

STATE V. THOMAS

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INTRODUCTION

Since the late nineteenth century, the accomplice-corroboration rule has protected criminal defendants from potentially unreliable accomplice testimony.¹ Tennessee courts supported this common law doctrine for years, upholding its application in various situations.² However, in the recent case of *State v. Thomas*, the State implored the Tennessee Supreme Court to abolish the long-standing rule.³ The Court agreed, holding that the accomplice-corroboration rule was outdated and unnecessary.⁴ As a result, working on a prospective basis, the Court abandoned the rule, overruling a century-old law in one swift opinion.⁵ With such power, what is to stop the Court from abandoning all common law? Furthermore, what impact will the abolition have on due

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1. *State v. Thomas*, 687 S.W.3d 223, 240, 242 (Tenn. 2024).

2. *Id.* at 242.

3. *Id.* at 240.

4. *Id.* at 242–43.

5. *Id.* at 242.

process and wrongful convictions? This Case Note addresses these questions by focusing on the decision's implications for future criminal jurisprudence in Tennessee.

First, this Note explores the background of the case, and the legal issues involved, providing an overview of the development of the accomplice-corroboration rule. Then, it examines the Court's reasoning behind abolishing the rule and the policy considerations surrounding applying this change. In particular, it considers the broader constitutional and legal ramifications of such a shift, including fairness and due process. Through this analysis, the Note provides insight into the power that judicial decisions wield in shaping the legal landscape. It concludes by urging the legislature to respond quickly out of fear that failure to do so will result in the conviction of innocent people.

I. ISSUES

There are two key issues the court grappled with in the *Thomas* case. First, the court had to determine whether to abolish the long-standing common law doctrine known as the accomplice-corroboration rule.⁶ Second, it had to decide whether to apply such a decision prospectively or retroactively, as the type of application could have large repercussions on the outcome of the case.⁷

The facts of the case state that a jury convicted two defendants, Tony Thomas ("Mr. Thomas") and Laronda Turner ("Ms. Turner") (collectively, the "Defendants"), of three counts of first-degree premeditated murder.⁸ These convictions stemmed from a triple homicide that occurred in 2015 at a duplex in Memphis, Tennessee.⁹ Eventually, three co-defendants were indicted by a grand jury, with Mr. Thomas and Ms. Turner proceeding in a joint trial.¹⁰ The

6. *Id.* at 239.

7. *Id.* at 246–47.

8. *Id.* at 228.

9. *Id.* at 228. The homicides were connected with gang activity in the area. *Id.* at 231.

10. *Id.* at 229.

other co-defendant, Demarco Hawkins (“Mr. Hawkins”), had his case severed from the Defendants and testified at their trial as part of the State’s proof.¹¹

During the original trial for Mr. Thomas and Ms. Turner, the trial court heard testimony from Mr. Hawkins stating that the Defendants participated in the killings.¹² Mr. Hawkins testified that Mr. Thomas and forced him to become involved in the plan as a Vice Lord.¹³ According to Mr. Hawkins, Ms. Turner also shot one of the victims.¹⁴ The Defendants’ convictions largely turned on this testimony, as much of the other evidence involved was circumstantial and did not definitively tie them to the crime.¹⁵ Furthermore, the State failed to disclose that Mr. Hawkins had given inconsistent statements to officials, which he later admitted were riddled with falsehoods.¹⁶

Therefore, after the conviction, the Defendants appealed, arguing that there was insufficient evidence to support the convictions due to the accomplice-corroboration rule.¹⁷ Additionally, the Defendants argued that the State violated the *Brady* disclosure rule by failing to tell the defense that Mr. Hawkins had originally testified that the Defendants were not involved, only later changing his story.¹⁸ The Court

11. *Id.*

12. *Id.* at 234. Mr. Hawkins stated that when nobody volunteered to help with the murder, Mr. Thomas approached Mr. Hawkins and asked him to assist in killing the victim. *Id.* at 235. Mr. Hawkins agreed. *Id.*

13. *Id.* at 235. The Vice Lords are a violent street gang, often involved in various crimes such as murder, robbery, and drug trafficking. Kim Chaney, *Three Accused Gang Members Indicted in Memphis Under Violent Crime Initiative*, ABC24 (Feb. 7, 2024, 11:20 AM), <https://www.localmemphis.com/article/news/crime/three-accused-gang-members-indicted-memphis-violent-crime-initiative/522-37511d1f-dcc1-48e6-ac43-a7939c1f9468>.

