

# 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.

### Civil Rights - A campus police department sent an officer to retrieve a police badge it had given the armorer who repaired their weapons; the officer stopped the armorer's car and asked to see the contents of the armorer's pockets and fanny pack after the armorer explained he did not have the badge with him

*Smith v. Burchfield*, 08-902098

Plaintiff: Oscar W. Adams, III, *Adams Law, P.C.*, Birmingham

Defense: Lisa Huggins and Cary Tynes Wahlheim, *UAB Office of Counsel*, Birmingham

Verdict: \$29,000 for plaintiff (less a credit of \$25,000)

Circuit: **Jefferson**, 4-18-12

Judge: Ed Ramsey

On 7-23-07, Robert Smith was attending a class at Samford University. While he was there, two police officers asked him to come with them to an empty classroom. The officers were Mark Mathieu, a lieutenant investigator for Samford University, and Jeremy Burchfield or Jerome Birchfield, an officer with the UAB Police Department.

In the empty classroom, Burchfield told Smith that he was in possession of a UAB police badge that the UAB Police Department wanted to reclaim. Smith agreed that he had the badge, but he told Burchfield he didn't have it with him at the moment. He even emptied his pockets to demonstrate his badgelessness.

As it happened, Smith had been given the badge by a former UAB police chief, Thomas Seals, who had left the UAB Police Department in 1983. Although Smith had never been a police officer, he had repaired weapons for the UAB Police Department as their armorer. After Seals had left the UAB Police Department, Smith had kept the badge as a souvenir.

Smith promised Burchfield he would go home, find the badge, and take it to the UAB Police Department the next day. Burchfield agreed to this, and he

and Mathieu left. The meeting had taken about 15 minutes.

Smith retrieved his guitar and his fanny pack from the music room where he had left them and prepared to go home. He was, however, uncomfortable with the way the officers had behaved during the interview, and so he used his cell phone to call Seals. He told Seals that he thought Burchfield and Mathieu were going to try to jump him on the way to the car, and he asked Seals to stay on the line as he left.

Seals stayed on the line as Smith got into his car. Seals then heard Smith say "There's a car pulled up behind me. They're blocking me in." Burchfield had spotted Smith leaving with the fanny pack and wanted to look inside it. Smith complied. Burchfield did not, however, ask to search Smith's vehicle, and Smith did not leave the vehicle.

Finding no badge or gun in the fanny pack, Burchfield allowed him to leave. Smith went home and returned his UAB badge to the UAB Police Department the next day. He did not encounter Burchfield on that trip.

Smith, however, was unhappy at his treatment. He felt Burchfield had acted in an overly aggressive and bulldog-like manner and that Burchfield had suggested he could have Smith arrested for impersonating a police officer or having a gun on campus. In addition, Smith learned Burchfield had received anger-management counseling.

From Smith's perspective, Burchfield was a loose cannon who had just been looking for an excuse to arrest him. Smith therefore filed suit against Samford, Mathieu, and Burchfield and blamed them for violating his civil rights and restricting his free movements without justification.

Samford and Mathieu settled with Smith for \$25,000. Burchfield, however, defended and claimed immunity as a police officer on duty at the time of the incident. Furthermore, he argued Smith had been free to leave

Clark collided with their vehicle.

The Hills were injured in the collision. The record does not show the nature of their injuries or the amount of their medical expenses.

The Hills filed suit against Clark and blamed her for causing the collision. Their theories included negligence, wantonness, and loss of consortium. They also named Alfa Insurance Corporation, their UIM carrier, as a co-defendant.

Alfa opted out of the action. Clark defended and minimized the damages claimed by the Hills. Derick settled with Clark before trial, leaving Zanis as the sole plaintiff.

A Birmingham jury heard the parties' arguments and returned a verdict of \$25,000 for Zanis. The court entered a consistent judgment, and it has since been satisfied.

**Battery - One man shot another who was sitting in the back seat of a car in a parking lot**

*McKay v. Fronduti*, 09-900873

Plaintiff: F. Tucker Burge, *Burge & Burge*, Birmingham

Defense: *Pro se*

Verdict: \$100,000 for plaintiff (comprised of \$75,000 in compensatory damages and \$25,000 in punitives)

Circuit: **Montgomery**, 5-8-12

Judge: William A. Shashy

On 7-22-07, John McKay was sitting in the back seat of a car in a parking lot at Lagoon Park in Montgomery County when 19-year-old Matthew Fronduti shot him with a handgun. The record does not provide details as to why Fronduti shot McKay, how many shots were fired, or where McKay was hit. Afterward, Fronduti left in a vehicle driven by Bobby Wooley.

