

SUPREME COURT OF KENTUCKY

MINUTES

DECEMBER 18, 2008

RELEASED: 2:00 P.M.

258. MATTHEW DERRY V. [2006-SC-000181-DG](#) METCALFE
COMMONWEALTH OF KENTUCKY **TO BE PUBLISHED**

**OPINION OF THE COURT BY
JUSTICE NOBLE – AFFIRMING**
MINTON, C.J., AND SCOTT, J.,
CONCUR IN RESULT ONLY.

Questions Presented:
Criminal Law. Double Jeopardy. Issues include whether, after the Commonwealth had completed questioning of three witnesses at a jury trial but the case then was dismissed because the alleged offenses occurred in another county, re prosecution for the same offenses could occur in the second county.

259. TIMOTHY TAYLOR V. [2006-SC-000863-MR](#) JEFFERSON
COMMONWEALTH OF KENTUCKY **TO BE PUBLISHED**

**OPINION OF THE COURT BY
JUSTICE ABRAMSON –
AFFIRMING**

Questions Presented:
Juvenile offender – Murder – 25 year sentence.

260. STANLEY STOKES V. [2007-SC-000006-MR](#) MCCracken
COMMONWEALTH OF KENTUCKY **TO BE PUBLISHED**

**OPINION OF THE COURT BY
JUSTICE NOBLE – AFFIRMING**
ABRAMSON, J., CONCURS BY
SEPARATE OPINION.
CUNNINGHAM, J., CONCURS
BECAUSE THE INFORMATION
GIVEN TO THE JURY WAS ONLY
THE UNCONTROVERTED
DEFINITION OF AN OFFENSE
ALREADY INTRODUCED, NOT
NEW “PROOF,” AND WAS
THEREFORE NOT ERROR –
HARMLESS OR OTHERWISE.

Questions Presented:
Trial court did not abuse its discretion by taking “judicial notice” of a medical dictionary as a “learned treatise” and in taking judicial notice of a definition contained therein, where the accuracy of the definition was readily ascertainable. KRE 803(18), KRE 201. Trial court’s answer to jury question, regarding truth in sentencing, did apply to facts and a point of law relevant to the case.

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261. ONDRA LEON CLAY V. [2007-SC-000377-MR](#) FAYETTE
COMMONWEALTH OF KENTUCKY **TO BE PUBLISHED**
OPINION OF THE COURT BY
JUSTICE NOBLE – AFFIRMING
- Questions Presented:**
Wanton Murder and First Degree Sodomy. Life Without Parole for Twenty-Five Years. Batson Challenge. Failure to strike Juror for Cause. Testimony of Sexual Assault Nurse Examiner. Judicial notice of law regarding discovery of underlying test data.
262. TRICO COUNTY DEVELOPMENT & PIPELINE V. [2007-SC-000556-WC](#) FROM COURT
SCOTTY SMITH, ET AL. **TO BE PUBLISHED** OF APPEALS
OPINION OF THE COURT –
AFFIRMING
MINTON, C.J., AND NOBLE
AND VENTERS, JJ., DISSENT
BY SEPARATE OPINION.
- Questions Presented:**
KRS 342.185(1). Whether notice to an employer's insurance carrier constitutes notice to the employer.
263. SANDRA TOY V. [2008-SC-000149-WC](#) FROM COURT
COCA COLA ENTERPRISES, ET AL. **TO BE PUBLISHED** OF APPEALS
OPINION OF THE COURT –
AFFIRMING
- Questions Presented:**
KRS 342.730(1)(c)2. Whether the phrase "during any period of cessation of that employment" refers to the employment to which the worker returned after the injury, the employment in which the injury occurred, or any post-injury employment.

