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

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I. CONSTITUTIONAL LAW

A. ALBERT MARSHALL v. COMMONWEALTH OF KENTUCKY (Ky. App. 2025).

2023-CA-1440-DG 3/14/2025 2025 WL 807688

Opinion Affirming by CETRULO, JUDGE; THOMPSON, C.J. (CONCURS) AND COMBS, J. (CONCURS)

We granted discretionary review from a Jefferson Circuit Court order addressing the constitutionality of Louisville Metro Code of Ordinances ("LMCO") §§ 135.03 & 135.99. Albert Marshall was charged with violation of the ordinance which bars the discharge of firearms within 300 feet of a public roadway or alley. LMCO § 135.99 makes a violation of § 135.03 a misdemeanor punishable by a fine of up to $500 and/or up to 12 months of incarceration. The district court had held that the ordinances violated Kentucky's separation of powers doctrine to the extent that they authorized incarceration, which the district court believed to be a non-delegable legislative power. The circuit court disagreed and reversed and remanded the case to the district court to continue Marshall's prosecution. We affirmed the circuit court.

We held that the ordinances are constitutional because the legislature properly delegated its power to designate misdemeanor crimes. Kentucky Revised Statute ("KRS") 500.020 reserves the power to create crimes to the legislature, with exceptions. KRS 83A.065 allows cities to "make the violation of any of its ordinances a misdemeanor or a violation by the express terms of the ordinance." KRS 83A.065 fits within the exception enunciated in KRS 500.020(1). The legislature is aware of existing Kentucky laws when it enacts new laws, and we read multiple statutes in harmony to give each statute the legislature's intended effect. See *Maysey v. Express Servs., Inc*., 620 S.W.3d 63, 71 (Ky. 2021) (citations omitted); see also *Kentucky Dep't of Corrs. v. Dixon*, 572 S.W.3d 46, 49 (Ky. 2019) (citations omitted). Further, KRS 67C.101(2)(a) gives consolidated local governments, like Louisville Metro, the powers retained by other Kentucky cities, such as the powers in KRS 83A.065. Finally, our Constitution permits the legislature to delegate legislative power to municipalities where, as here, the requisite safeguards were instilled. Thus, we held that Louisville Metro lawfully enacted LMCO §§ 135.03 and 135.99, and the ordinances are enforceable.

B. *COMMONWEALTH OF KENTUCKY, EX REL. ATTORNEY GENERAL RUSSELL COLEMAN v. KENTUCKY EDUCATION ASSOCIATION, ET. AL.*

AND

DOUG BECHANAN, IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF NICHOLAS COUNTY SCHOOLS v. KENTUCKY EDUCATION ASSOCIATION, ET. AL.

AND

COMMONWEALTH OF KENTUCKY, EX REL. ATTORNEY GENERAL RUSSELL COLEMAN v. SAULETTE DAVIS, INDIVIDUALLY AND AS REPRESENTATIVE RESPECTFULLY OF THE AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES LOCAL 2629, AFL-CIO, ET. AL.

2023-CA-1025-MR 2023-CA-1194-MR 2024-CA-0452-MR	3/7/2025	2025 WL 728078

Opinion Affirming in Part, Vacating in Part, and Remanding on Appeal Nos. 2023-CA-1025-MR AND 2024-CA-0452-MR AND Reversing on Cross-Appeal No. 2023-CA-1194-MR by EASTON, JUDGE; CETRULO, J. (CONCURS) AND COMBS, J. (CONCURS)

DISCRETIONARY REVIEW GRANTED 09/10/2025

These appeals stem from final orders of Franklin Circuit Court and Jefferson Circuit Court, which both determined that an exemption within 2023 Senate Bill 7 ("SB 7") violates equal protection guarantees of the Kentucky Constitution. Both courts permanently enjoined SB 7 in its entirety without specification of who and what was enjoined. Cross-Appellant, Doug Bechanan, in official capacity as Superintendent of Nicholas County Schools ("Superintendent") filed a cross-appeal challenging the Franklin Circuit Court's determination that venue for the Superintendent was proper in Franklin County.