14. *Thomas*, 687 S.W.3d at 236.

15. *Id.* The other evidence that the State presented to corroborate Mr. Hawkins’ testimony included testimony that Ms. Turner was a member of Vice Lords, testimony placing Ms. Turner at the duplex hours before the murders, evidence of dropped marijuana near the scene, and a phone call from Mr. Thomas stating that Ms. Turner should “stick to the script.” *Id.* at 249–51.

16. *Id.* at 238.

17. *Id.*

18. *Id.* The *Brady* disclosure rule requires the prosecution to provide a defendant with favorable evidence that is material to guilt or punishment. *Id.*

of Criminal Appeals of Tennessee affirmed the judgments of the trial court.¹⁹

The Tennessee Supreme Court granted review, agreeing to consider two issues on appeal. First, whether the evidence was sufficient to support Ms. Turner's convictions for first-degree murder, and second, whether, as to both Defendants, the prosecution breached its obligations under *Brady*.²⁰

The Defendant argued that the accomplice-corroboration rule required that Ms. Turner's charges be dismissed.²¹ The State responded by imploring the Court to "abandon the rule," which they believed to be "out of step with the principles underlying sufficiency analysis ... [and] is also out of step with the clear majority of jurisdictions."²² The Tennessee Supreme Court had the opportunity to uphold the judgment of the Court of Appeals—however, it declined to do so.²³ Instead, it not only dismissed the charges against Ms. Turner for insufficient evidence, but it also abolished the accomplice-corroboration rule in its entirety.²⁴ In doing so, the Court overturned more than a century's worth of common-law precedent, setting a dangerous new role for the jury to play in deciding a defendant's fate.

II. DEVELOPMENT OF THE ISSUES

The first issue of this case concerns whether the Tennessee Supreme Court should abolish the accomplice-corroboration rule as an outdated piece of common law.²⁵ An understanding of its development and application is necessary to fully comprehend the court's reasoning for abolishing such common law. The second issue is whether such an abolition should be applied to the case retroactively

19. *Id.*

20. *Id.* at 239. Although, the Court agreed to consider the *Brady* violations, an analysis of this issue is outside of the scope of this Note.

21. *Id.*

22. *Id.* at 240.

23. *Id.* at 256.

24. *Id.*

25. *Id.* at 239.

or prospectively.²⁶ A comprehensive understanding of this issue requires a look at previous case law in Tennessee to determine if the Tennessee Supreme Court is bound by a certain application.

A. *The Accomplice-Corroboation Rule*

It has long been a common law rule in Tennessee that “evidence is insufficient to sustain a conviction” when the conviction is “solely based upon the uncorroborated testimony of one or more accomplices.”²⁷ An accomplice is one who knowingly, voluntarily, and with common intent participates with the principal offender in the commission of a crime.²⁸ A witness qualifies as an accomplice if that witness “could be indicted for the same offense charged against the defendant.”²⁹ To satisfy the rule, there must be some evidence, entirely independent of the accomplice’s testimony, which leads to the inference that the defendant is implicated in the crime.³⁰ This corroborative evidence may be direct or entirely circumstantial, and it does not need to be adequate, in and of itself, to sustain a conviction.³¹ It is enough that the evidence fairly and legitimately connects the defendant with the commission of the crime.³²

The origins of this rule can be traced back to the late nineteenth century, where it was applied to a case involving

26. *Id.* at 245.

27. *Id.* at 239; *State v. Collier*, 411 S.W.3d 886, 894 (Tenn. 2013) (citing *State v. Little*, 402 S.W.3d 202, 211–12 (Tenn. 2013); *Clapp v. State*, 30 S.W. 214, 216–17 (Tenn. 1895)). The Tennessee Supreme Court has described the accomplice-corroboation rule as “[t]here must be some fact testified to, entirely independent of the accomplice’s testimony, which, taken by itself, leads to the inference, not only that a crime has been committed, but also that the defendant is implicated in it; and this independent corroborative testimony must also include some fact establishing the defendant’s identity.” *State v. Bigbee*, 885 S.W.2d 797, 803 (Tenn. 1994).

