

# The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

February, 2024

Statewide Jury Verdict Coverage - Published Monthly

24 A.J.V.R. 2

*Alabama's Jury Verdict Reporter Since 2001*

## In This Issue

<b>Jefferson County</b>	
Medical Neg. - Defense verdict	p. 1
<b>Walker County</b>	
Auto Negligence - \$600,000	p. 2
<b>Federal Court - Birmingham</b>	
Civil Rights - \$4,450,000	p. 2
<b>Calhoun County</b>	
Construction Neg. - Defense verdict	p. 4
<b>Mobile County</b>	
Auto Negligence - \$150,000	p. 6
<b>Talladega County</b>	
Medical Neg. - Defense verdict	p. 6
<b>Federal Court - Opelika</b>	
Civil Rights - \$1,000,000	p. 7
<b>Madison County</b>	
Auto Negligence - \$6,000	p. 8
<b>Dale County</b>	
Auto Negligence - Defense verdict	p. 8
<b>Tennessee Verdict</b>	
<i>Columbia, TN</i>	
Premises Liability - \$342,983	p. 9
<b>Notable Georgia Verdict</b>	
<i>Atlanta, Georgia</i>	
Truck Negligence - \$715,000	p. 10

## Civil Jury Verdicts

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

### **Medical Negligence - A healthy 29 day-old infant was given general anesthesia as part of a diagnostic MRI; difficulties with the intubation resulted in the infant suffering a catastrophic anoxic brain injury, followed by cardiac arrest and death**

*White v. Buckmaster, et al.*, 21-901910  
Plaintiff: John J. Givens, Jessica K. Givens, and Joe Lane, *The Cochran Firm, P.C.*, Dothan

Defense: Joseph S. Miller and Tyler J. McIntyre, *Starnes Davis Florie, LLP.*, Birmingham, for Buckmaster; Mark W. Lee and J. Alex Wyatt, *Parsons, Lee & Juliano, P.C.*, Birmingham, for Hubbard, Lewis, and Children's Hospital

Verdict: Defense verdict  
Circuit: **Jefferson**, 2-2-24  
Judge: Jim Hughey, III

On 6-25-20, Clarke Benjamin White, then only 29 days old, was scheduled to undergo a diagnostic MRI at Children's Hospital of Alabama in Birmingham. White – referred to in the record as “Baby Ben” – was a healthy infant, and the procedure was not an emergency.

The medical team first attempted to perform the MRI without the use of anesthetic. However, Baby Ben had difficulty lying still. In order to deal with the situation, the medical team decided to place Baby Ben under general anesthetic.

The anesthesia was to be provided by a pediatric anesthesiologist, Dr. Mark Buckmaster. He was assisted in his work by two certified registered nurse anesthetists. They were Patrick Hubbard and Allie Lewis.

Dr. Buckmaster ordered the placement of an endotracheal tube by

Hubbard. The anesthesia was then started at 7:32 am. A few minutes later a large leak was noted, and the tube was removed. Baby Ben was given oxygen, and the procedure continued.

The medical team attempted reintubation at least twice more but were unsuccessful. During this time, Baby Ben was deprived of oxygen and in essence was slowly suffocating. Approximately half an hour after the initial start of the anesthesia the pediatric ICU team arrived and took over Baby Ben's care.

At approximately 8:53 am he was transferred to the PICU. Only then was his airway properly established. By that time, however, the damage had been done. Baby Ben had suffered catastrophic brain damage. He subsequently went into cardiac arrest secondary to respiratory failure and was pronounced dead on 6-27-20.

Baby Ben's parents filed suit against Dr. Buckmaster, Hubbard, Lewis, and Children's Hospital of Alabama. Plaintiffs blamed defendants for breaching the standard of care, failing to maintain and manage Baby Ben's airway, and thereby causing his death. The identified experts for plaintiffs were Dr. John McCloskey, Anesthesiology, Philadelphia, PA; and Cynthia Nicholas, CRNA, South Pasadena, FL.