McKay filed suit against Fronduti and blamed Fronduti for shooting him for no reason. McKay's theories included negligence and wantonness. McKay also named Wooley as a co-defendant. A third co-defendant was Fronduti's father, Mark, on the theory that Mark owned the gun and had entrusted it to Fronduti.

Mark vigorously denied ownership of any handgun and was dismissed from the case on summary judgment. Fronduti briefly retained an attorney

who later withdrew from the representation when he was unable to contact Fronduti. From that point onward, Fronduti proceeded *pro se*. The record does not describe his defense theories.

As for Wooley, he also failed to retain counsel. There is no indication in the record as to whether McKay continued to pursue his claim against Wooley and, if so, how Wooley defended himself.

A Montgomery jury, however, was duly outraged by the shooting and awarded McKay \$75,000 in compensatory damages and \$25,000 in punitive damages against Fronduti. The court entered a consistent judgment.

**Auto Negligence - Plaintiff was injured in a crash that took place in Baldwin County; the jury returned a defense verdict**

*Crook v. Sherer*, 09-900750

Plaintiff: Robert J. Hedge, *Miller & Hedge, P.C.*, Mobile

Defense: Jessica M. McDill, *Chason & Chason, P.C.*, Bay Minette

Verdict: Defense verdict

Circuit: **Baldwin**, 3-13-12

Judge: Charles C. Partin

On 7-7-07, Emily Crook was in a motor vehicle on Spanish Fort Boulevard near its intersection with Blakely Drive in Mobile County when another vehicle driven by Neil Sherer, Jr. collided with hers.

Crook was injured as a result of the collision. The record does not reveal the nature of her injuries, but her medical expenses totaled \$7,060.

Crook filed suit against Sherer and blamed him for causing the collision. Her theories included negligence and wantonness. Sherer defended and minimized the damages claimed by Crook.

After a one-day trial, a Bay Minette jury returned a defense verdict. The court entered a consistent judgment.

**Medical Negligence - A two-year-old boy who was suffering from bleeding in his brain was diagnosed instead with gastroenteritis and sent home; when the boy later died, his parents criticized the ER doctor for not saving their boy's life**

*Estate of Estes v. Sims*, 08-901174

Plaintiff: Toby D. Brown, David S.

Cain, Jr., and David G. Wirtes, Jr.,

*Cunningham Bounds LLC.*, Mobile

Defense: Randal H. Sellers and W.

Christian Hines, III, *Starnes Davis*

*Florie LLP.*, Birmingham and Mobile,

for Sims and Emergency Medicine

Assocs.; R. Alan Alexander and Annie

J. Dike, *Helmsing Leach Herlong*

*Newman & Rouse, P.C.*, Mobile, for

Providence

Verdict: Mistrial

Circuit: **Mobile**, 4-9-12

Judge: Michael A. Youngpeter

On 10-7-06, the parents of the two-year-old Chase Estes brought him to the ER of Providence Hospital in Mobile

County after he had spent the previous two days with nausea and vomiting. Dr.

Ronnie Sims examined Estes and diagnosed gastroenteritis. He gave

Estes some nausea medication and

released him to be taken home. The

discharge instructions were that if Estes

was not better on Monday, he should be

taken to his regular doctor.

On the evening of 10-8-06, an

ambulance brought Estes back to the

hospital. He had been listless all day

and had vomited. More significantly,

he had stopped breathing for a time.

Dr. Sims again diagnosed

gastroenteritis. He ordered a chest x-

ray and requested a consultation. Estes

was admitted to the floor in the early

morning hours.

That night, the nurse noticed Estes's

heart rate dropping. His eye movement

seemed abnormal, and his pupils were

unequal. She called a doctor. Dr. Roy

Hammock appeared thereafter and

determined Estes was lethargic and his

peculiar movements were due to

gastroenteritis.

Shortly after Dr. Hammock left, the

nurse noted Estes was posturing and she

could not push his arms down. In

addition, he was bradycardic. Another

doctor arrived and ordered a stat CT

brain scan. This showed a mass in

Estes's brain and a possible

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