28. *State v. Bough*, 152 S.W.3d 453, 464 (Tenn. 2004) (citing *State v. Lewis*, 36 S.W.3d 88, 94 (Tenn. Crim. App. 2000)).

29. *Thomas*, 687 S.W.3d at 239–40.

30. *Id.* at 240.

31. *Id.*

32. *Id.*

a child witness who was considered an accomplice.³³ Since its inception, Tennessee courts used the doctrine consistently, with the most recent application occurring only nine years ago.³⁴ However, the use of the doctrine in other states has declined because they have either abandoned the rule or failed to adopt one in the first place.³⁵

In *Thomas*, the defense relied on the accomplice-corroboration rule in the appeal to argue lack of sufficient evidence. Ultimately, the Court applied the accomplice-corroboration rule to Ms. Turner's case, holding that the other evidence presented was insufficient to affirm her conviction.³⁶ However, the *Thomas* case will likely be one of the last instances of Tennessee courts applying the rule, as the Tennessee Supreme Court decided to abolish it entirely moving forward.

B. *Retroactive v. Prospective Application*

In abolishing the rule, the Court also had to decide whether to apply such a holding retroactively or prospectively, thus addressing the constitutionality of retroactive application. Prospective application involves the change of law becoming effective in the future.³⁷ Retroactive application involves a law or court decision that imposes liability on individuals for prior actions.³⁸ The State argued that the abolition of the accomplice-corroboration rule should be applied retroactively because "Tennessee is the last State in the country that requires corroboration as a common-law rule ... [a]nd this Court has retroactively applied similar sufficiency standards when it has abandoned a long-standing rule."³⁹

33. *Id.* at 242. The minor was considered an accomplice for the purposes of testifying in cases regarding sex crimes. *Id.*

34. *Id.* at 242.

35. *Id.* at 240–42.

36. *Id.* at 251.

37. *Prospective*, BLACK'S LAW DICTIONARY (12th ed. 2024).

38. *Retroactive*, BLACK'S LAW DICTIONARY (12th ed. 2024).

39. *Thomas*, 687 S.W.3d at 245.

However, retroactive application of law often raises many concerns over due process as it applies new changes to past conduct.⁴⁰ In fact, though they are not required to, many courts have opted to abide by the Ex Post Facto Clause holding that a previous act cannot be deemed illegal or increase a defendant's punishment after the act is completed.⁴¹ The origins of this clause stem from a desire to avoid the element of surprise in criminal cases.⁴² Often, in cases involving retroactive application, individuals have made commitments in reliance upon the law in force at the time.⁴³ Therefore, when such a law is changed abruptly, they are confronted with different outcomes that they had no opportunity to anticipate or avoid.⁴⁴

Although these concerns exist, the United States Supreme Court has previously held that retroactive application of the abandonment of a common law doctrine does not violate due process.⁴⁵ According to the Supreme Court, only the legislative body is subject to the Ex Post Facto Clause, not the judiciary.⁴⁶ However, the judiciary is still subject to other due process claims, such as those under the Fourteenth or Fifth Amendments for "unexpected and indefensible" changes.⁴⁷ Courts can avoid such violations as long as "fair warning" is given.⁴⁸ Yet, the United States Supreme Court left open the question of what constitutes "fair warning," and it seems that it interprets such a phrase to broadly allow courts to make substantial changes without violating due process.⁴⁹ Here, the Tennessee Supreme Court

40. See U.S. CONST. amend. XIV, § 1; U.S. CONST. amend. V, § 1; Richard S. Kay, *Retroactivity and Prospectivity of Judgments in American Law*, 62 AM. J. COMP. L. 37, 38 (2014).

41. "No state shall ... pass any ... ex post facto law." U.S. CONST. art. I, § 9, cl. 3. However, this clause has been held to only apply to criminal statutes, not civil. *Rogers v. Tennessee*, 532 U.S. 451, 456 (2001).

42. Edward S. Stinson, *Retroactive Application of Law—A Problem in Constitutional Law*, 38 MICH. L. REV. 30, 37–38 (1939).