House Bill 364 ("HB 364"), as first introduced, would prohibit all public employers from deducting from an employee's wages membership dues for any "labor organization." SB 7 would prohibit all public employers from deducting amounts from an employee's wages that were to be spent on "political activities" through labor organizations but allowed public employers to deduct membership dues from employees' wages. After passing the Senate, House Committee Substitute 1 combined various portions of SB 7 and HB 364. This amended version contained an added exemption for the benefit of some labor organizations and is the primary subject of these appeals.

Three questions were answered by the Appellate Court: 1) Was the venue proper for the Superintendent in Franklin County? 2) Does the exemption within SB 7 violate principles of equal protection of the law under Section 1, 2, or 3 of the Kentucky Constitution? 3) If so, was the injunction issued overly broad because those enjoined and the acts enjoined were not specified?

First, venue was improper as to the Superintendent as he neither lives in nor is employed in Franklin County. This case involved a constitutional challenge to a statute, and the Legislature has provided specific rules for the applicable venue per KRS 452.005. Superintendents are officers of the school districts that employ them, and they are not employed by the "state" so as to make them state officers as intended by KRS 452.005(1)(c)1. While the Superintendent is a public servant, as that term is generally understood, he is not an employee within the executive branch of state government which the Legislature intended to include under KRS 452.005(1)(c) and as extended by KRS 11A.010(9)(h).

Second, we agree with the circuit courts' ultimate conclusion that SB 7's distinction between those labor organizations primarily representing employees in protective vocations and all other labor organizations representing other public employees lacked a rational basis. The legislative regulation at issue here, payroll deduction policies, is a matter of social or economic policy. It does not involve any suspect class requiring strict scrutiny or a similar heightened level of review. Rather, the question is whether there is any rational basis for the different treatment of individuals. The exemption in SB 7 was supposed to give identified groups of employees the right to use payroll deductions, but it does not do so. It favors some labor organizations and disfavors others for no rational reason when we consider the subject of the law relates to the right of individual employees to use payroll deductions. Thus, the exemption contained in KRS 336.180(10) (Section 1(10) of SB 7) violates the equal protection guarantee embodied in Sections 1, 2, and 3 of the Kentucky Constitution.

Third, the injunctions are overly broad and vague. The circuit courts enjoined SB 7 without specifying who was enjoined. Injunctions are directed to individuals not laws. Although the Commonwealth is a party to these cases, this does not excuse some specification of who is enjoined. *Commonwealth v. Mountain Truckers Ass'n, Inc.*, 683 S.W.2d 260, 263 (Ky. App. 1984). Because of our conclusions about the constitutionality of SB, it is appropriate to remand these cases to the circuit courts to modify the terms of the injunctions entered consistent with *Mountain Truckers, supra.*

In conclusion, we reversed the Franklin Circuit Court's determination of venue for the Superintendent, as we found venue to be improper. We affirmed the conclusions of the Franklin and Jefferson Circuit Courts that the exemption for certain labor organizations within SB 7 is an unconstitutional violation of equal protection of the law. Finally, we remanded and vacated both Case No. 2023-CA-1025 and Case No. 2024-CA-0462 only

to direct modification of the injunctions to specify the application of the injunctions to those parties called upon to enforce the law and the actions enjoined.

II. CRIMINAL LAW

A. JAY PETERSON v. COMMONWEALTH OF KENTUCKY (Ky. App. 2025).

2023-CA-0655-MR 3/14/2025 2025 WL 807449

Opinion Affirming by L. JONES, JUDGE; ECKERLE, J. (CONCURS) AND KAREM, J. (CONCURS)

Peterson brought this appeal from a May 31, 2023, Judgment and Sentence and a June 20, 2023, Restitution order convicting him of theft by failure to make required disposition of property, $10,000 or more, sentencing him to five years imprisonment and court costs, ordering him to pay restitution of $10,000 within six months of his release from incarceration. The Court of Appeals affirmed on all issues.

