

**SUPREME COURT OF KENTUCKY**

**FEBRUARY 24, 2022 RULINGS**

**RELEASED: 10:00 A.M.**

12. SHAWN WELSH V.  
COMMONWEALTH OF KENTUCKY

[2020-SC-0021-MR](#)  
**TO BE PUBLISHED**

HARDIN

**OPINION OF THE COURT BY JUSTICE  
HUGHES - AFFIRMING**

ALL SITTING. ALL CONCUR.

**Questions Presented:**

Criminal Law. Police Pursuit. In this matter of right appeal, the Court considers whether it was an abuse of discretion to exclude evidence that officers' behavior during the vehicle chase which resulted in the defendant's conviction for wanton murder and assault potentially violated the department's police pursuit policies.

13. GREGORY SHIELDS, SR. V.  
COMMONWEALTH OF KENTUCKY

[2020-SC-0060-MR](#)  
**TO BE PUBLISHED**

WARREN

**OPINION OF THE COURT BY JUSTICE  
HUGHES - AFFIRMING**

ALL SITTING. LAMBERT AND VANMETER, JJ., CONCUR. MINTON, C.J., CONCURS IN RESULT ONLY. KELLER, J., DISSENTS BY SEPARATE OPINION, IN WHICH CONLEY AND NICKELL, JJ., JOIN.

**Questions Presented:**

Criminal Law. KRE 804(b)(1). Confrontation Clause. In this matter of right appeal, the Court considers whether defendant had an adequate opportunity to question a witness during a preliminary hearing, where the witness later died and was unavailable to testify at trial.

14. JOSEPH CAPSTRAW V.  
COMMONWEALTH OF KENTUCKY

[2020-SC-0186-MR](#)  
**TO BE PUBLISHED**

HARDIN

**OPINION OF THE COURT BY JUSTICE  
LAMBERT - AFFIRMING IN PART AND  
VACATING IN PART**

ALL SITTING. ALL CONCUR.

**Questions Presented:**

Criminal Law. Gruesome Photographs. Jury Instructions. Confrontation Clause. Jail Fees. In this matter of right appeal, the Court reviews the trial court's admission of gruesome crime scene photos; whether jury instructions resulted in a non-unanimous verdict, whether medical records were testimonial in nature and thus violative of the Confrontation Clause; and whether the Court properly imposed jail fees where there was no evidence of a reimbursement policy under KRS 441.265(2)(a).

15. JOHNNY R. COX V.  
COMMONWEALTH OF KENTUCKY

[2020-SC-0391-DG](#)  
**TO BE PUBLISHED**

FAYETTE

**OPINION OF THE COURT BY JUSTICE  
LAMBERT - AFFIRMING IN PART,  
REVERSING IN PART, AND REMANDING**

ALL SITTING. MINTON, C.J.; HUGHES,  
KELLER, AND NICKELL, JJ., CONCUR.  
CONLEY, J., CONCURS IN PART AND  
DISSENTS IN PART BY SEPARATE  
OPINION, IN WHICH VANMETER, J., JOINS.

**Questions Presented:**

Criminal Law. *Miranda* Rights. Competency. Issues include whether the trial court erred in denying the defendant's motion to suppress his confession because the police interrogator allegedly ignored his request for counsel made during his interview with police, and whether he was competent to knowingly and intelligently waive his *Miranda* rights.

16. MITZI SIMPSON, AS CO-ADMINISTRATOR  
OF THE NANNIE CATHERINE  
WETHINGTON ESTATE, ET AL. V.  
KERRY T. WETHINGTON, ET AL.

[2020-SC-0567-DG](#)  
**TO BE PUBLISHED**

MARION

**OPINION OF THE COURT BY JUSTICE  
CONLEY - REVERSING AND REMANDING**

ALL SITTING. ALL CONCUR.

**Questions Presented:**

*Inter Vivos* Gift. Fraudulent Transfer of Spousal Interest. The issue in this case is whether a valid *inter vivos* gift was made when a father gave his son a signed, but otherwise blank check, which the son then negotiated prior to his father's death to withdraw the contents of his father's bank account, or whether this negotiation of the check constituted a fraudulent transfer of funds to deny the widow of her spousal interest in the account.

