PUBLISHED OPINIONS
KENTUCKY COURT OF APPEALS
DECEMBER 1, 2025 to DECEMBER 31, 2025

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I. CRIMINAL LAW

A. COMMONWEALTH OF KENTUCKY v. DARRELL GENE EVANS (Ky. App. 2025).

2024-CA-0037-MR 12/05/2025 2025 WL 3492521

Opinion Reversing and Remanding by KAREM, JUDGE; TAYLOR, J. (CONCURS) AND MCNEILL, J. (DISSENTS AND FILES SEPARATE OPINION)

An adult son was killed at the hands of his father inside father's home. The only living witness of the events that transpired inside the home is father.

It is undisputed that father and son began a verbal altercation outside in the yard. It is also undisputed that father went inside the home and son followed. Once inside, father shot and killed son.

Father was arrested and indicted for the murder of his son. Father subsequently filed a motion seeking immunity from prosecution pursuant to KRS 503.085 and 503.055, commonly known as the "castle doctrine," which precludes criminal prosecution including arrest, custodial detention and charging when one is defending one's home. The trial court granted the motion and the case was dismissed. The Commonwealth appealed.

The Court reversed the trial court finding that the trial court erred by prematurely granting immunity and not allowing a jury to decide on the facts of the case. Additionally, the Court found the son had not made unlawful entry into the home thereby eliminating the application of the "castle doctrine."

The dissent would have affirmed the finding of immunity believing that the circuit court properly considered the totality of the circumstances and had a substantial basis for its findings.

B. MARK JOSHUA COLLINS v. COMMONWEALTH OF KENTUCKY (Ky. App. 2025).

2024-CA-1058-MR 12/12/2025 2025 WL 3558524

****Discretionary Review Granted 9/16/2026****

Opinion Affirming by ECKERLE, JUDGE; A. JONES, J. (CONCURS) AND TAYLOR, J. (CONCURS IN RESULT ONLY)

The Court held that a restitution order issued more than ten days after sentencing was not best practices, but the defendant was not entitled to relief because he had waived the Trial Court's loss of particular-case jurisdiction by repeatedly waiving the issue, agreeing to delay the restitution hearing, and seeking multiple continuances of his own. With regard to the many issues the defendant failed to preserve by raising them before the Trial Court and yet asserting them on appeal, the Court held that the lack of details in a restitution order regarding the frequency and methods of restitution payments was a technical defect, but the defect did not cause the order to be an illegal sentence and was not a palpable error. Finally, the Court concluded that where the defendant did not claim an alleged error below, the Trial Court's failure to make findings regarding the defendant's financial status in a restitution order did not constitute palpable error.

C. COMMONWEALTH OF KENTUCKY v. CORNELL DENMARK THOMAS, II (Ky. App. 2025). ****Discretionary Review Granted 9/16/2026****

2024-CA-0023-MR 12/19/2025 2025 WL 3684011

Opinion Vacating and Remanding with Instructions by ACREE, JUDGE; THOMPSON, C. J. (CONCURS) AND A. JONES, J. (CONCURS)

Appellee ignored a red light, entered an intersection at 95 miles per hour, collided with a second vehicle, and killed its driver. He was indicted on one count of wanton murder. Two-and-one-half years after the collision, Appellee gave notice pursuant to RCr 8.07(2) of his intention to present evidence of his compromised mental health at the time of the collision. The Commonwealth hired an expert who examined Appellee and reported a "Psychiatric Diagnosis" of "Probable Substance-Induced Psychosis, in Remission." Citing the report, Appellee filed a motion to dismiss the indictment arguing the Commonwealth could not prove *mens rea* as a necessary element of the crime.

The trial court granted Appellee's motion but went further, ruling *sua sponte* that the Commonwealth engaged in prosecutorial misconduct before the grand jury, and then ruling *sua sponte* that the Commonwealth engaged in selective prosecution. The Court of Appeals found none of the three grounds for dismissing the indictment was supported by law.