The charge against Peterson stemmed from a $10,000 check that he accepted as a deposit for a roofing job for Phillip and Sheila Burden (Burdens). Peterson never performed the work or refunded the deposit. On June 7, 2022, Peterson was indicted and later found guilty by a jury trial in April 2023.

First, Peterson argued the trial court erred by denying his motion for directed verdict of acquittal as the Commonwealth failed to present sufficient evidence that Peterson did not make the required disposition of the Burdens' $10,000 per KRS 514.070, asserting he used the deposit to purchase materials for the roof repair. However, this Court concluded the trial court properly denied Peterson's motion for directed verdict as there was certainly sufficient evidence presented that Peterson obtained property ($10,000 check), upon an agreement to a known legal obligation to make a specified disposition (to purchase materials for the Burdens' roof), and that Peterson dealt with the property as his own (by depositing the Burdens' $10,000 check into a checking account over which Peterson had control); and Peterson failed to make the required disposition (by failing to provide materials for the repair of the Burdens' roof or return of their deposit). *See* KRS 514.070(1). Thus, a reasonable juror could believe beyond a reasonable doubt that Peterson was guilty.

Second, Peterson argued the trial court erred by not permitting him to introduce additional receipts showing the purchase of roofing materials. Peterson produced said receipts the morning of trial and asserted they "might" have been for the purchase of the Burdens' roofing materials and should not have been precluded from introduction. The trial court prohibited the introduction of the receipts as they had not been disclosed before the discovery deadline. This Court held the trial court did not abuse its discretion

by excluding the untimely submitted receipts, which constituted cumulative evidence, as Peterson failed to comply with the discovery order. *See* RCr 7.24(11).

Third, Peterson argued that the Commonwealth committed prosecutorial misconduct during closing argument by stating that Peterson had not produced receipts to support his claim that he utilized the Burdens' $10,000 to purchase roofing materials for the roof replacement. Peterson also claimed the Commonwealth should not have made the reference, as Peterson was precluded from introducing receipts he produced the morning of trial. This Court rejected Peterson's argument. The receipts introduced at trial were as vague as the receipts produced during discovery, and the Commonwealth's reference to Peterson's failure to produce receipts was intended only to show the insufficiency of the receipts Peterson did produce, that which did not support Peterson's claim that he used the Burdens' $10,000 to purchase materials for their roof. And, as admitted by Peterson, the receipts produced the morning of trial were no more specific than those previously produced. As counsel is granted wide latitude in closing argument and considering the overall fairness of the trial, we reject Peterson's contention that the Commonwealth engaged in prosecutorial misconduct.

Fourth, Peterson asserted the trial court erred by ordering him to pay restitution of $10,000 within six months of his release from incarceration, stating the trial court was required to make findings of fact regarding his financial situation or ability to pay before ordering restitution. Peterson claimed he is a poor person under Kentucky Law and the imposition of restitution against him constitutes an illegal sentence that is jurisdictional and does not require proper preservation (Peterson acknowledged he failed to preserve this issue for appellate review), and further argued that it is "manifest injustice" to impose restitution upon his without first having a hearing to determine his financial situation and ability to pay. However, restitution is a proper component of a judgment imposing a final sentence, and it is mandatory under KRS 532.032, and is not an illegal sentence *per se. Jones v. Commonwealth,* 382 S.W.3d 22, 28 (Ky. 2011).

Furthermore, no palpable error or manifest injustice existed as to the trial court's procedure or lack of findings of fact regarding Peterson's financial situation or ability to pay. The protections illustrated by the *Jones* Court in implementing the mandate of KRS 532.032 to protect due process and achieve substantial justice were exercised by the trial court. *See Jones,* 382 S.W.3d at 32. Because a defendant's indigency has no bearing on the imposition of restitution, it is relevant only when setting the amount of any partial payments, the frequency of payments, and any sanctions for non-payment. These are matters that often cannot be determined while a defendant is still incarcerated on the underlying sentence. Also, nothing precludes the trial court from conducting a subsequent hearing to determine Peterson's ability to pay upon his release from prison, and nothing precludes Peterson from seeking such a review. *See* KRS 532.033(6)-(7). This matter is clearly placed within the authority of the trial court by both the legislature and our Supreme Court. There has been no manifest injustice and no error, palpable or otherwise.