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264. KAREEM ALI HENRY V. [2006-SC-000767-DG](#) JEFFERSON
COMMONWEALTH OF KENTUCKY **TO BE PUBLISHED**
OPINION OF THE COURT BY
JUSTICE ABRAMSON –
AFFIRMING IN PART AND
REVERSING AND REMANDING
IN PART
NOBLE, J., CONCURS IN PART
AND DISSENTS IN PART BY
SEPARATE OPINION.
SCHRODER, J., NOT SITTING.
- Questions Presented:**

Criminal Law. Miranda Warnings. Vehicle Search. Double Jeopardy. On appeal of criminal conviction pursuant to conditional guilty plea, issues relate to the "public safety" exception to mandated Miranda warnings, the warrantless search of automobile incident to recent occupant's arrest, and whether claim of double jeopardy is waived upon entry of guilty plea.
265. T.J. MAXX V. [2007-SC-000939-WC](#) FROM COURT
CHRISTINE L. BLAGG, ET AL. **TO BE PUBLISHED** OF APPEALS
OPINION OF THE COURT –
REVERSING AND REMANDING
- Questions Presented:**

KRS 342.315. Whether the ALJ erred by ordering a university evaluation after a claim had been submitted for a decision.
266. COMMONWEALTH OF KENTUCKY, [2006-SC-000348-DG](#) ANDERSON
CABINET FOR HEALTH AND **NOT TO BE PUBLISHED**
FAMILY SERVICES V.
EPI CORPORATION
OPINION OF THE COURT BY
JUSTICE SCHRODER –
AFFIRMING
MINTON, C.J., NOT SITTING.
267. WILBUR D. PASSMORE V. [2008-SC-000224-WC](#) FROM COURT
LOWES HOME CENTER, ET AL. **NOT TO BE PUBLISHED** OF APPEALS
MEMORANDUM OPINION OF
THE COURT –
REVERSING AND REMANDING

SUPREME COURT OF KENTUCKY

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OPINIONS AND ORDERS – DECEMBER 10, 2008

GREGORY SAYLOR V. COMMONWEALTH OF KENTUCKY ORDER GRANTED MOTION FOR DISCRETIONARY REVIEW, REVERSED COURT OF APPEALS' OPINION, VACATED THE ORDER OF THE KENTON CIRCUIT COURT, AND REMANDED TO THE KENTON CIRCUIT COURT.	2007-SC-000956-D	KENTON
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OPINIONS AND ORDERS – DECEMBER 18, 2008

KENTUCKY BAR ASSOCIATION V. ERIC LAMAR EMERSON ORDER SUSPENDED RESPONDENT FROM THE PRACTICE OF LAW FOR A PERIOD OF 61 DAYS.	<u>2008-SC-000732-KB</u> TO BE PUBLISHED	IN SUPREME COURT
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KENTUCKY BAR ASSOCIATION V. JENNIFER SUE WHITLOCK ORDER SUSPENDED RESPONDENT FROM THE PRACTICE OF LAW FOR A PERIOD OF 30 DAYS FROM THE DATE OF THE OPINION AND ORDER WITH CONDITIONS.	<u>2008-SC-000743-KB</u> TO BE PUBLISHED	IN SUPREME COURT
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SUPREME COURT OF KENTUCKY

MINUTES

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OPINIONS AND ORDERS – DECEMBER 18, 2008

KENTUCKY BAR ASSOCIATION V. DANA LEA B. QUESINBERRY ORDER SUSPENDED RESPONDENT FROM THE PRACTICE OF LAW FOR A PERIOD OF 1 YEAR FROM THE DATE OF THE OPINION AND ORDER.	<u>2008-SC-000769-KB</u> TO BE PUBLISHED	IN SUPREME COURT
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JAMES GREGORY TROUTMAN V. KENTUCKY BAR ASSOCIATION ORDER SUSPENDED MOVANT FROM THE PRACTICE OF LAW IN THE COMMONWEALTH OF KENTUCKY FOR A PERIOD OF 2 YEARS, RETROACTIVE TO JANUARY 25, 2007.	<u>2008-SC-000833-KB</u> TO BE PUBLISHED	IN SUPREME COURT
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**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
DECEMBER 10, 2008**

