

SUPREME COURT OF KENTUCKY

FEBRUARY 16, 2023 RULINGS

RELEASED: 10:00 A.M.

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

[2021-SC-0288-DG](#)
TO BE PUBLISHED

FAYETTE

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

BISIG, CONLEY, KELLER, LAMBERT,
NICKELL, AND THOMPSON, JJ., SITTING.
ALL CONCUR. VANMETER, C.J., NOT
SITTING.

Questions Presented:

Tort. Negligence. Foreseeability of Criminal Acts. Parking Lot Security. Issues include whether for third-party criminal acts, a landowner owes a duty to protect only from dangers that are reasonably foreseeable.

2. COMMONWEALTH OF KENTUCKY V.
THOMAS MOORE

[2021-SC-0411-DG](#)
TO BE PUBLISHED

TODD

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

ALL SITTING. ALL CONCUR.

Questions Presented:

Appellate Procedure. Criminal Law. Probation Revocation. Issues involve a *pro se* palpable error argument despite failure to appeal either the final judgment (20 years probated for 5 years) or the probation revocation.

3. DAOUD OUFABA V.
TAXI, LLC D/B/A TAXI 7 (AKA TAXICAB),
ET AL.

[2022-SC-0003-WC](#)
TO BE PUBLISHED

COURT OF
APPEALS

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

ALL SITTING. ALL CONCUR.

Questions Presented:

Workers' Compensation. Employment status. Issues include adopting the economic realities test in workers' compensation claims to determine whether a taxi driver is an independent contractor or employee for the purposes of receiving benefits.

4. ROGER D. BURDETTE V.
COMMONWEALTH OF KENTUCKY

[2022-SC-0015-MR](#)
TO BE PUBLISHED

JEFFERSON

**OPINION OF THE COURT BY CHIEF
JUSTICE VANMETER - AFFIRMING**

ALL SITTING. ALL CONCUR.

Questions Presented:

Criminal Law. Murder. Wanton Endangerment. Evidence. In this matter of right appeal, issues include whether the trial court properly admitted evidence at trial including autopsy photographs, text messages indicating the defendant's illicit purchase of pills, and content of pornographic videos defendant was watching at the time of the collision; whether it was error to permit the jury to view vehicles involved in the collision; and whether statements made by the defendant regarding substance use to a jail intake nurse were admissible.

5. JEFFERSON COUNTY PUBLIC SCHOOLS
A/K/A JEFFERSON COUNTY BOARD OF
EDUCATION, ET AL. V.
SHONTAI TUDOR, MOTHER AND NEXT
FRIEND OF J.T., A MINOR

[2022-SC-0024-DG](#)
TO BE PUBLISHED

JEFFERSON

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

ALL SITTING. ALL CONCUR.

Questions Presented:

Torts. School Law. Assault. Vicarious Liability. Immunity. Issues include whether JCPS is immune from a student's tort claims when an assistant principal allegedly used excessive force to restrain the student after a physical fight with a classmate.

6. DANIEL CAMERON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE COMMONWEALTH OF KENTUCKY V. EMW WOMEN'S SURGICAL CENTER, P.S.C., ON BEHALF OF ITSELF, ITS STAFF AND ITS PATIENTS, ET AL.

[2022-SC-0329-TG](#)
TO BE PUBLISHED

JEFFERSON

OPINION OF THE COURT BY JUSTICE LAMBERT - AFFIRMING AND REMANDING

ALL SITTING. CONLEY, J. CONCURS. VANMETER, C.J., CONCURS IN RESULT ONLY. BISIG, J., CONCURS IN PART AND DISSENTS IN PART BY SEPARATE OPINION IN WHICH KELLER, J., JOINS. KELLER, J., CONCURS IN PART AND DISSENTS IN PART BY SEPARATE OPINION IN WHICH BISIG, J., JOINS. NICKELL, J., CONCURS IN PART AND DISSENTS IN PART BY SEPARATE OPINION. THOMPSON, J., CONCURS IN PART AND DISSENTS IN PART BY SEPARATE OPINION.