43. *Id.* at 38.

44. *Id.*

45. *Rogers v. Tennessee*, 532 U.S. 451, 455–56 (2001).

46. *Id.* at 456.

47. *Id.* at 457.

48. *Id.*

49. *Id.* at 459.

ultimately decided to apply the change on a prospective basis out of concern for inherent unfairness given that Ms. Turner relied on its existence in deciding how to proceed in her trial.⁵⁰

III. ANALYSIS OF STATE V. THOMAS

A. *Majority Opinion*

The Majority first examined the sufficiency of the evidence, focusing on the viability of applying the accomplice-corroboration rule.⁵¹ In her appeal, Ms. Turner argued that because of Tennessee's common law rule, the evidence presented at trial was insufficient to convict her.⁵² The State disagreed, instead encouraging the court to abolish the rule to sustain a conviction.⁵³ This argument was critical for the court to address first as it directly impacted the sufficiency of the evidence issue presented.⁵⁴ In doing so, the court explicitly affirmed their power to evaluate common law doctrines stating, "[t]his is a proper consideration for our Court, as we do not 'hesitate to abolish obsolete common-law doctrines,' especially when 'it is the Court, rather than the Legislature, which has recognized and nurtured the action.'"⁵⁵

In their evaluation, the court began by noting that the accomplice-corroboration rule had been a part of Tennessee law for over a century.⁵⁶ After its inception, the rule remained staunchly intact being applied time and again to various cases.⁵⁷ The court noted that Tennessee's rule, like comparable rules in other jurisdictions, developed under the justification that accomplice testimony is unique and must be considered with a different degree of scrutiny than other

50. State v. Thomas, 687 S.W.3d 223, 246 (Tenn. 2024).

51. *Id.* at 239.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.* at 242.

57. *Id.*

testimony.⁵⁸ Because accomplices often have an incentive to shape their testimony in a way that could help them gain favor with the prosecution and police, proponents of the rule saw it as a necessary safeguard for criminal defendants.⁵⁹ However, despite this original thought process, many states now recognize that accomplice-corroboration rules unduly interfere with the jury's fact-finding role and the role of the jury to evaluate a witness' credibility.⁶⁰

The court then looked to other jurisdictions to gain a sense of how widely used the rule was.⁶¹ In so doing, the court discovered that an "overwhelming majority of jurisdictions," including thirty-three states, the District of Columbia, three federal territorial jurisdictions, twelve federal circuit courts of appeal, and the United States Supreme Court, had all either declined to adopt an accomplice-corroboration rule or have since repealed such a rule.⁶² Although, the Court also noted that sixteen jurisdictions continue to observe a similar rule.⁶³ While not bound by the decisions of other jurisdictions, the Court found them useful in their reevaluation of the doctrine.⁶⁴ Largely influential in the decision was a recent case decided by the Supreme Court of Maryland, which held, "[i]n criminal jury trials, the court should disturb as little as possible the jury's role of factfinder.... This deference to the jury restores the balance between the concerns underlying accomplice testimony and its potential benefits."⁶⁵

Relying on the reasoning of other jurisdictions, the Court abolished the accomplice-corroboration rule in its entirety stating that "[a]lthough the power of this Court to overrule former decisions is very sparingly exercised and only when

58. *Id.* at 240; Christine J. Saverda, *Accomplices in Federal Court: A Case for Increased Evidentiary Standards*, 100 Yale L.J. 785, 786 (1990).

59. *Thomas*, 687 S.W.3d at 240.

60. *Id.*; e.g., *State v. Johnson*, 179 A.3d 780, 786 (Conn. 2017); *State v. Hopkins*, 897 So. 2d 854, 892 (La. Ct. App. 2005); *Smith v. State*, 507 So. 2d 788, 790 (Fla. Dist. Ct. App. 1987); *People v. Williams*, 166 N.E.2d 568, 571 (Ill. 1960); *Vlahos v. State*, 75 P.3d 628, 636 (Wyo. 2003); *Mathis v. United States*, 513 A.2d 1344, 1350 (D.C. 1986).

61. *Id.*

62. *Id.*

63. *Id.* at 242.