Citing *McCue v. Commonwealth*, 652 S.W.3d 218 (Ky. App. 2022), the Court held the motion was improper to begin with because it required the trial court to engage in substantive factfinding regarding the issue of guilt. The trial court erroneously claimed RCr 8.16 authorized granting the motion, ignoring the distinction between preliminary factfinding and substantive factfinding, which the Court of Appeals explained. In granting Appellee's motion, the trial court commandeered the criminal justice system by interloping among the grand jurors who indicted, disapproving of the evidence upon

which they indicted Appellee, and by usurping the petit jury's role as factfinder. The trial court violated the separation-of-powers doctrine by unilaterally rejecting the work of the constitutionally independent grand jury. Ky. Const. § 248. The trial court further erred by shifting the burden of proving sanity to the Commonwealth even before going to trial. The trial court misrepresented the holdings of several relevant published opinions (short cited in the opinion as *Craft*, *Star*, *Armstrong*, *Smith*, and *Correa-Gomez*). The trial court failed to provide the "safeguard for society" required by KRS 504.030 of "conduct[ing] an involuntary hospitalization proceeding under KRS Chapter 202A or 202B" for any defendant found not guilty by reason of insanity such as Appellee.

The trial court demonstrated a fundamental misconception of prosecutorial misconduct. The trial court violated due process prior to entering an order finding prosecutorial misconduct by giving no notice to the Commonwealth that it was covertly evaluating the prosecutor's conduct. The trial court abused its discretion by ignoring the party-presentation doctrine. The trial court disregarded 170 years of jurisprudence demonstrating how RCr 5.10 limits a trial judge's authority vis-à-vis grand jury proceedings. The trial court abused and exceeded its limited supervisory powers by rejecting the grand jury's independent decision to indict and by encroaching upon the prosecutor's duty to carry out a core Executive Branch function to prosecute that indictment.

The Court of Appeals closely examined *Commonwealth v. Baker*, 11 S.W.3d 585 (Ky. App. 2000), harmonizing it with Kentucky and federal jurisprudence regarding the authority of courts to assess grand jury proceedings for prosecutorial misconduct. The Court also closely examined the two-step procedure underlying *Bank of Nova Scotia v. United States*, 487 U.S. 250 (1988) to demonstrate how it was followed in *Baker*, but not followed by the trial court in this case. Additionally, the trial court abused its discretion by invoking supervisory powers to circumvent the harmless-error inquiry for prosecutorial misconduct, just as it had occurred in *Bank of Nova Scotia*.

In reviewing the trial court's dismissal on selective prosecution grounds, the Court of Appeals engaged in the Kentucky appellate courts' first substantive analysis of *United States v. Armstrong*, 517 U.S. 456 (1996), and applied it in this case. *Armstrong* made clear that selective prosecution claims stood independently from the merits of the criminal prosecution. Like the procedure for evaluating prosecutorial misconduct in *Bank of Nova Scotia*, *Armstrong* described a two-step process for evaluating selective prosecution claims—(1) presentation of "some evidence" that "similarly situated individuals of a different race were not prosecuted[,]" thereby allowing discovery of the prosecutor's work product; and then (2) clear and convincing proof that overcomes the presumption of regularity, *i.e.*, proof demonstrating a prosecutorial policy intended to violate "the equal protection component of the Due Process Clause of the Fifth Amendment[.]" *Id.* at 464.

Finally, applying *Marchese v. Aebersold*, 530 S.W.3d 441 (Ky. 2017), the Court of Appeals ruled the trial court's receipt and own presentation of extrajudicial evidence, including the trial judge's own testimony, required the trial judge's recusal.

For all these reasons, the Court vacated the order dismissing the indictment, reinstated the indictment, and remanded for further proceedings in keeping with the opinion.

II. CIVIL LAW

A. DAVID DOUGLAS PETERSON, ET AL. v. JOSEPH ROBERT PETERSON, ET AL. (Ky. App. 2025).

2024-CA-0560-MR 12/05/2025 2025 WL 3492239

Opinion Reversing and Remanding by ECKERLE, JUDGE; CALDWELL, J. (CONCURS) AND MCNEILL, J. (DISSENTS AND FILES SEPARATE OPINION)

This appeal arose from a dispute over ownership of a family's half-century old family farm. To prevent the sale, division, or encumbrance of the property, the parents had nominally deeded it to their five children, who remained subject to transferring bare title back to them at any time. Upon the death of the father, the widow directed that the property pass to one brother, who had always lived on the farm and cared for it, in exchange for his provision of $50,000 to each of his four siblings. The Appellee refused, sought the sale of the farm against and in disregard of the express wishes of both of his parents; his own promises and understanding; the history of the workings of the property; and the agreements, desires, and actions of all four of his siblings. The Trial Court ruled in his favor, denying the sought-after constructive trust over the entire farm. The Court of Appeals found that Kentucky law provides for a constructive trust under these circumstances to effectuate the will of the grantor and nominal owners and of all the other family members that the property should not be sold or divided. The Court held that the Circuit Court abused its discretion in referring the matter to a Master Commissioner for the sale and division of the family farm. Therefore, the Court reversed and remanded this matter back to the Circuit Court for the imposition of a constructive trust in favor of the Appellants. The dissent would have affirmed the sale.