HOLLIS KING V. COMMONWEALTH OF KENTUCKY	2008-SC-000274-DG	FAYETTE
BRANDON LEON WATKINS V. COMMONWEALTH OF KENTUCKY	2008-SC-000567-DG	TODD
COMMONWEALTH OF KENTUCKY; ADMINISTRATIVE OFFICE OF THE COURTS V. PATRICIA GREENE, ET AL.	2008-SC-000783-DG	FRANKLIN

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
DECEMBER 10, 2008**

CAROLYN M. SCOTT V. BILLY JOE LOWE	2007-SC-000824-D	GREEN
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**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
DECEMBER 10, 2008**

TERRY MULLINS, HUSBAND, ET AL. V. NARCISSUS LUTTRELL, WIFE, ET AL.	2008-SC-000105-D	CASEY
KENNETH WAYNE ROBINSON V. COMMONWEALTH OF KENTUCKY	2008-SC-000214-D	LINCOLN
DANNY ANDERSON V. WAYNE RUDDER	2008-SC-000232-D	PIKE
JAMES ALEXANDER V. CRAWFORD RADIOLOGY CLINIC, GERSCH LUNDBERG, M.D. AND RONALD M. KUPPER, M.D.	2008-SC-000234-D	MCCRACKEN
SCOTT PEDEN V. W. MITCHELL NANCE, BARREN FAMILY COURT JUDGE	2008-SC-000246-D	BARREN
SOPHAL PHON V. COMMONWEALTH OF KENTUCKY	2008-SC-000250-D	WARREN
JOE WILLIAM RODGERS, A/K/A J.W. RODGERS AND BONNIE RODGERS V. LUVON RODGERS	2008-SC-000291-D	SCOTT
PAUL WATKINS V. BETTY WATKINS	2008-SC-000299-D	ESTILL
DARRELL CARNES V. COMMONWEALTH OF KENTUCKY	2008-SC-000315-D	GRAYSON

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**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
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CELINDA LAWSON V. AMERICAN BANKERS LIFE ASSURANCE COMPANY OF FLORIDA COURT OF APPEALS' OPINION ORDERED TO BE PUBLISHED.	2008-SC-000355-D	JESSAMINE
DIANA SMITH V. DENICA MCCURDY, INDIVIDUALLY, ET AL	2008-SC-000382-D	MARSHALL
ANDRE COLLINS V. COMMONWEALTH OF KENTUCKY	2008-SC-000407-D	JEFFERSON
TERRELL LITTLE V. COMMONWEALTH OF KENTUCKY	2008-SC-000413-D	PIKE
JOHN M. KENNEY AND KENNEY ORTHOPEDIC, LLC V. HANGER PROSTHETICS & ORTHOTICS, INC. AND MICHAEL ADAM	2008-SC-000420-D	FAYETTE
ASHLEY RENE SIES V. COMMONWEALTH OF KENTUCKY	2008-SC-000423-D	BOONE
BLAKE WALKER V. COMMONWEALTH OF KENTUCKY	2008-SC-000424-D	ADAIR
IRVIN EDGE V. COMMONWEALTH OF KENTUCKY	2008-SC-000443-D	WARREN
COMMONWEALTH OF KENTUCKY V. BILLY RAY COLLINS COURT OF APPEALS' OPINION ORDERED NOT TO BE PUBLISHED.	2008-SC-000451-D	LETCHER