64. *Id.*

65. *State v. Jones*, 216 A.3d 907, 920 (Md. 2019).

the reason is compelling, we will do so when ‘there is no valid basis to uphold the minority view.’”⁶⁶ In other words, this opinion explained that it was beyond the court’s role to uphold a rule that interfered with judicial fact-finding.⁶⁷ However, although the Court ultimately determined to abandon the rule, it distinguished *Thomas* from other cases overruling common law doctrines because they were obsolete.⁶⁸

Unlike in *Rogers* where the Tennessee Supreme Court struck down the year-and-a-day rule⁶⁹ because it was viewed as obsolete, the court differentiated *Thomas* recognizing that it continued to address concerns regarding the reliability of accomplice testimony as shown by its application in sixteen states.⁷⁰ Despite acknowledging its persisting use, the court nonetheless concluded that the rule had effectively become “obsolete” in a common law context and that the legislature was the better suited body to decide whether such a rule needs to be enacted in Tennessee.⁷¹ In the absence of such legislation, the court instead decided to rely upon jury instructions that caution jurors to be wary of inaccuracies in accomplice testimony.⁷²

Lastly, the majority contemplated whether to apply the abolition of the common law doctrine on a prospective or retroactive basis.⁷³ While the State argued for a retroactive application given that many jurisdictions had abandoned the rule, the majority acknowledged that such a change might be

66. *Thomas*, 687 S.W.3d at 244; *State v. Collier*, 411 S.W.3d 886, 899 (Tenn. 2013).

67. *Thomas*, 687 S.W.3d at 244.

68. *Id.* See *State v. Rogers*, 992 S.W.2d 393, 397 (Tenn. 1999).

69. At common law, the year and a day rule provided that no defendant could be convicted of murder unless the victim had died by the defendant’s act within a year and a day of the act. *Rogers*, 532 U.S. at 453.

70. *Thomas*, 687 S.W.3d at 244.

71. *Id.* at 245.

72. *Id.* at 248. “The prosecution has presented a witness who claims to have been a participant with the defendant in the crime charged. While you may convict upon this testimony alone, you should act upon it with great caution. Give it careful examination in the light of other evidence in the case. You are not to convict upon this testimony alone, unless you are convinced beyond a reasonable doubt that it is true.” *Id.* This temporary instruction is similar to the instruction used in the State of Colorado. *Id.*

73. *Id.* at 245.

warranted on a prospective-only basis.⁷⁴ Historically, when a change to a common law rule is “unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue,” changes to such rules in criminal cases need to be applied on a prospective-only basis to avoid violation of due process protections.⁷⁵ The court agreed, reasoning that just because a court can apply a change retroactively, does not necessarily mean that it should.⁷⁶

While acknowledging Justice Campbell’s argument that the court has the power to act retroactively, it declined to make such application an absolute rule because of concerns of fundamental fairness.⁷⁷ The majority strongly disagreed with Justice Campbell’s interpretation of case precedent, holding that while it has exercised retroactive application in the past, it would be inappropriate to do so here.⁷⁸ Additionally, the majority emphasized the importance of maintaining discretion in the means of application when changing common law doctrines.⁷⁹ As such, the court held that abrogating the accomplice-corroboration rule should be applied to all trials commencing after the date of the mandate, but the rule would apply to Ms. Turner’s case.⁸⁰

B. *Dissenting Opinions*

Both Justice Lee and Justice Campbell wrote dissenting opinions in this case, with very different takes on the Majority’s decision.⁸¹ Justice Lee supported the holding that Mr. Thomas’ conviction should be affirmed.⁸² In her view, the Majority correctly analyzed the sufficiency of the evidence

74. *Id.*

75. *Id.*; *Rogers v. Tennessee*, 532 U.S. 451, 462 (2001).

76. *See Thomas*, 687 S.W.3d at 245.

77. *Id.* at 246.

78. *Id.*

79. *Id.* at 248.

80. *Id.* at 245. In doing so, they held that the evidence presented in Ms. Turner’s case was insufficient to convict her. *Id.* at 252. Thus, they dismissed the first-degree murder charges brought against her. *Id.*

81. *See id.* at 256 (Lee, J., dissenting).

