding judge, parties, case number, attorneys and results.

**Legal Negligence - After a woman died subsequent to receiving medical treatment, her daughter opened an estate and was appointed the personal representative; the daughter later closed the estate and only then sought to pursue a medical negligence claim against her mother's medical providers; the daughter then found the medical negligence claim was barred by the statute of limitations, so she pursued a legal negligence claim accusing her attorneys of botching the case; in order to resolve the legal negligence claim, the underlying medical negligence claim was tried as a "case within a case"**

*Gamble v. Jones, et al.*, 21-900027  
Plaintiff: Jerry M. Blevins, *Law Office of Jerry M. Blevins*, Montgomery  
Defense: Robert P. MacKenzie, III and Stephen W. Still, Jr., *Starnes Davis Florie, LLP.*, Birmingham, Royal Dumas, *Rushton Stakely Johnston & Garrett*, Montgomery, Joe Stott, *Stott & Harrington*, Birmingham and John M. Peek, Andalusia  
Verdict: Defense verdict  
Circuit: **Covington**, 5-19-23  
Judge: Benjamin M. Bowden

Maxine Day suffered a fall in October of 2017. A couple of months later on Christmas Day, 12-25-17, Day presented to Mizell Memorial Hospital in Opp with complaints of severe left hip pain that she attributed to her fall.

Day was admitted to the hospital and was treated for bilateral sacral fractures and spinal stenosis. Four days later in the morning of 12-29-17, a nurse noticed that Day appeared to be displaying symptoms consistent

with a possible cerebrovascular event.

Day came under the care of Dr. Steven Davis, an employee of Mizell Hospital. He saw Day later that morning and sent her for a CT scan and to the ER for further evaluation. Day was subsequently diagnosed with an ischemic stroke with neurologic deficits.

Dr. Davis contacted Day's family and requested permission to begin administration of tPA, a protein involved in the breakdown of blood clots. Dr. Davis also consulted by telephone with a neurologist, Dr. James Kiely. Dr. Kiely wasn't sure that Day was a good candidate for tPA, so he requested that appropriate precautions be taken before administering it.

It seems there are strict criteria for the administration of tPA. Among other things, there is a window of opportunity for its safe administration, and it must not be administered if the patient's blood pressure is outside of a recommended range.

Despite Dr. Kiely's cautions, Day was started on an IV drip of tPA at 12:42 pm. At 1:02 pm Dr Kiely phoned the hospital and spoke with a nurse believed to be Autumn Jones. Dr. Kiely was calling to check on Day's status.

When Dr. Kiely was informed of Day's current blood pressure, he said it was not within the acceptable range and that tPA should therefore be discontinued. Additionally, he noted that it would take time for Day's blood pressure to come down, and by that time she would be outside the window of opportunity to administer tPA in any event.

Brazelton defended the case and minimized Ward's claimed injuries.

The case was tried in a single day in Eufaula. The jury returned a verdict for Ward and awarded him damages of \$50,000. The court entered a judgment for that amount, and it has been satisfied. Ward filed a post-trial motion for costs of \$1,415. The court granted the motion.

**Case Documents:**

[Jury Verdict](#)

[Final Judgment](#)

**Medical Negligence - A woman was referred to a radiologist for an ultrasound of her leg to rule out deep vein thrombosis (DVT); the radiologist read the ultrasound as showing no evidence of DVT; after the woman died a few days later of a pulmonary embolism, her estate blamed her death on the radiologist for failing to identify DVT on the ultrasound**

*Estate of Jessica Fisher v. Birmingham Radiological Group, P.C.*, 17-905385  
Plaintiff: Jeffrey P. Leonard,  
*Heninger Garrison Davis, LLC.*,  
Birmingham

Defense: Walter W. Bates, J. Bennett White, and Mary Pat Grizzle, *Starnes Davis Florie, LLP.*, Birmingham

Verdict: Defense verdict

Circuit: **Jefferson**, 5-24-23

Judge: Jim Hughey, III

In December of 2015, Jessica Fisher was suffering from lumbar pain. On 12-28-15 she consulted on the matter with her pain management physician, Dr. Srinivas Mallempati, an employee of Alabama Ortho Spine & Sports (AOSS).

During Fisher's presentation, Dr. Mallempati noted that she was displaying signs and symptoms that could be suggestive of deep vein thrombosis. Specifically, her right leg was swollen and red. Dr. Mallempati wanted to rule out deep

vein thrombosis, so he sent Fisher for an ultrasound.

The ultrasound was done the same day by a technician employed by Birmingham Radiological Group, P.C. The ultrasound was interpreted by a diagnostic radiologist, Dr. Julian Druhan, also an employee of Birmingham Radiological Group, P.C.

Dr. Druhan read the ultrasound as showing no evidence of deep vein thrombosis. That interpretation was then communicated to Dr. Mallempati. Based on that interpretation, Dr. Mallempati proceeded to treat Fisher's lumbar pain. He administered an epidural steroid injection on 12-30-15.

The following morning, on 12-31-15, Fisher died due to pulmonary embolism. It would later be alleged that the embolism was itself caused by undiagnosed deep vein thrombosis. That is, a piece of the thrombus (i.e., blood clot) broke off and migrated to Fisher's lungs, thereby depriving her heart of oxygen.

Fisher's estate filed suit against AOSS, Birmingham Radiological Group, P.C., and the technician who had performed the ultrasound. However, the technician was later dismissed from the case by the court's grant of partial summary judgment. Also, the estate voluntarily dismissed AOSS.

When the dust had settled, the only remaining defendant was Birmingham Radiological Group, P.C. The estate pursued that claim on a theory of vicarious liability. Specifically, the estate claimed that Dr. Druhan had failed to notice the plain evidence on the ultrasound of deep vein thrombosis both above and below Fisher's right knee.

Additionally, Dr. Druhan had failed to note in his report that the ultrasound was limited due partly to Fisher's obesity and the inability to

image parts of her leg. The estate further alleged that Dr. Druhan failed to communicate those limitations to Dr. Mallempati and instead gave a definitive pronouncement that there was no evidence of deep vein thrombosis.

Both sides identified a number of experts in this case. The experts for the estate included Dr. Bruce Distell, Radiology, Fayetteville, NC; Dr. Geoffrey Risley, Vascular Surgery, Crestwood, FL; and Dr. Susan Smith, Internal Medicine, Pensacola, FL.

Birmingham Radiological Group defended the case and denied any breach of the standard of care on the part of Dr. Druhan. According to defendant, Dr. Druhan's interpretation of the ultrasound was reasonable, and it showed no evidence of deep vein thrombosis.

The identified defense experts included Dr. Stan French, Diagnostic Radiology, Montgomery; Dr. Timothy Usey, Diagnostic Radiology, Madison, MS; and Dr. Ben Pearce, Vascular Surgery, Birmingham. It was Dr. Pearce's opinion that the cause of Fisher's death was unknowable. Furthermore, if she had deep vein thrombosis at all, it did not originate in the area that was imaged in the ultrasound.

The case was tried for eight days in Birmingham. The jury returned a verdict for Birmingham Radiological Group, and the court entered a defense judgment.

**Case Documents:**

[Jury Verdict](#)

[Final Judgment](#)