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**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
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ANGELA G. HILL V. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY AND TERRY M. JANKOWSKI	2008-SC-000478-D	HARDIN
NORMAN DARRELL SIMMONS AND BARBARA SIMMONS V. COUNTRYWAY INSURANCE COMPANY	2008-SC-000481-D	BRECKINRIDGE
SHAWN MICHAEL MALONE V. COMMONWEALTH OF KENTUCKY	2008-SC-000529-D	LAUREL
PARADISE TOMATO KITCHENS, INC. V. LOUISVILLE/JEFFERSON COUNTY METRO REVENUE COMMISSION, ET AL. COURT OF APPEALS' OPINION ORDERED NOT TO BE PUBLISHED.	2008-SC-000531-D	JEFFERSON
DARLENE WILDER V. COMMONWEALTH OF KENTUCKY	2008-SC-000532-D	BELL
JAMES WALTERS V. COMMONWEALTH OF KENTUCKY	2008-SC-000572-D	MCCRACKEN
TAMMY BARKMAN V. DAVID OVERSTREET, M.D., ET AL. COURT OF APPEALS' OPINION ORDERED NOT TO BE PUBLISHED.	2008-SC-000576-D	BOYLE
SCOTTY ALLEN UPCHURCH V. COMMONWEALTH OF KENTUCKY	2008-SC-000596-D	WAYNE
D.J., A CHILD UNDER EIGHTEEN V. COMMONWEALTH OF KENTUCKY	2008-SC-000645-D	KENTON
J.R.W. V. E.W.C.	2008-SC-000670-DE	WARREN

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**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
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C.M.K., BIOLOGICAL FATHER OF K.M.S. V. CABINET FOR HEALTH AND FAMILY SERVICES, ET AL.	2008-SC-000734-DE	TRIMBLE
SHARON COMPTON V. JASON COMPTON	2008-SC-000738-DE	BOONE
J.D.Y., THE FATHER B.H.D., THE MOTHER, ET AL.	2008-SC-000753-DE	HARDIN

**COURT ORDERS DENYING BELATED MOTION FOR ENLARGEMENT OF TIME TO FILE
MOTION FOR DISCRETIONARY REVIEW – DECEMBER 10, 2008**

JAMES ALLEN LAGRAN V. COMMONWEALTH OF KENTUCKY	2008-SC-000815-D	MUHLENBERG
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COURT ORDERS GRANTING MOTION TO TRANSFER – DECEMBER 18, 2008

UNIVERSITY OF THE CUMBERLANDS V. REV. ALBERT M. PENNYBACKER, ET AL. AND VERNIE MCGAHA (SENATOR IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE KENTUCKY GENERAL ASSEMBLY), ET AL.	2008-SC-000253-TG	FRANKLIN
	2008-SC-000285-TG	FRANKLIN
NICHOLAS WILLIAMS V. COMMONWEALTH OF KENTUCKY	2008-SC-000651-TG	ROCKCASTLE
ROBERT CARL FOLEY V. COMMONWEALTH OF KENTUCKY ENTERED: DECEMBER 15, 2008	2008-SC-000909-TG	LAUREL

SUPREME COURT OF KENTUCKY

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COURT ORDERS DENYING PETITION FOR REHEARING – DECEMBER 18, 2008

DENNIS MARTIN MACKIN V. COMMONWEALTH OF KENTUCKY	2007-SC-000184-MR	NELSON
RINKER MATERIAL CORPORATION V. WILLIAM BRATCHER, ET AL.	2007-SC-000650-WC	FROM COURT OF APPEALS
JERRY GIBSON V. WEHR CONSTRUCTORS, INC., ET AL.	2007-SC-000810-WC	FROM COURT OF APPEALS

COURT ORDERS

FRED FURNISH V. COMMONWEALTH OF KENTUCKY ORDER CORRECTED THE OPINION OF THE COURT BY CHIEF JUSTICE LAMBERT RENDERED ON AUGUST 23, 2007 AND MODIFIED ON NOVEMBER 26, 2008, BY SUBSTITUTION OF PAGES 1, 20,. 21, AND 22.	2004-SC-000387-MR	KENTON
SAM MILLER BACK V. COUNTY OF RUSSELL ORDER GRANTED INTERLOCUTORY RELIEF. ENTERED: DECEMBER 18, 2008	2008-SC-000368-I	RUSSELL
KENTUCKY BAR ASSOCIATION V. ZACK N. WOMACK ORDER MODIFIED THE OPINION AND ORDER OF THE COURT ENTERED NOVEMBER 26, 2006 BY SUBSTITUTION OF PAGES 1 AND 7.	2008-SC-000456-KB	IN SUPREME COURT