82. *Id.*

issue raised by concluding that the State's evidence was insufficient to sustain a conviction and that the charges must be dismissed.⁸³ However, while she agreed with the majority on Ms. Turner's account, her opinion on the abrogation of the accomplice-corroboration rule stands in stark contrast to all the other justices.⁸⁴ Citing a plethora of cases, she contended that the rule has served as a safeguard for criminal defendants against untrustworthy testimony since "the very beginning of the judicial history of this State,"⁸⁵ and continues to do so in current times.⁸⁶

The dissent then highlights the necessity of such a rule, as an accomplice is susceptible to promises of leniency or threats of punishment.⁸⁷ Thus, the main concern is that the accomplice would be tempted to commit perjury to gain a benefit, which was discussed in the majority's opinion.⁸⁸ Additionally, while she agrees that it is the jury's role to "resolve conflicts in the testimony" and "weigh the evidence," nothing prevents the Court from using common law to protect fairness by limiting the use of accomplice testimony.⁸⁹

In Justice Lee's view, the case at hand highlighted the concern about perjured testimony.⁹⁰ Here, Mr. Hawkins admitted that he lied to police and prosecutors to make himself look better, hoping to "get a break."⁹¹ This is exactly the type of behavior that the accomplice-corroboration rule seeks to eliminate and prevent. Therefore, Justice Lee believed that the fact that other jurisdictions do not maintain a similar rule should be irrelevant in the Court's determination and the rule should have been upheld.⁹²

83. *Id.*

84. *See id.* at 257.

85. *Id.*

86. *Id.* As recently as nine years ago, the Court applied the accomplice-corroboration rule. *Id.*

87. *Id.* at 258.

88. *Id.* Although the majority did not see this concern as grave enough to warrant the continuation of the rule. *Id.*

89. *Id.* at 257.

90. *Id.* at 258.

91. *Id.*

92. *Id.* ("The purpose of the rule—to safeguard against untrustworthy testimony—remains the same. Tennessee does not always follow the lead of other

Although, she did agree that the Court properly exercised its discretion by applying the abrogation of the doctrine prospectively given the issue of fundamental fairness.⁹³

Justice Campbell took issue with different aspects of the majority's opinion, instead focusing on the decision to apply the holding prospectively rather than retroactively.⁹⁴ While she agrees with the majority that the accomplice-corroboration doctrine should be abrogated, she wrote separately on this issue to highlight the original departure from English law in the adoption of the rule to show another reason why it should be abandoned.⁹⁵

More intriguing though, is her dissent on the proper application of the abolition. Justice Campbell argues that the holding should be applied retroactively for three reasons. First, in her view retroactivity has long been a hallmark of judicial decision making.⁹⁶ She highlights the traditional role that courts play in deciding what the law is rather than making the law.⁹⁷ Therefore, in her view, the courts have always had a retroactive role, while the legislature must act prospectively.⁹⁸ Second, according to Justice Campbell, Tennessee precedent has consistently applied overruling decisions in criminal cases retroactively.⁹⁹ Interestingly, both the majority and Justice Campbell evaluate the same cases in their analysis, though they come to vastly different conclusions regarding their holdings.¹⁰⁰ Third, as a result of

states. For instance, Tennessee is the only state in the country with an attorney general appointed by the Supreme Court.”).

93. *Id.* at 259.

94. *Id.* (Campbell, J., dissenting).

95. *Id.* She highlights that the adoption of the accomplice-corroboration rule was a departure from the common law from the beginning, which for her was far more alarming than the reasoning the Majority gave for abandoning it. *Id.* at 260. While acknowledging that the rule has a long history in Tennessee, she states that the adoption was wrong as an initial matter. *Id.*

96. *Id.* at 261.