17. DEVERIOUS JONES V.  
COMMONWEALTH OF KENTUCKY

[2021-SC-0009-MR](#)  
**TO BE PUBLISHED**

FAYETTE

**OPINION OF THE COURT BY JUSTICE  
KELLER - AFFIRMING**

MINTON, C.J.; CONLEY, HUGHES,  
LAMBERT, AND NICKELL, JJ., SITTING.  
ALL CONCUR. VANMETER, J., NOT  
SITTING.

**Questions Presented:**

Criminal Law. Successive Conflicts of Interest in Representation. *Miranda* rights. In this matter of right appeal, the Court considers whether the defendant was prejudiced by his counsel having previously represented a witness/victim in the case and whether he was subject to impermissible questioning prior to receiving a *Miranda* warning at arrest.

18. DEE WHITAKER CONCRETE V.  
AUSTIN ELLISON, ET AL.

[2021-SC-0070-WC](#)  
**TO BE PUBLISHED**

COURT OF  
APPEALS

**OPINION OF THE COURT BY JUSTICE  
HUGHES - AFFIRMING**

ALL SITTING. ALL CONCUR.

**Questions Presented:**

Workers' Compensation. Carpool Exception. In this appeal from the Workers' Compensation Board, issues include whether the traveling employee exception applies to the "going and coming" rule which would ordinarily exclude employer liability for injuries occurring during travel to or from a job site.

19. CHRISTOPHER JACKSON, III, AS  
ADMINISTRATOR OF THE ESTATE OF  
CHRISTINE JACKSON, DECEASED V.  
LEGACY HEALTH SERVICES, INC., ET AL.

[2021-SC-0062-DG](#)  
**TO BE PUBLISHED**

FAYETTE

**OPINION OF THE COURT BY JUSTICE  
LAMBERT - REVERSING AND  
REMANDING**

ALL SITTING. ALL CONCUR.

**Questions Presented:**

KRS 387.500. Guardianship. Arbitration Agreement. The issue is whether a duly appointed guardian of a disabled person has the authority to execute a voluntary agreement for alternate dispute resolution, which is later enforceable to compel arbitration of claims brought following the death of the disabled person.

20. DEBORAH ROBBINS FRENCH V.  
REV-A-SHELF, ET AL.

[2021-SC-0146-WC](#)  
**TO BE PUBLISHED**

COURT OF  
APPEALS

**OPINION OF THE COURT BY JUSTICE  
KELLER - AFFIRMING IN PART,  
REVERSING IN PART, AND REMANDING**

ALL SITTING. ALL CONCUR.

**Questions Presented:**

Workers' Compensation. KRS 342.0011. KRS 342.730(1)(c)(2). Post-Injury Wages. Concurrent Employment. Issues include whether the Administrative Law Judge Erred in awarding temporary total disability benefits and in applying the two-times multiplier to enhance permanent partial disability benefits.

21. ANDY BESHEAR, IN HIS OFFICIAL  
CAPACITY AS GOVERNOR OF THE  
COMMONWEALTH OF KENTUCKY, ET AL.  
V.  
RIDGEWAY PROPERTIES, LLC D/B/A  
BEANS CAFE & BAKERY, ET AL.

[2021-SC-0228-I](#)  
**TO BE PUBLISHED**

BOONE

**OPINION OF THE COURT BY JUSTICE  
HUGHES - REVERSING AND REMANDING**

ALL SITTING. ALL CONCUR. MINTON, C.J.,  
ALSO CONCURS BY SEPARATE OPINION,  
IN WHICH KELLER AND VANMETER, JJ.,  
JOIN.

**Questions Presented:**

Standing. Justiciability. Concurrent Jurisdiction.  
Issues include whether the circuit court properly  
recognized plaintiff's standing to assert the  
constitutionality of legislations restricting the  
Governor's emergency powers, and the  
application of the exclusive concurrent jurisdiction  
doctrine to the same arguments between parties  
made in multiple circuit courts.