B. TERRI BRADSHAW v. CAPITAL COMMUNITY ECONOMIC/INDUSTRIAL DEVELOPMENT AUTHORITY D/B/A KENTUCKY CAPITAL DEVELOPMENT CORPORATION (Ky. App. 2025).

2024-CA-1259-MR 12/05/2025 2025 WL 3492357

Opinion Affirming by A. JONES, JUDGE; EASTON, J. (CONCURS) AND LAMBERT, J. (CONCURS)

Terri Bradshaw appeals the Franklin Circuit Court's summary dismissal of claims asserted against her former employer, Kentucky Capital Development Corporation ("KCDC") for breach of contract and violations of the Open Meetings Act and the Whistleblower Act.

As to Bradshaw's breach of contract claim for failing to hire an executive assistant and for offering an insufficient amount to compensate for vacation and comp time, we held that Bradshaw did not plead that she satisfied any conditions precedent in her contract with KCDC. Additionally, she was capped at 50 hours per fiscal year of comp time and being able to carry over 277.5 hours of annual leave per year so she could never have warranted a judgment in her favor.

As to Bradshaw's argument that there was a violation of the Open Meetings Law and the Open Meetings Act, the circuit court appropriately dismissed the claim as a matter of law. Violations of the OMA do not render official actions void *ab initio* (meaning it would not have rendered the non-renewal of her contract void). Rendering a judgment *voidable* is but one remedy. Additionally, there was no error in holding a straw vote in a closed meeting but reaching the final action in open session. Also, even if the Board's description of the need for a closed-door meeting was inadequate, Bradshaw did not explain how it amounted to willful misconduct.

For Bradshaw's Whistleblower claim, the circuit court determined, and we agreed, that Bradshaw was not an employee and KCDC was not an employer within the meaning of KRS 61.101. KCDC is not entitled to pure sovereign immunity, as it is not a state or county government, and it does not perform an integral function of government. As the Kentucky Supreme Court has determined, local industrial development authorities created under KRS 154.50-301 et seq. are not entitled to governmental immunity. *Kea-Ham Contracting, Inc. v. Floyd County Dev. Auth.*, 37 S.W.3d 703 (Ky. 2001). We affirmed.

C. TIMOTHY C. GLEASON v. MAGNA WAVE, INC. (Ky. App. 2025).

2024-CA-1300-MR 12/12/2025 2025 WL 3558467

Opinion Reversing and Remanding by KAREM, JUDGE; COMBS, J. (CONCURS) AND A. JONES, J. (CONCURS)

Employee filed a complaint against his employer for wrongful termination. The trial court granted the employer's motion to dismiss, finding that Kentucky is an at-will employment state, and the firing of the employee did not violate public policy.

The employee's job required him to make calls to customers throughout the country. These calls were recorded without the knowledge or consent of the customer. Kentucky law allows the recording of conversations with the consent of only one party. However, employee alleged other states to which he was calling required the consent of both

parties for the recording to be legal. He refused to make the phone calls without obtaining that consent, and employer fired him.

The Court reversed the trial court. The Court found that it is a violation of public policy to fire someone for refusing to break the law, even if that law is one of another state.

D. BRAYDEN GRIMSLEY v. PHILLIP BURNETT, JR., IN HIS INDIVIDUAL CAPACITY AND OFFICIAL CAPACITY AS COMMISSIONER OF THE KENTUCKY STATE POLICE, ET AL. (Ky. App. 2025).