Questions Presented:

Abortion. Interlocutory Relief. Standing. Issues include whether a temporary injunction enjoining enforcement of KRS 311.772 and KRS 311.7707-11 issued by the Jefferson Circuit Court following the United States Supreme Court opinion in *Dobbs v. Jackson Women's Health Organization*, 213 L. Ed. 2d 545, 142 S. Ct. 2228 (2022) was properly entered.

7. CLIFFORD HOWELL V. COMMONWEALTH OF KENTUCKY

[2021-SC-0354-MR](#)
NOT TO BE PUBLISHED

KENTON

MEMORANDUM OPINION OF THE COURT - AFFIRMING

ALL SITTING. ALL CONCUR.

8. KEVIN RUSSELL V. COMMONWEALTH OF KENTUCKY

[2021-SC-0381-MR](#)
NOT TO BE PUBLISHED

CASEY

AND

KEVIN RUSSELL V. COMMONWEALTH OF KENTUCKY

[2021-SC-0384-MR](#)
NOT TO BE PUBLISHED

CASEY

MEMORANDUM OPINION OF THE COURT - AFFIRMING

ALL SITTING. ALL CONCUR.

9. GARY PUGH V.
COMMONWEALTH OF KENTUCKY
[2021-SC-0448-MR](#)
NOT TO BE PUBLISHED MCCRACKEN
- MEMORANDUM OPINION OF THE COURT – AFFIRMING**
- ALL SITTING. ALL CONCUR.
10. BILLY CLARK, III V.
COMMONWEALTH OF KENTUCKY
[2021-SC-0477-MR](#)
NOT TO BE PUBLISHED BUTLER
- MEMORANDUM OPINION OF THE COURT - AFFIRMING**
- ALL SITTING. ALL CONCUR.
11. KERAM CHRISTENSEN V.
COMMONWEALTH OF KENTUCKY
[2021-SC-0504-MR](#)
NOT TO BE PUBLISHED KENTON
- MEMORANDUM OPINION OF THE COURT - AFFIRMING**
- ALL SITTING. VANMETER, C.J.; BISIG, CONLEY, KELLER, LAMBERT, AND NICKELL, JJ., CONCUR. THOMPSON, J., CONCURS IN RESULT ONLY.
12. LAYW THOMAS V.
COMMONWEALTH OF KENTUCKY
[2022-SC-0030-MR](#)
NOT TO BE PUBLISHED CHRISTIAN
- MEMORANDUM OPINION OF THE COURT - AFFIRMING**
- ALL SITTING. ALL CONCUR.
13. KERAM CHRISTENSEN V.
COMMONWEALTH OF KENTUCKY
[2022-SC-0041-TG](#)
NOT TO BE PUBLISHED KENTON
- MEMORANDUM OPINION OF THE COURT - AFFIRMING**
- ALL SITTING. VANMETER, C.J.; BISIG, CONLEY, KELLER, LAMBERT, AND NICKELL, JJ., CONCUR. THOMPSON, J., CONCURS IN RESULT ONLY.

OPINION AND ORDERS - February 16, 2023

KENTUCKY BAR ASSOCIATION V.
JEFFREY OWENS MOORE

[2016-SC-0082-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

**OPINION AND ORDER - PERMANENTLY
DISBARRING**

ALL SITTING. ALL CONCUR.

KENTUCKY BAR ASSOCIATION V.
ARTHUR JOSEPH MORBURGER

[2022-SC-0430-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

**OPINION AND ORDER - PERMANENTLY
DISBARRING**

ALL SITTING. ALL CONCUR.

LISA M. WELLS V.
KENTUCKY BAR ASSOCIATION

[2022-SC-0503-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

**OPINION AND ORDER - SUSPENDING
FOR 2 YEARS**

ALL SITTING. ALL CONCUR.

KENTUCKY BAR ASSOCIATION V.
STEVEN O. THORNTON

[2022-SC-0557-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

**OPINION AND ORDER - INDEFINITELY
SUSPENDING**

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

EXPEDITED ORDER GRANTING DISCRETIONARY REVIEW (NO ORAL ARGUMENT) - February 08, 2023

CABINET FOR HEALTH AND FAMILY SERVICES, COMMONWEALTH OF KENTUCKY V.
D.W., ET AL.

[2022-SC-0521-DGE](#)

JEFFERSON

EXPEDITED ORDER GRANTING DISCRETIONARY REVIEW (ORAL ARGUMENT) - February 08, 2023

COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES V.
M.Q.M., ET AL.