97. *Id.*

98. *Id.*

99. *Id.*

100. *See id.* at 265. Justice Campbell argued that cases such as *State v. Collier*, *State v. Dorantes*, and *State v. Rogers* showed the longstanding history of retroactive application in criminal cases. *Id.* at 264. The Majority disagreed, stating that while these holdings used retroactive application, they were vastly different than the case

the majority's decision on prospective overruling, the court gives too much discretion and as a result poses a threat to stare decisis.¹⁰¹

IV. LEGAL AND POLICY IMPLICATIONS

The holding in *Thomas* raises an important policy question that has yet to be addressed by the Court: if the Tennessee Supreme Court can eliminate a common law doctrine that has been in place for over a century, is there any common law that they could not eliminate? More importantly, is there any safeguard for these doctrines? While the Tennessee Supreme Court acknowledges that its' power to overrule former decisions is used sparingly and only in very compelling cases,¹⁰² it seems that the court itself is the only protection for common law. Despite being treated as absolute law, common law is developed and monitored by judges through court decisions. However, although continuously looked to for guidance, common law is not protected by any type of repeal process, such as that for enacted statutes. While the legislature can enact statutes to codify or modify common law, the Tennessee Supreme Court remains the ultimate source for making or abolishing such doctrines.¹⁰³

This is an alarming realization for many, as common law is often relied on in judicial determinations, substantially impacting the outcome of cases. If the Tennessee Supreme Court essentially functions as a gatekeeper of common law, abolishing or creating rules as it sees fit, what is to stop it from abolishing other doctrines, or perhaps all common law? It is evident after *Thomas* that the answer is simply nothing.

at hand. *Id.* at 246. Instead of dealing with slight changes to rules, the holding in this case strikes a law completely, which can have harsh implications on the outcome of the case. *Id.* at 245. Therefore, in the Majority's view such retroactive application is inappropriate in a case such as *Thomas*. *Id.* at 246.

101. *Id.* at 261.

102. See *supra* Part III.A.

103. *Common Law vs. Statutory Law—What's the Difference?*, TODD COOLIDGE (Sep. 28, 2024), <https://coolidgelawfirmaz.com/common-law-v-statutory-law-criminal-defense-attorney/>.

It seems that the Tennessee Supreme Court holds the power to abolish any law, even those that have existed for over a century, in a single opinion.¹⁰⁴ If the reasoning of other courts is persuasive, the Tennessee Supreme Court may simply decide that it no longer see the function of a rule that has a deep-rooted history in Tennessee law. Therefore, the outcome of many cases and the fate of defendants depending on common law doctrines, rests solely in the hands of the five justices.

The ease of eliminating laws is also concerning from a due process standpoint. *Thomas* brought to light once more the constitutionality and fairness of retroactive application of new law. Although the court in *Thomas* decided to apply the holding prospectively, it is clear from *Rogers* that the Court did not need to do so. However, if courts can change widely known common law doctrines simply because it deems it obsolete, how are individuals supposed to be aware of the applicable laws? While courts have historically been thought to have retroactive application, this has largely been in relation to interpretation of laws,¹⁰⁵ not the complete abandonment of long-standing doctrines. It seems unreasonable to allow individuals to be prosecuted for or charged with crimes different from existing laws at the time of their actions.

Under this holding, there is simply no way for an individual to anticipate the repercussions of their actions. For example, Tennessee has long recognized a common law defense known as “mutual combat” in killings.¹⁰⁶ It is defined as a situation where both parties willingly engage in a fight, often arising from a sudden quarrel, and can reduce the charge from second-degree murder to voluntary manslaughter.¹⁰⁷ So, if an individual kills another in a mutual fight, the court could simply decide that the doctrine

104. See *State v. Jones*, 450 S.W.3d 866, 888 (Tenn. 2014); see also *State v. Hawkins*, 519 S.W.3d 1, 58–59 (Tenn. 2017) (affirming the intermediate appellate court’s application of the accomplice-corroboration rule).

105. *Rogers v. Tennessee*, 532 U.S. 451, 457 (2001).

106. *State v. Williams*, 38 S.W.3d 532, 536 (Tenn. 2001).

107. *Id.* at 537.

is obsolete, barring the defendant from invoking this well-known defense. The individual would then face punishment for second-degree murder. Is this a fair application? According to the Tennessee Supreme Court, apparently so. Therefore, this decision places at risk the liberty of individuals whose conduct may not have been criminal but for the Tennessee Supreme Court's change of common law rules.