22. JAMES LANG V.  
COMMONWEALTH OF KENTUCKY

[2020-SC-0045-MR](#)  
**NOT TO BE PUBLISHED**

JEFFERSON

**MEMORANDUM OPINION OF THE  
COURT - AFFIRMING**

ALL SITTING. ALL CONCUR.

23. JASON ALEXANDER REUSSER V.  
COMMONWEALTH OF KENTUCKY

[2020-SC-0202-MR](#)  
**NOT TO BE PUBLISHED**

CASEY

**MEMORANDUM OPINION OF THE  
COURT - AFFIRMING**

ALL SITTING. ALL CONCUR.

24. TAHJEE WINTERS V.  
COMMONWEALTH OF KENTUCKY

[2020-SC-0238-MR](#)  
**NOT TO BE PUBLISHED**

FAYETTE

**MEMORANDUM OPINION OF THE  
COURT - AFFIRMING**

MINTON, C.J.; CONLEY, HUGHES,  
LAMBERT, KELLER, AND NICKELL, JJ.,  
SITTING. ALL CONCUR. VANMETER, J.,  
NOT SITTING.

25. JUSTIN DENIHAN V.  
COMMONWEALTH OF KENTUCKY  
**MEMORANDUM OPINION OF THE COURT - AFFIRMING**  
ALL SITTING. ALL CONCUR.
- [2020-SC-0521-MR](#)  
**NOT TO BE PUBLISHED**
- WARREN
26. EDWARD SIDDENS V.  
COMMONWEALTH OF KENTUCKY  
**MEMORANDUM OPINION OF THE COURT - AFFIRMING**  
ALL SITTING. ALL CONCUR.
- [2020-SC-0540-MR](#)  
**NOT TO BE PUBLISHED**
- ALLEN
27. DARRESHIA HAYES V.  
FIRST TRANSIT, ET AL.  
**MEMORANDUM OPINION OF THE COURT - AFFIRMING**  
ALL SITTING. ALL CONCUR.
- [2020-SC-0592-WC](#)  
**NOT TO BE PUBLISHED**
- COURT OF APPEALS
28. ECLIPSE COLLIERIES, INC. V.  
JOEY TACKETT, ET AL.  
**MEMORANDUM OPINION OF THE COURT - REVERSING AND REMANDING**  
MINTON, C.J.; CONLEY, HUGHES, KELLER, NICKELL, AND VANMETER, JJ., SITTING. ALL CONCUR. LAMBERT, J., NOT SITTING.
- [2021-SC-0016-WC](#)  
**NOT TO BE PUBLISHED**
- COURT OF APPEALS
29. FORD MOTOR COMPANY V.  
LARRY BROWN, ET AL.  
**MEMORANDUM OPINION OF THE COURT - REVERSING AND REMANDING**  
ALL SITTING. ALL CONCUR.
- [2021-SC-0051-WC](#)  
**NOT TO BE PUBLISHED**
- COURT OF APPEALS

30. MARY PURO V. [2021-SC-0060-DG](#) JEFFERSON  
MANAGEMENT REGISTRY, INC. D/B/A  
MALONE WORKFORCE SOLUTIONS  
**NOT TO BE PUBLISHED**

**MEMORANDUM OPINION OF THE  
COURT - REVERSING AND REMANDING**

ALL SITTING. ALL CONCUR.

31. JAMES CROUCH V. [2020-SC-0485-MR](#) WARREN  
COMMONWEALTH OF KENTUCKY  
**NOT TO BE PUBLISHED**

**MEMORANDUM OPINION OF THE  
COURT - AFFIRMING**

ALL SITTING. ALL CONCUR.

32. DARREN C. WILSON V. [2021-SC-0273-MR](#) HARRISON  
HONORABLE JAY B. DELANEY, ET AL.  
**NOT TO BE PUBLISHED**

**MEMORANDUM OPINION OF THE  
COURT - AFFIRMING**

ALL SITTING. ALL CONCUR.