[2022-SC-0383-DGE](#)

JEFFERSON

THOMPSON, J., NOT SITTING.

ORDER GRANTING DISCRETIONARY REVIEW (ORAL ARGUMENT) - February 08, 2023

COMMONWEALTH OF KENTUCKY V.
RICKY D. ULLMAN, JR.

[2022-SC-0293-DG](#)

OLDHAM

THOMPSON, J., NOT SITTING.

DONNA POWERS V.
KENTUCKY FARM BUREAU MUTUAL INSURANCE COMPANY, ET AL.

[2022-SC-0309-DG](#)

MCCRACKEN

ORDER GRANTING DISCRETIONARY REVIEW (NO ORAL ARGUMENT) - February 08, 2023

VALETTA BROWNE V.
TIMOTHY POOLE

[2022-SC-0412-DG](#)

FAYETTE

ORDER DENYING DISCRETIONARY REVIEW - February 08, 2023

WILLIAM B. YEAPLES V. [2022-SC-0286-D](#) BOURBON
COMMONWEALTH OF KENTUCKY

JAMES J. NOONAN V. [2022-SC-0314-DE](#) GRAVES
JAMES D. GREEN, WARDEN
THOMPSON, J., NOT SITTING.

JESSICA SCHWEITZER, INDIVIDUALLY, [2022-SC-0323-D](#) FAYETTE
ET AL. V.
HANK INVESTMENTS, INC. D/B/A
MALABU PUB, ET AL.

THEODORE ANTHONY WALDRIDGE V. [2022-SC-0344-D](#) JEFFERSON
COMMONWEALTH OF KENTUCKY

KATHERINE M. WALDRIDGE V. [2022-SC-0345-D](#) JEFFERSON
COMMONWEALTH OF KENTUCKY

IOLA CAPITAL, ET AL. V. [2022-SC-0346-D](#) FRANKLIN
PUBLIC SERVICE COMMISSION OF
KENTUCKY, ET AL.
THOMPSON, J., NOT SITTING.

BERNHEIM ARBORETUM AND [2022-SC-0349-D](#) FRANKLIN
RESEARCH FOREST V.
PUBLIC SERVICE COMMISSION OF
KENTUCKY, ET AL.
THOMPSON, J., NOT SITTING.

ALASTAIR MARTEL COUCH V. [2022-SC-0359-D](#) FRANKLIN
COMMONWEALTH OF KENTUCKY

ORDER DENYING DISCRETIONARY REVIEW - February 08, 2023

JAMES MENARY, ET AL. V. SULLIVAN & COZART, INC., ET AL. THOMPSON, J., NOT SITTING.	2022-SC-0367-D	JEFFERSON
STEVE BALDWIN, ET AL. V. FRANKLIN-SIMPSON COUNTY PLANNING AND ZONING ADJUSTMENT BOARD, ET AL.	2022-SC-0379-D	SIMPSON
MARY JANE DIEBOLD, ET AL. V. STEPHEN E. DIEBOLD	2022-SC-0380-D	JEFFERSON
JAMES LEWIS ERWIN V. JUSTICE AND PUBLIC SAFETY CABINET	2022-SC-0391-D	OLDHAM
COMMONWEALTH OF KENTUCKY V. WILLIAM TERRY JAMISON	2022-SC-0393-D	FULTON
GARY JOY, INDIVIDUALLY AS SOLE SHAREHOLDER OF JOY & ASSOCIATES, INC., ET AL. V. LOWELL WAINWRIGHT, ET AL.	2022-SC-0397-D	JEFFERSON
SEAN MARTIN V. COMMONWEALTH OF KENTUCKY	2022-SC-0401-D	JEFFERSON
ALLISON BALL, IN HER OFFICIAL CAPACITY AS TREASURER OF THE COMMONWEALTH OF KENTUCKY V. HOLLY JOHNSON, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE FINANCE AND ADMINISTRATION CABINET, ET AL.	2022-SC-0413-D	FRANKLIN