Aside from the broader policy and constitutional issues that *Thomas* raises, the abolition of the accomplice-corroboration rule itself will also have large legal implications on future trials and convictions. The move made by the Tennessee Supreme Court has alarmed defense attorneys and other advocates as it is an unnecessary weakening of the protections of individuals facing serious criminal charges.¹⁰⁸ As noted *supra*,¹⁰⁹ accomplices have varying motives for testifying, including exonerating themselves or shifting the blame.¹¹⁰ They are particularly susceptible to promises of leniency or threats of punishment.¹¹¹ As such, it seems a rule that aids in mitigating the possible adverse effects of such testimony is needed in implementing a fair judicial system and in criminal prosecution. Failing to have such a rule will have large impacts on Tennesseans and could make it easier for innocent people to get convicted.¹¹² The rate of wrongful convictions could go up as a result of the decision as juries are likely to believe individuals who have "insider" knowledge of the crime.¹¹³ Despite this alarming reality, the court left the issue to the legislature to enact a law if they

108. Steven Hale, *Tennessee Supreme Court Abolishes Century-Old 'Safeguard' for Criminal Defendants*, NASHVILLE BANNER (Mar. 22, 2024), <https://nashvillebanner.com/2024/03/22/tennessee-supreme-court-abolishesaccomplice-rule/#:~:text=Known%20as%20the%20accomplice%20corroboration,for%20a%20conviction%20to%20stand>.

109. See Part III.A.

110. *State v. Thomas*, 687 S.W.3d 223, 258 (Tenn. 2024).

111. *Id.*

112. Hale, *supra* note 108.

113. *Id.*

deem it necessary.¹¹⁴ Yet, the legislature has thus far failed to take any action in regard to this holding.

For now, the jury has the responsibility of protecting against unreliable testimony.¹¹⁵ Although the jury plays the role of factfinder in trials, it is unclear why the court removed the judiciary's role in protecting defendants. This is concerning for several reasons, largely because juries are known to be unreliable and may reach inaccurate decisions based on various factors.¹¹⁶ Additionally, jury instructions are ineffective in many cases.¹¹⁷

Several psychological studies analyzing the effectiveness of instructions found that there were substantial failures in the instruction process.¹¹⁸ Most commonly, issues arose with language problems and omitting mention of issues the jury should not consider.¹¹⁹ Furthermore, in ninety-two percent of cases, at least one instruction was read aloud among the jurors.¹²⁰ However, although jurors discussed instructions a lot, they were inaccurate in comprehending them seventeen percent of the time.¹²¹ Therefore, even if the court mandates that jury instructions be provided in cases involving accomplice testimony, they may not be accurate or effective.

It seems evident from this analysis that it is vital for the legislature to act swiftly to resolve such uncertainty and perhaps unfairness in criminal law. As the court has denied safeguarding defendants from the potential harm by abolishing the accomplice-corroboration rule, individuals must now look to fellow citizens for protection. Unfortunately, only time will tell how this decision will impact important issues such as wrongful convictions. As a

114. *Thomas*, 687 S.W.3d at 247.

115. *Id.* at 248.

116. Lee J. Curley et al., *Cognitive and Human Factors in Legal Layperson Decision making: Sources of Bias in Juror Decision Making*, 62(3) *Med. Sci. & L.* 206, 206 (2022).

117. *New Study Reveals How Juries Think and Behave* (Sep. 10, 2017), <https://www.americanbar.org/news/abanews/publications/youraba/2017/september-2017/new-study-reveals-how-juries-think-and-behave/>.

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

result, Tennessee courts and juries should proceed with caution in evaluating and allowing such testimony out of fear that doing so will have unintended consequences on innocent individuals.

CONCLUSION

The *Thomas* decision ultimately marks a shift in the power of the Tennessee Supreme Court that is sure to affect many Tennesseans. While it aligns Tennessee with a majority of jurisdictions, the abolition of the accomplice-corroboration rule may undermine the protections that many have relied upon to ensure fair trials. The decision signals a new era in criminal law where the jury's role is increasingly emphasized, but it also underscores the need for vigilant legislative action to safeguard defendants' rights. As the legal community continues to assess the fallout from *Thomas*, it remains to be seen whether this departure from precedent will have unintended consequences. Thus, the legal community must grapple with the uncertainty and potential risks of wrongful convictions in future cases.