**OPINION AND ORDERS - February 24, 2022**

KENTUCKY BAR ASSOCIATION V.  
TONY BRANDON MILLER

[2021-SC-0527-KB](#)  
**TO BE PUBLISHED**

IN SUPREME  
COURT

**OPINION AND ORDER - TEMPORARILY  
SUSPENDING**

ALL SITTING. ALL CONCUR.

JOHN DAVID INMAN V.  
KENTUCKY BAR ASSOCIATION

[2021-SC-0570-KB](#)  
**TO BE PUBLISHED**

IN SUPREME  
COURT

**OPINION AND ORDER - SUSPENDING  
FOR 30 DAYS (PROBATED FOR 1 YEAR)**

ALL SITTING. ALL CONCUR.

**OPINION AND ORDERS - February 24, 2022**

KENTUCKY BAR ASSOCIATION V.  
BENJAMIN GERALD DUSING

[2021-SC-0512-KB](#)  
**TO BE PUBLISHED**

IN SUPREME  
COURT

**OPINION AND ORDER - TEMPORARILY  
SUSPENDING**

ALL SITTING. ALL CONCUR.

**ORDER GRANTING CROSS MOTION FOR DISCRETIONARY REVIEW (NO ORAL  
ARGUMENT) - February 16, 2022**

ANDREW MCMICHAEL V.  
COMMONWEALTH OF KENTUCKY

[2021-SC-0572-DG](#)  
[2021-SC-0207-DG](#)

JEFFERSON

**ORDER GRANTING DISCRETIONARY REVIEW (ORAL ARGUMENT) - February 16, 2022**

VIVIANE RENOT V.  
SECURA SUPREME INSURANCE COMPANY

[2021-SC-0281-DG](#)

FAYETTE

VANMETER, J., NOT SITTING.

WALMART, INC., ET AL. V.  
LEIGH ANN REEVES

[2021-SC-0288-DG](#)

FAYETTE

VANMETER, J., NOT SITTING.

CENTURY ALUMINUM OF KENTUCKY, GP  
V.  
DEPARTMENT OF REVENUE, FINANCE  
AND ADMINISTRATION CABINET  
COMMONWEALTH OF KENTUCKY

[2021-SC-0300-DG](#)

FRANKLIN

COMMONWEALTH OF KENTUCKY V.  
ANTHONY WOODS

[2021-SC-0460-DG](#)

JESSAMINE

CHARLES F. MAHL V.  
LOUANNE MAHL

[2021-SC-0481-DG](#)

JEFFERSON

HUGHES, J., NOT SITTING.

**ORDER GRANTING DISCRETIONARY REVIEW (ORAL ARGUMENT) - February 16, 2022**

LOUANNE MAHL V. [2021-SC-0487-DG](#) JEFFERSON  
CHARLES F. MAHL  
HUGHES, J., NOT SITTING.

**ORDER GRANTING DISCRETIONARY REVIEW (NO ORAL ARGUMENT) - February 16, 2022**

DAVID MEGRONIGLE D/B/A [2021-SC-0196-DG](#) JEFFERSON  
ACCIDENT/INJURY CHIROPRACTIC, ET AL.  
V.  
ALLSTATE PROPERTY & CASUALTY  
INSURANCE COMPANY

COMMONWEALTH OF KENTUCKY V. [2021-SC-0411-DG](#) TODD  
THOMAS MOORE

**ORDER DENYING DISCRETIONARY REVIEW - February 16, 2022**

JAMES HARRISON V. [2021-SC-0208-D](#) FRANKLIN  
CATHERINE WEICHT, ET AL.

THOMAS NORTON, ET AL. V. [2021-SC-0246-D](#) FAYETTE  
CLARE SIPPLE, ET AL.

ALICIA ENGLAND V. [2021-SC-0257-D](#) LOGAN  
RICARDO FEDERICO, ET AL.

PAUL CROUSHORE, IN HIS CAPACITY AS [2021-SC-0282-D](#) CAMPBELL  
NEXT FRIEND OF EACH OF SOPHIA  
VILLARREAL, A MINOR AND SPENCER  
VILLARREAL, A MINOR V.  
G. KEITH GAMBREL, ET AL.