2023-CA-1149-MR 12/19/2025 2025 WL 3683138

Opinion Affirming by ACREE, JUDGE; EASTON, J. (CONCURS) AND MCNEILL, J. (CONCURS)

Brayden Grimsley alleged Kentucky State Police officer Rickey Elmore subjected him to excessive force during a traffic stop. He did. After KSP investigations began, Elmore resigned from KSP. Grimsley brought a 42 U.S.C. § 1984 action against Elmore who settled the federal suit. Elmore essentially confessed judgment and settled for $100,000. However, because he could only pay $10,000, Grimsley received only that much cash. The settlement agreement, however, memorialized Elmore's obligation to pay $90,000 more which he did not have. To make up the difference, Elmore assigned by quitclaim a "right" Grimsley believed Elmore had pursuant to KRS 16.185 to indemnification by the Commonwealth for his conduct while still with the KSP. Grimsley demanded that the KSP Commissioner acknowledge such statutory "right" exists to indemnify Elmore, and now Grimsley by assignment. The Commissioner refused. Grimsley sued to claim that assigned "right." The circuit court dismissed the claim for failure to state a claim. The Court of Appeals affirmed. KRS 16.185 does not establish a right of indemnification; it is an appropriations statute by which the legislature conferred upon an executive branch officer (the KSP Commissioner) the delegable power to determine whether a State Trooper conferred a benefit upon the Commonwealth by acting "within the scope and course of employment . . . during the performance of duty and . . . in the good faith belief that the act or omission was lawful and proper." The Court concluded Grimsley appealed the Commissioner's administrative decision as a constitutional right, citing *Louisville Historical League, Inc. v. Louisville/Jefferson Cnty. Metro Government*, 709 S.W.3d 213 (Ky. 2025). The Court rejected Grimsley's as-applied challenge to the statute under the Kentucky Constitution, unmoved by Grimsley's argument that the Police Commissioner's disinclination to find Elmore acted in good faith represented an arbitrary wield of power.

E. MICHAEL O'CONNELL v. CHRISTOPHER THIENEMAN (Ky. App. 2025).

2024-CA-0300-MR 12/19/2025 2025 WL 3683236

Opinion Reversing by MCNEILL, JUDGE; CALDWELL, J. (CONCURS) AND TAYLOR, J. (CONCURS)

In *Michael O'Connell v. Christopher Thieneman 2024-CA-0300*, the Kentucky Court of Appeals addressed a defamation claim arising from a speech given by Michael O'Connell, the Jefferson County Attorney, during a Law Day event in 2018. O'Connell referred to Thieneman as a "sexual predator" and a "domestic violence perpetrator," which resulted in Thieneman filing a defamation suit. O'Connell sought dismissal based on immunity. The Jefferson Circuit Court denied his motion, which was affirmed by the Court of Appeals. On remand, O'Connell filed a motion for summary judgment, which was denied. The Court of Appeals reversed the circuit court's decision, concluding that O'Connell's remarks, although inaccurate, were not made with malice or bad faith because the Court was presented with nothing that would necessitate a jury to determine whether O'Connell acted in bad faith, thus entitling him to qualified immunity. The Court found that O'Connell corrected his mischaracterization during his speech, and there was no triable fact regarding malice. Consequently, the order of the Jefferson Circuit Court was reversed.

III. ADMINISTRATIVE LAW

A. PROFESSIONAL LEARNING INSTITUTE, LLC v. COMMONWEALTH OF KENTUCKY, KENTUCKY REAL ESTATE AUTHORITY, ET AL. (Ky. App. 2025).

2024-CA-0938-MR 12/05/2025 2025 WL 3492135

Opinion Vacating by MOYNAHAN, JUDGE; THOMPSON, C. J. (CONCURS) AND ACREE, J. (CONCURS)

This appeal presents an issue of first impression about whether the Kentucky Board of Home Inspectors ("KBHI") and the Kentucky Real Estate Authority ("KREA") have statutory authority to promulgate and enforce regulations allowing KBHI to authorize investigations, complaints, and disciplinary actions against parties other than licensees. In this appeal, the underlying dispute arose from a series of education courses tendered by Professional Learning Institute ("PLI"), an education provider, to KBHI that the former was alleged to have conduced without KBHI approval. A KBHI investigation resulted in discipline against PLI that was challenged on appeal.

Finding that the Hearing Officer's Final Order and the Jefferson County Circuit Court improperly extended the scope of KBHI's statutory authority to investigate and discipline education providers, we vacate the Jefferson County Circuit Court's Order of Dismissal, set aside the Hearing Officer's Final Order, and dismiss the disciplinary action taken by KBHI and KREA against PLI. We affirmatively rule that the home inspector statutes only authorize investigations, complaints, and disciplinary actions against licensees.