

Supreme Court of Kentucky

MARCH 26, 2020 MINUTES

RELEASED: 10:00 A.M.

21. LARRY LAMONT WHITE V. COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY JUSTICE VANMETER – REVERSING AND REMANDING
ALL SITTING. ALL CONCUR.
- [2014-SC-000725-MR](#)
TO BE PUBLISHED
- JEFFERSON

Questions Presented:

Death Penalty. Rape in the First Degree. Murder. On remand from the United States Supreme Court for further consideration in light of *Moore v. Texas* and its analysis of execution of intellectually disabled defendants. The Court held that defendant may not pro se waive his intellectual disability claim in a death penalty case and remanded to the trial court with instructions to conduct an evidentiary hearing on White's intellectual disability claim.

22. COMMONWEALTH OF KENTUCKY V. TRAVIS M. BREDHOLD AND COMMONWEALTH OF KENTUCKY V. EFRAIN DIAZ, JR. AND JUSTIN SMITH
OPINION OF THE COURT BY JUSTICE HUGHES – VACATING INTERLOCUTORY ORDERS AND REMANDING
ALL SITTING. ALL CONCUR.
- [2017-SC-000436-TG](#)
[2017-SC-000536-TG](#)
[2017-SC-000537-TG](#)
TO BE PUBLISHED
- FAYETTE

Questions Presented:

Death Penalty. Eighth Amendment. In consolidated cases, the Court vacated the trial court's orders extending the holding in *Roper v. Simmons* to prohibit death penalty eligibility for defendants who are under the age of 21. The Court held that this case is non-justiciable because none of the defendants have yet to be convicted or sentenced and thus do not have standing to raise an Eighth Amendment challenge to the death penalty.

23. PAUL MOSTERT V. THE MOSTERT GROUP, LLC
OPINION OF THE COURT BY JUSTICE HUGHES – AFFIRMING
MINTON, C.J.; KELLER, VANMETER, WRIGHT, JJ. AND DUNAWAY AND RHOADS, S.J., SITTING. ALL CONCUR. **LAMBERT AND NICKELL, JJ., NOT SITTING.**

[2017-SC-000600-DG](#)
TO BE PUBLISHED

FAYETTE

Questions Presented:

Secured Transactions. Breach of Contract. Software and Source Code. Creator of a thoroughbred biometrics computer program was not entitled to retain the program's source code where the contract documents reveal that the parties recognized and intended a difference between the term "software" and "source code" and "source code" was not specified as collateral to be retained by the creator.

24. TAMMY ROBERTS V. COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY JUSTICE WRIGHT – REVERSING, VACATING, AND REMANDING
ALL SITTING. MINTON, C.J.; HUGHES, KELLER, LAMBERT, AND VANMETER, JJ. CONCUR. NICKELL, J., CONCURS IN RESULT ONLY.

[2018-SC-000249-MR](#)
TO BE PUBLISHED

GRAVES

Questions Presented:

Murder. Trial court erred in failing to grant a mistrial where Commonwealth played recordings of police interviews with the Defendant containing references to a prior assault committed by her 12 years before, a violation of KRE 404(b). Trial court's ruling that the Defendant had not met the burden in showing that her actions were "in regard to" domestic violence for parole eligibility in KRS 403.720 was clearly erroneous where extensive evidence indicated that the Victim's act of taking money from the Defendant was an act of domestic violence in the couple's relationship.

25. B.S.S. V. K.S., NOW K.G.
**OPINION OF THE COURT BY
JUSTICE LAMBERT –
REVERSING**

[2019-SC-000019-DE](#)
TO BE PUBLISHED

CARTER

MINTON, C.J.; HUGHES,
KELLER, LAMBERT,
VANMETER J. AND WRIGHT,
JJ., SITTING. HUGHES,
KELLER, LAMBERT,
VANMETER AND WRIGHT, JJ.,
CONCUR. MINTON, C.J.,
DISSENTS BECAUSE HE
WOULD AFFIRM THE COURT
OF APPEALS' DECISION TO
REMAND THIS CASE TO THE
FAMILY COURT WITH
DIRECTIONS TO MAKE
SPECIFIC FINDINGS TO
EXPLAIN WHY, IN LIGHT OF
ITS ADJUDICATION THAT THE
FATHER POSED A RISK OF
SEXUAL ABUSE TO THE
CHILD, MODIFICATION OF
VISITATION TO REQUIRE
CONTACT WITH THE FATHER
PROMOTES THE BEST
INTERESTS OF THE CHILD.
NICKELL, J., NOT SITTING.

Questions Presented:

Family law. Dependency, Neglect and Abuse. Law of the Case. The law of the case doctrine is inapplicable to distinct and separate dependency, neglect, and abuse and custody actions, notwithstanding that the same child is involved or that the actions are before the same judge in the same family court. Court of Appeals ruling in a DNA action was entitled to no weight by the family court when it made a subsequent visitation determination in the dissolution action. Trial court did not abuse its discretion in declining to extend a finding of alleged sexual abuse from a DNA action to a dissolution action and the remainder of its findings of fact upon which it based its decision to grant visitation were supported by substantial evidence.

26. ASHLEY LAYMAN V. RICHARD
LEE BOHANON, JR.
**OPINION OF THE COURT BY
JUSTICE KELLER -
REVERSING**
MINTON, C.J.; HUGHES,
KELLER, LAMBERT, AND
WRIGHT, JJ., CONCUR.
VANMETER J., CONCURS IN
RESULT ONLY.
NICKELL, J., NOT SITTING.