Dr. Buckmaster, Hubbard, Lewis, and Children's Hospital of Alabama defended the case and denied that their treatment of Baby Ben constituted a breach of the standard of care. The identified defense experts included Dr. William Nelson,

**Civil Rights (Illegal Search and Excessive Force) - While serving civil papers to a residence, a deputy sheriff smelled marijuana – this led to the local drug task force raiding the house (there was no warrant) and using an explosive flash bang when they entered – the police exhaustively searched the home and found \$50 worth of marijuana that belonged to the son of the mild-mannered grandparents who resided with them – the grandparents sued and alleged illegal search (the judge found for the plaintiffs a matter of law on this) and excessive force, the jury awarding the plaintiffs an even \$1,000,000 in damages**

*Almond v. Walker et al*, 3:19-175

Plaintiff: Heather Leonard, *Heather Leonard, P.C.*, Birmingham and R. Brett Adair, *Adair Law Firm*, Birmingham

Defense: C. David Stubbs and Lisa M. Ivey, *Stubbs Sills & Frye*, Anniston for Walker (Illegal Search Claim) Robert M. Spence, *Smith & Staggs*, Tuscaloosa for Clark (Excessive Force Claim)

Verdict: \$1,000,000 for plaintiffs representing \$750,000 on illegal search and \$250,000 on excessive force

Federal: **Opelika**, 1-26-24

Judge: R. Austin Huffaker, Jr.

Gregory and Teresa Almond resided on 1-31-18 in Woodburn, AL. They were described as mild-mannered grandparents. A Randolph County deputy sheriff came to their home around noon that day to serve civil papers on Gregory. He wasn't open but Teresa opened the door and accepted them. The deputy smelled burnt marijuana in the Almond home.

This triggered a call to the Randolph County Narcotics Unit (RCNU). It is team of highly trained specialists among several

jurisdictions in the county to eradicate drugs. Kevin Walker, an officer with the City of Wedowee and a part of RCNU, began an investigation. That mostly included calling the Judge Amy Newsome to get a warrant.

The warrant process was a complete mess. Newsome would later testify in this case that she didn't authorize a warrant over the telephone. Walker for his part believed he'd been given a telephonic warrant. Finally there was a warrant in the case issued for 1-31-18, but it wasn't signed until two days later. Ultimately there was no warrant.

That didn't hold back the RCNU. They met at two in the afternoon (two hours after the deputy first arrived to serve papers) and developed an assault plan for the Almond home. That plan did not include the use of flash bangs. Neighbors would recall seeing the police massing to take down the Almond drug operation and being heavily armed. One indicated they looked like they were dressed as Transformers.

The raid went down a little after two. A Randolph County Deputy (Larry Clark) kicked in the front door and tossed a flash bang. It landed near Gregory and affected his hearing. Clark then tackled Gregory and took him to the ground. Clark then advised Gregory (with a gun to his head) that he'd put a bullet in his skull if he resisted. While all the officers had body cameras on them, no footage survived.

With Gregory now in custody, Teresa was taken outside. The RCNU then began an extensive search of the home. It didn't produce much. They found \$50 worth of marijuana (it belonged to the Almond's son) and a single prescription Lunesta pill. The police also seized several thousand dollars in cash and other personalty.

The Almonds were taken to jail and bonded out the next day. The criminal charges against them were dismissed a year later. In the interim they lost their home in foreclosure and alleged the police had not returned all the cash, cash which they had intended to pay for the house.

The Almonds then filed this lawsuit against Walker (with the Wedowee department) and Randolph County Deputy Clark. The claim against Walker (made by both plaintiffs) was that the search was illegal on its face. Why? There was no warrant. Judge Newsome so testified at trial. They sought both compensatory and punitive damages.

Gregory alone also presented an excessive force count regarding the use of the flash bang. He noted that it wasn't need and represented overkill. Moreover it wasn't even in the "raid" plan the police had made at the church before coming to the home. He too sought compensatory and punitive damages on this count.

Clark moved for summary judgment and argued he was entitled to qualified immunity because he'd acted in good faith. The trial court denied his motion. Clark took an appeal to the 11<sup>th</sup> Circuit Court of Appeals. It affirmed the trial court.

Thus at trial and relying on the testimony from Judge Newsome, the presiding Judge Huffaker granted a directed verdict for the plaintiffs on the illegal search count. He conceded this was rare (a directed verdict against the police in a civil case), but regardless of what Walker believed, there was never a warrant. He could not fairly claim a good faith exception to the warrant requirement because that doctrine (*U.S. v. Leon*) doesn't apply in civil cases and moreover, the warrant wasn't defective (within the meaning of *U.S. v. Leon*) because there wasn't one at