Fifth, Peterson asserted the trial court erred by ordering him to pay court costs as he contends to be a poor person. Although he was adjudged a needy person eligible for the appointment of a public defender, Peterson was not deemed a poor person exempt from paying court costs. We do not believe the trial court erred by imposing court costs upon Peterson, as he did not raise the issue of his status as a poor person, and we cannot conclude that a sentencing error occurred.

Finally, Peterson argued he is entitled to a new trial under the cumulative error rule, which provides that "multiple errors, although harmless individually, may be deemed reversible if their cumulative effect is to render the trial fundamentally unfair." *Brown v. Commonwealth,* 313 S.W.3d 577, 631 (Ky. 2010). In this case, we found no single error and certainly no cumulative error.

III. FAMILY LAW

A. MONA RHEA BASHAM v. BRODERICK NELSON BASHAM

2023-CA-1436-MR 3/21/2025 2025 WL 876295

Opinion Affirming by A. JONES, JUDGE; COMBS, J. (CONCURS) AND MCNEILL, J. (CONCURS)

In a direct appeal from the family court's findings of fact, conclusions of law, and judgment dissolving the parties' marriage, the Court of Appeals affirmed. The chief issues in this case revolved around the Appellant's repeated violations of the family court's discovery orders and the resulting sanctions.

Appellant presented four arguments on appeal. First, she contended the family court erred in finding that she failed to provide sufficient discovery and in issuing its contempt order. Second, she argued the family court abused its discretion by denying her the opportunity to fully testify about her monthly expenses in support of her maintenance claim. Third, she asserted that the family court improperly denied her request for maintenance. Finally, she maintained that the family court erred in rejecting her claim that the parties' residence was her nonmarital property.

The Court of Appeals rejected Appellant's arguments. First, the Appellant's failures to comply with discovery orders were clearly willful and in bad faith. Further, the family court believed that Appellant's failure to respond to discovery requests operated to the prejudice of the Appellee. We held the family court's sanctions, prohibiting her from introducing withheld documents and evidence in support of her claims, was a measured application of sanctions under CR 37.02(2)(b), rather than an arbitrary refusal to consider evidence.

We also rejected the Appellant's claim that allowing Appellee to draft findings of fact was inappropriate, as the mere adoption of one party's proposed findings does not constitute reversible error, unless it is shown that the court failed to exercise

independent judgment. The family court exercised independent judgment in this case, evidenced by the fact that it amended the Appellee's proposed findings.

Next, we also rejected Appellant's argument that the family court should have awarded her some maintenance based on the limited evidence available. However, the limited evidence was insufficient for the family court to make a reasoned determination regarding whether Appellant had sufficient assets to meet her reasonable needs, and the lack of this evidence was attributable to her own conduct and the resulting sanctions. Parties cannot benefit from withholding required disclosures. Furthermore, Appellant did not ask the family court to allow her to submit the disputed evidence by avowal. We held that, without knowing what evidence Appellant would have adduced, there was no way for her to demonstrate an entitlement to maintenance, and if so, what amount would have been reasonable.

Finally, we held that, despite a quitclaim deed being in Appellant's name, the evidence supported the family court's classification of the family home as marital property. Both parties had contributed to the mortgage using marital funds for decades. Furthermore, the quitclaim deed itself was not intended as a gift of Appellee's marital interest to Appellant, but it was instead an attempt to protect the marital residence from the collection efforts of Appellee's potential creditors.