ORDER DENYING DISCRETIONARY REVIEW - February 08, 2023

JAMES HARRISON V. CABINET FOR HEALTH AND FAMILY SERVICES, ET AL.	2022-SC-0415-D	FRANKLIN
GERRY BERNARDO V. TRISHA BERNARDO THOMPSON, J., NOT SITTING.	2022-SC-0417-D	FAYETTE
ABRAHAM MAROK, PERSONAL REPRESENTATIVE OF THE ESTATE OF ALEK MAROK V. NORTON HOSPITAL INC., D/B/A NORTON CHILDREN'S HOSPITAL, ET AL.	2022-SC-0431-D	JEFFERSON
JANICE GERALDS V. LESLIE GERALDS	2022-SC-0434-D	JEFFERSON
DAVID SMITH V. COMMONWEALTH OF KENTUCKY THOMPSON, J., NOT SITTING.	2022-SC-0437-D	PERRY
RONNY D. WALKER, SR. V. KATHLEEN KENNEY	2022-SC-0440-D	FRANKLIN
ROBERT ERNEST HULL V. NANCY PRUITT HULL	2022-SC-0445-D	JEFFERSON
CRAWFORD FARMS LEXINGTON, LLC V. HIDDEN BROOK, LLC	2022-SC-0446-D	FAYETTE

ORDER DENYING DISCRETIONARY REVIEW - February 08, 2023

COMMONWEALTH OF KENTUCKY V. [2022-SC-0448-D](#) ROCKCASTLE
BARBARA BURKE

NICKELL, J., WOULD GRANT
DISCRETIONARY REVIEW. LAMBERT, J.,
NOT SITTING.

ARNOLD LARRY ALEXANDER V. [2022-SC-0451-DE](#) JEFFERSON
COMMONWEALTH OF KENTUCKY

HORIZON ADULT HEALTH CARE, LLC V. [2022-SC-0455-D](#) MADISON
DEVOTED SENIOR CARE, LLC

J.C.C. V. [2022-SC-0464-DE](#) JEFFERSON
COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES, ET AL.

E.M.S.(M.) V. [2022-SC-0467-DE](#) WAYNE
C.E.M., ET AL.

ERIC SHRADER V. [2022-SC-0472-D](#) BRECKINRIDGE
COMMONWEALTH OF KENTUCKY,
ENERGY AND ENVIRONMENT CABINET,
ET AL.

MARCIA EBBS, M.D. V. [2022-SC-0483-D](#) OLDHAM
CHRIS ROTY
THOMPSON, J., NOT SITTING.

SA'MYRA N. GUERIN V. [2022-SC-0491-D](#) MCCRACKEN
COMMONWEALTH OF KENTUCKY

ORDER DENYING DISCRETIONARY REVIEW AND DEPUBLISHING - February 08, 2023

JEREMY BOTTOMS V.
CHARLES SMITH, ET AL.

[2022-SC-0450-D](#)

NELSON

KELLER, J., WOULD LEAVE THE COURT OF
APPEALS OPINION PUBLISHED.

ORDER DENYING TRANSFER - February 16, 2023

ASHLEY AHRENS V.
DANIEL FENDLEY, ET AL.

[2022-SC-0553-T](#)

OLDHAM

ALL SITTING. VANMETER, C.J.; CONLEY,
LAMBERT, NICKELL, AND THOMPSON, JJ.,
CONCUR. BISIG AND KELLER, JJ., WOULD
GRANT TRANSFER.

MOTION FOR RECONSIDERATION DENIED - February 13, 2023

EX PARTE LEO G. SMITH, CHIEF PUBLIC
DEFENDER, LOUISVILLE & JEFFERSON
COUNTY PUBLIC DEFENDER
CORPORATION AND ELIZABETH B.
MCMAHON, DEPUTY CHIEF PUBLIC
DEFENDER, LOUISVILLE & JEFFERSON
COUNTY PUBLIC DEFENDER
CORPORATION

[2022-SC-0243-OA](#)

IN SUPREME
COURT

**ORDER DENYING PETITION FOR
RECONSIDERATION**

ALL SITTING. ALL CONCUR.

PETITION FOR REHEARING GRANTED - February 16, 2023

PRIMAL VANTAGE COMPANY, INC. V. [2020-SC-0247-DG](#) JEFFERSON
KEVIN O'BRYAN, ET AL.