**ORDER DENYING DISCRETIONARY REVIEW - February 16, 2022**

QUINTEZ JOHNSON V. COMMONWEALTH OF KENTUCKY	<a href="#">2021-SC-0313-D</a>	KENTON
DECEMBER ESTATE, LLC V. DECEMBER FARM INTERNATIONAL, LLC	<a href="#">2021-SC-0336-D</a>	SCOTT, SCOTT
SAMUEL PATTON V. COMMONWEALTH OF KENTUCKY	<a href="#">2021-SC-0407-D</a>	EDMONSON
CUT-N-SHOOT, LLC, ET AL. V. BINGHAM GREENEBAUM DOLL, LLP, ET AL.	<a href="#">2021-SC-0415-D</a>	GALLATIN
HEATHER PARSLEY, AS GUARDIAN/CONSERVATOR FOR COLETON PARSLEY, A MINOR, ET AL. V. CINCINNATI INSURANCE COMPANY, ET AL.  LAMBERT, J., NOT SITTING.	<a href="#">2021-SC-0420-D</a>	WARREN
JOSEPH BARRIER V. COMMONWEALTH OF KENTUCKY	<a href="#">2021-SC-0426-D</a>	RUSSELL
MARY EITEL V. SOUTH STATE BANK, N.A.	<a href="#">2021-SC-0458-D</a>	JEFFERSON
<b>AND</b>		
MARY EITEL V. SOUTH STATE BANK, N. A.	<a href="#">2021-SC-0459-D</a>	JEFFERSON
DONNA MILLER BRUENGER V. COURTENAY ANN MILLER  LAMBERT, J., WOULD GRANT DISCRETIONARY REVIEW.	<a href="#">2021-SC-0462-D</a>	JEFFERSON

**ORDER DENYING DISCRETIONARY REVIEW - February 16, 2022**

CHARLIE W. GORDON V. ERIC T. GORDON	<a href="#">2021-SC-0467-D</a>	SHELBY
AUSTIN CHANNING MCGRAW V. COMMONWEALTH OF KENTUCKY	<a href="#">2021-SC-0482-D</a>	CARTER
ELADIO CASTANEDA V. COMMONWEALTH OF KENTUCKY	<a href="#">2021-SC-0486-D</a>	CALDWELL
TIFFANY BRICE NICHOLS V. MARIAH NICHOLS	<a href="#">2021-SC-0491-D</a>	BELL
ALLIED WORLD SPECIALTY INSURANCE COMPANY, FORMERLY KNOWN AS DARWIN NATIONAL ASSURANCE COMPANY V. BOARD OF REGENTS OF KENTUCKY STATE UNIVERSITY ET AL.	<a href="#">2021-SC-0524-D</a>	FRANKLIN
G.F. V. COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES, ET AL.	<a href="#">2021-SC-0531-DE</a>	FAYETTE
DANIELLE NICOLE BURCH V. PAUL FRANKLIN LIPSCOMB	<a href="#">2021-SC-0562-DE</a>	ANDERSON

**ORDER DENYING DISCRETIONARY REVIEW AND DEPUBLISHING - February 16, 2022**

MARK JOSEPH SMITH V. HERITAGE HILLS GOLF CLUB	<a href="#">2021-SC-0521-D</a>	BULLITT
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**ORDER DENYING DISCRETIONARY REVIEW - February 23, 2022**

PROVIDENCE HILL, LLC V. DAMIEN NDZANGA	<a href="#">2021-SC-0304-D</a>	BOYD
VANMETER, J., WOULD GRANT DISCRETIONARY REVIEW.		

**ORDER GRANTING TRANSFER - February 23, 2022**

COMMONWEALTH OF KENTUCKY EX REL. [2021-SC-0518-T](#) FRANKLIN  
ATTORNEY GENERAL DANIEL CAMERON

V.

HOLLY JOHNSON, IN HER OFFICIAL  
CAPACITY AS SECRETARY OF THE  
FINANCE AND ADMINISTRATION  
CABINET, ET AL.