IV. FUNERAL PLANNING

A. EMMA JEAN JEANNE MCCOY v. SETH MCCOY (Ky. App. 2025).

2023-CA-1089-MR 3/14/2025 2025 WL 807445

Opinion Affirming by ACREE, JUDGE; THOMPSON, C.J. (CONCURS) AND L. JONES, J. (CONCURS)

DISCRETIONARY REVIEW GRANTED 10/15/2025

Donald McCoy died intestate and without written expression of his preferred place of burial. His surviving spouse, Emma McCoy—Donald's fifth wife—consented to his burial in the McCoy family cemetery in Pike County alongside a previous wife. Emma subsequently had a change of heart and sought to disinter Donald's remains and reinter them in a Floyd County cemetery. Seth McCoy, Donald's son, petitioned for a permanent injunction to prevent the move. Every witness at the bench trial, including Emma, testified to Donald's verbally expressed desire to be buried in the McCoy Family Cemetery. The circuit court granted the permanent injunction. At issue in this appeal is whether Emma possessed a paramount right, as Donald's surviving spouse, to determine where he was buried. The Court of Appeals explained that while interment is now governed by Kentucky statutory law, that law does not apply to disinterment-reinterment. Rather, disinterment-reinterment remains governed by Kentucky common law, which recognizes a surviving spouse's wishes "are not supreme," and that the

wishes of the decedent, and the "rights and feelings of those entitled to be heard by reason of relationship or association" are also factors. The Court concluded the circuit court properly considered those factors and affirmed the circuit court's decision to permanently enjoin the disinterment-reinterment of Donald's body.

V. STATUTE OF LIMITATIONS

A. EXECUTIVE BRANCH ETHICS COMMISSION v. ALISON LUNDERGAN GRIMES (Ky. App. 2025).

2024-CA-0630-MR	3/21/2025	2025 WL 876574

Opinion Affirming by CETRULO, JUDGE; LAMBERT, J. (CONCURS) AND TAYLOR, J. (CONCURS)

This is an appeal from an order of the Franklin Circuit Court, which found the decision of the Executive Branch Ethics Commission to be barred by the statute of limitations. The Commission had fined former Secretary of State Alison Lundergan Grimes for actions alleged to have violated KRS 11A.120. The actions occurred in 2016 before the November election. However, the proceedings were not commenced until 2021, more than five years after the cause of action accrued. The Franklin Circuit Court reversed the Commission's action, finding it was filed outside the applicable statute of limitations set forth in KRS 413.120, which was created by the legislature when "no other time is fixed by the statute creating the liability." We affirmed. KRS 11A.120, the ethical violations statute at issue here, does not contain any limitations period and was enacted long after the General Assembly enacted KRS 413.120. If the legislature intended a specific or unlimited timeframe on such actions, it would have expressed that in KRS 11A.120 as it did in other sections of the Chapter. We further distinguished this proceeding from actions to discipline members of the bar by the Supreme Court, as those actions are not created by statute. Finally, we found that the discovery rule did not apply to extend the statute beyond the five-year limitations period set by KRS 413.120, so the action was barred and the judgment affirmed.

VI. TORTS

A. NIKOLA JAJIC v. JENNIFER SAINATO, ET. AL. (Ky. App. 2025).

2023-CA-0956-MR 2023-CA-1021-MR	3/14/2025	2025 WL 807663

DISCRETIONARY REVIEW GRANTED 04/15/2026

Opinion Affirming in Appeal No. 2023-CA-0956-MR and Affirming in Part, Reversing in Part, and Remanding in Cross-Appeal No. 2023-CA-1021-MR by CETRULO, JUDGE; ECKERLE, J. (CONCURS) AND MCNEILL, J. (CONCURS)

This was an appeal from a Jefferson Circuit Court jury verdict assessing over one million dollars in damages for appellee, Sainato. The case arose from a sexual encounter that occurred between Jajic and Sainato when they were both staying at a Marriott hotel in Louisville. A dram shop claim was also made against the Marriott, and the jury found in the Marriott's favor. The jury found Jajic committed a civil battery against Sainato. The trial court then instructed the jury to apportion fault for the battery. The jury apportioned 55% of the fault to Jajic and 45% to Sainato and awarded punitive damages and 45% of the compensatory damage verdict to Sainato.