AND

KEVIN O'BRYAN V. [2021-SC-0064-DG](#) JEFFERSON
PRIMAL VANTAGE COMPANY, INC., ET AL.

AND

SANTÈ O'BRYAN V. [2021-SC-0065-DG](#) JEFFERSON
PRIMAL VANTAGE COMPANY, INC., ET AL.

**ORDER GRANTING REHEARING AND
SETTING ORAL ARGUMENT**

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

PETITION FOR REHEARING DENIED - February 16, 2023

ASHLAND HOSPITAL CORPORATION D/B/A [2020-SC-0260-DG](#) BOYD
KING'S DAUGHTERS MEDICAL CENTER,
ET AL. V.
DARWIN SELECT INSURANCE CO. N/K/A
ALLIED WORLD SURPLUS LINES
INSURANCE CO., ET AL.

VANMETER, C.J.; BISIG, CONLEY, KELLER,
NICKELL, AND THOMPSON SITTING. ALL
CONCUR. LAMBERT, J., NOT SITTING.

RIVER CITY FRATERNAL ORDER OF [2021-SC-0159-DG](#) JEFFERSON
POLICE LODGE NO. 614, INC. V.
LOUISVILLE/JEFFERSON COUNTY METRO
GOVERNMENT, ET AL.

ALL SITTING. VANMETER, C.J.; CONLEY,
KELLER, LAMBERT, NICKELL, AND
THOMPSON, JJ., CONCUR. BISIG, J., WOULD
GRANT THE PETITION FOR REHEARING.

JUNE MCGAHA, ET AL. V.
SUZANNE MCGAHA, ET AL.

ALL SITTING. ALL CONCUR.

[2021-SC-0351-DG](#)

RUSSELL

DONALD RAY VIOLETT V.
JOHN GRISE, ET AL.

[2021-SC-0425-MR](#)

WARREN

CORRECTED OPINION

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

ORDER DISMISSING – January 24, 2023

ALEXIS GRAHAM V.
COMMONWEALTH OF KENTUCKY

[2022-SC-0271-MR](#)

MCCRACKEN

**ORDER GRANTING APPELLANT’S
MOTION TO DISMISS**

VANMETER, C.J.; CONLEY, KELLER, AND
NICKELL, JJ., SITTING. ALL CONCUR.

IAN CASEY WALKER, ET AL. V. HON.
MARY K. MOLLOY

[2022-SC-0498-MR](#)

KENTON

**ORDER GRANTING APPELLANT’S
MOTION TO DISMISS**

VANMETER, C.J.; CONLEY, KELLER, AND
NICKELL, JJ., SITTING. ALL CONCUR.

MEIESHA SHARP V. COMMONWEALTH OF
KENTUCKY

[2021-SC-0577-DG](#)

HENDERSON

**ORDER GRANTING APPELLANT’S
MOTION TO DISMISS**

VANMETER, C.J.; CONLEY, KELLER, AND
NICKELL, JJ., SITTING. ALL CONCUR.

ORDER DISMISSING – January 24, 2023

RICHARD ALLEN V.
COMMONWEALTH OF KENTUCKY

[2022-SC-0484-D](#)

JEFFERSON

**ORDER DENYING MOTION FOR
BELATED APPEAL**

VANMETER, C.J.; CONLEY, KELLER, AND
LAMBERT, JJ., SITTING. ALL CONCUR.

ORDER DISMISSING – February 8, 2023

VICTORY GENTRY V.
J.A., A MINOR, BY AND THROUGH S.A., HIS
MOTHER AND NEXT FRIEND

[2022-SC-0303-D](#)

JEFFERSON

**ORDER GRANTING JOINT MOTION TO
DISMISS**

ALL SITTING. ALL CONCUR.

ORDER WITHDRAWING FROM KENTUCKY BAR ASSOCIATION - February 01, 2023

JOSEPH ALAN WRIGHT V.
KENTUCKY BAR ASSOCIATION

[2023-SC-0047-KB](#)

IN SUPREME
COURT

MARIA ALICE GALL V.
KENTUCKY BAR ASSOCIATION

[2023-SC-0048-KB](#)

IN SUPREME
COURT

AMY KATHLEEN JAY V.
KENTUCKY BAR ASSOCIATION

[2023-SC-0049-KB](#)

IN SUPREME
COURT