**AND**

COUNCIL FOR BETTER EDUCATION, INC. [2021-SC-0519-T](#) FRANKLIN  
ET AL. V.

HOLLY JOHNSON, IN HER OFFICIAL  
CAPACITY AS SECRETARY OF THE  
FINANCE AND ADMINISTRATION  
CABINET, ET AL.

**AND**

COMMONWEALTH OF KENTUCKY EX REL. [2021-SC-0520-T](#) FRANKLIN  
ATTORNEY GENERAL DANIEL CAMERON

V.

HOLLY JOHNSON, IN HER OFFICIAL  
CAPACITY AS SECRETARY OF THE  
FINANCE AND ADMINISTRATION  
CABINET, ET AL.

**AND**

AKIA MCNEARY, ET AL. V. [2021-SC-0522-T](#) FRANKLIN  
COUNCIL FOR BETTER EDUCATION, INC.,  
ET AL.

**ORDER DENYING TRANSFER - February 15, 2022**

RYAN QUARLES, IN HIS OFFICIAL [2021-SC-0578-T](#) JEFFERSON  
CAPACITY AS COMMISSIONER OF THE  
DEPARTMENT OF AGRICULTURE, ET AL.

V.

ANDY BESHEAR, IN HIS OFFICIAL  
CAPACITY AS GOVERNOR, ET AL.

**PETITION FOR MODIFICATION GRANTED - February 24, 2022**

COMMONWEALTH OF KENTUCKY V. [2020-SC-0080-DG](#) KNOX  
STEVEN D. ROARK

**ORDER DISMISSING - February 10, 2022**

SPENCER STONE V. [2021-SC-0556-MR](#) JEFFERSON  
LAUREN ADAMS OGDEN, ET AL.

HUGHES, KELLER, LAMBERT, NICKELL,  
JJ., SITTING. ALL CONCUR.

CALLOS RESOURCE, LLC V. [2021-SC-0489-WC](#) COURT OF  
GREG FARIS, ET AL. APPEALS

HUGHES, KELLER, LAMBERT, NICKELL,  
JJ., SITTING. ALL CONCUR.

JAMES R. RAMSEY, ET AL. V. [2021-SC-0115-MR](#) JEFFERSON  
JUDITH MCDONALD-BURKMAN, ET AL.

HUGHES, KELLER, LAMBERT, NICKELL,  
JJ., SITTING. ALL CONCUR.

MARY EITEL V. [2021-SC-0543-D](#) JEFFERSON  
SOUTH STATE BANK, N.A.

HUGHES, KELLER, LAMBERT, NICKELL,  
JJ., SITTING. ALL CONCUR.

**ORDER AFFIRMING EQUALLY DIVIDED COURT - February 24, 2022**

BLUEGRASS OAKWOOD, INC. V. [2020-SC-0593-WC](#) COURT OF  
ROBIN STUBBS, ET AL. APPEALS

**ORDER AFFIRMING EQUALLY DIVIDED  
COURT**

MINTON, C.J., KELLER, AND NICKELL, JJ.,  
WOULD AFFIRM THE OPINION OF THE  
COURT OF APPEALS. CONLEY, HUGHES,  
AND VANMETER, JJ., WOULD REVERSE  
THE OPINION OF THE COURT OF APPEALS.  
LAMBERT, J., NOT SITTING.

**ORDER VACATING SUSPENSION - February 14, 2022**

BARD KEVIN BRIAN V.  
KENTUCKY BAR ASSOCIATION

[2022-SC-0036-KB](#)

IN SUPREME  
COURT

**ORDER WITHDRAWING FROM KENTUCKY BAR ASSOCIATION - February 15, 2022**

KRISTINA LEA PORZIO V.  
KENTUCKY BAR ASSOCIATION

[2022-SC-0058-KB](#)

IN SUPREME  
COURT

**ORDER WITHDRAWING FROM KENTUCKY BAR ASSOCIATION - February 18, 2022**

ANDREA FAIANO V.  
KENTUCKY BAR ASSOCIATION

[2022-SC-0065-KB](#)

IN SUPREME  
COURT