Jajic appealed by asserting: insufficiency of the evidence; evidentiary errors; that the punitive damages should have also been apportioned; and that the verdict was the result of passion and prejudice. Sainato cross-appealed by asserting: the trial court erred in granting summary judgment to Marriott on the negligence claim; a spoliation instruction should have been granted; and the evidence was insufficient to support apportionment of the verdict against Sainato. We affirmed the trial court on each claimed error, except for the apportionment of fault for the civil battery.

In a matter of first impression, we held that Kentucky law does not permit including a non-tortfeasor victim of a civil battery within a comparative fault analysis. While KRS 411.182 requires apportionment in all torts, only parties at fault may be included in the apportionment analysis. Since the jury determined that Sainato did not consent to sexual contact with Jajic, no fault could legally be apportioned to her, a non-tortfeasor. While Kentucky caselaw is not specifically on point, our application of comparative fault is consistent with how the Commonwealth's courts treat the doctrine. See *Sommerkamp v. Linton*, 114 S.W.3d 811 (Ky. 2003); see also *Roman Catholic Diocese* of *Covington v. Secter*, 966 S.W.2d 286 (Ky. App. 1998). We further found that an incorrect sequencing of the jury instructions and the lack of an explicit instruction as to Sainato's duties exacerbated the prejudicial effect of the improper instruction. Accordingly, we reversed and remanded the case for a new trial.

VII. WORKERS' COMPENSATION

A. CHRISTOPHER HARPER v. PREMIER INK SYSTEMS, INC. ET AL. (Ky. App. 2025).

2024-CA-1091-WC	3/21/2025	2025 WL 876932

Opinion Affirming by TAYLOR, JUDGE; A. JONES, J. (CONCURS) AND L. JONES, J. (CONCURS)

This is an appeal from a Workers' Compensation Board (Board) order declining to review a subrogation agreement between Christopher Harper's (Harper) former employer, Premier Ink Systems, Inc. (Premier), its insurance carrier, Chubb Insurance Group (Chubb), and third-party alleged tortfeasors, AmScan, Inc. (AmScan) and AmScan employee Michael Hughes, citing lack of jurisdiction. We affirm.

Harper was injured while visiting AmScan as part of his job duties and filed a claim for workers' compensation benefits from Premier. Harper and Premier entered into a settlement agreement, and Premier agreed to pay Harper $100,000 as a lump sum benefit. Harper filed a separate tort action against AmScan and Hughes, and Premier filed an intervening complaint seeking subrogation for workers' compensation benefits paid to Harper. Unbeknownst to Harper and prior to any resolution, Premier, through Chubb, entered in a subrogation agreement with AmScan and Hughes in which AmScan and/or Hughes agreed to pay Chubb $65,000. Premier, Chubb, AmScan, and Hughes filed a stipulation and sought dismissal of all claims between one another. Harper objected, arguing that Premier's claims were only derivative of his own and that he had not been included in the negotiations, contending he was entitled to a pro rata share of costs and attorney's fees pursuant to KRS 342.700.

Upon further motion by Harper, the circuit court remanded the settlement agreement between Premier/Chubb and AmScan/Hughes to the ALJ for approval. In a perfunctory order, the ALJ denied Harper's motion, stating in part that it is for the circuit court to decide the extent of an employer's subrogation interest, if any. Harper appealed to the Board, which affirmed the ALJ. Harper then petitioned this Court for review.

The only issue to decide on appeal is whether the Board was correct in its determination that it lacked jurisdiction to review the settlement/subrogation agreement Premier/Chubb and AmScan/Hughes. This Court concluded that the dispute between Premier/Chubb and AmScan/Hughes concerns reimbursement benefits already paid to Harper and does not raise under a statutory provision of KRS Chapter 342. The circuit court did not have jurisdiction to remand the case to the Board, and Harper failed to show that any provision of RS Chapter 342 confers jurisdiction of the ALJ and the Board over AmScan or Hughes under the facts of this case. Therefore, the Board did not have jurisdiction to resolve the issue, including review of the settlement agreement.