[2019-SC-000364-DGE](#)
TO BE PUBLISHED

BOYD

Questions Presented:

Family Law. Parenting Time. Modification or Restriction. KRS 403.320(3). Mother's motion to modify from an equal parenting time schedule to schedule giving her more overnights than Father did not trigger the presumption of joint custody and equal parenting time in KRS 403.270. Modification of visitation or timesharing is governed by KRS 403.320. Trial court modification of timesharing was not error where the modified timesharing arrangement was reasonable based upon the circumstances of the case.

27. CURTIS SNELL V.
COMMONWEALTH OF
KENTUCKY
**MEMORANDUM OPINION OF
THE COURT – AFFIRMING**
ALL SITTING. MINTON, C.J.;
HUGHES, LAMBERT, NICKELL,
VANMETER J., AND WRIGHT,
JJ., CONCUR. KELLER, J.
CONCURS IN RESULT ONLY.

[2018-SC-000219-MR](#)
NOT TO BE PUBLISHED

KENTON

28. THOMAS D. JACOBS V.
COMMONWEALTH OF
KENTUCKY
**MEMORANDUM OPINION OF
THE COURT - AFFIRMING**
ALL SITTING. ALL CONCUR.

[2018-SC-000366-MR](#)
NOT TO BE PUBLISHED

MARION

29. SALEM NAGDY V.
COMMONWEALTH OF
KENTUCKY
**MEMORANDUM OPINION OF
THE COURT – AFFIRMING**
ALL SITTING. ALL CONCUR.

[2018-SC-000565-MR](#)
NOT TO BE PUBLISHED

JEFFERSON

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| 30. | SAM CORNETT V.
COMMONWEALTH OF
KENTUCKY
MEMORANDUM OPINION OF
 THE COURT - <u>AFFIRMING</u>
ALL SITTING. ALL CONCUR. | 2018-SC-000658-MR
NOT TO BE PUBLISHED | CLAY |
| 31. | DINA WOOD V. METALSA
AUTOMOTIVE USA; DANA
CORPORATION; HON. ROBERT
L. SWISHER, FORMER
ADMINISTRATIVE LAW JUDGE;
HON. DOUGLAS W. GOTT,
CHIEF ADMINISTRATIVE LAW
JUDGE; AND WORKERS
COMPENSATION BOARD
MEMORANDUM OPINION OF
 THE COURT - <u>AFFIRMING</u>
ALL SITTING. ALL CONCUR. | 2018-SC-000686-WC
NOT TO BE PUBLISHED | COURT OF
APPEALS |
| 32. | BRIAN CURTIS WOODS V.
COMMONWEALTH OF
KENTUCKY
MEMORANDUM OPINION OF
 THE COURT - <u>AFFIRMING</u>
ALL SITTING. MINTON, C.J.;
HUGHES, LAMBERT, NICKELL,
VANMETER AND WRIGHT, JJ.,
CONCUR. KELLER, J.
CONCURS IN RESULT ONLY. | 2019-SC-000075-MR
NOT TO BE PUBLISHED | HARDIN |
| 33. | WILLARD FLYNN V.
COMMONWEALTH OF
KENTUCKY
MEMORANDUM OPINION OF
 THE COURT - <u>AFFIRMING</u>
ALL SITTING. ALL CONCUR. | 2019-SC-000106-MR
2019-SC-000150-TG
NOT TO BE PUBLISHED | OWEN |

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| 34. | REX COAL CO., INC. V. EARL
BEGLEY; HONORABLE R.
ROLAND CASE,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS'
COMPENSATION BOARD
MEMORANDUM OPINION OF
 THE COURT - <u>AFFIRMING</u>
ALL SITTING. ALL CONCUR. | 2019-SC-000418-WC
NOT TO BE PUBLISHED | COURT OF
APPEALS |
| 35. | THOMAS LEE PERRY V. LEAH
NICOLE GOODWIN AND
CAITLYN MANON CURNETT
MEMORANDUM OPINION OF
 THE COURT - <u>REVERSING</u>
MINTON, C.J.; HUGHES,
KELLER, LAMBERT,
VANMETER, AND WRIGHT, JJ.
SITTING. ALL CONCUR.
NICKELL, J., NOT SITTING. | 2019-SC-000474-DE
NOT TO BE PUBLISHED | SCOTT |

OPINIONS AND ORDERS – MARCH 26, 2020

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| CHARACTER AND FITNESS
COMMITTEE OF THE
KENTUCKY OFFICE OF BAR
ADMISSIONS V. BRADLEY
STUART SOWELL
ORDER GRANTING
 RECOMMENDATION FOR
 LICENSURE REVOCATION
HUGHES, KELLER, LAMBERT,
NICKELL, VAMETER, AND
WRIGHT, JJ., SITTING. ALL
CONCUR.
MINTON, C.J., NOT SITTING. | 2019-SC-000413-OA
TO BE PUBLISHED | IN SUPREME
COURT |
| KENTUCKY BAR ASSOCIATION
V. JASON NICHOLAS MARTIN
ORDER OF INDEFINITE
 SUSPENSION
ALL SITTING. ALL CONCUR. | 2019-SC-000657-KB
TO BE PUBLISHED | IN SUPREME
COURT |

KENTUCKY BAR ASSOCIATION
V. JASON PIERCE MAC IAIN
**ORDER OF SUSPENSION
FROM THE PRACTICE OF LAW
FOR 181 DAYS**
ALL SITTING. ALL CONCUR.

[2019-SC-000643-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

KENTUCKY BAR ASSOCIATION
V. LISA M. WELLS
**ORDER OF TEMPORARY
SUSPENSION**
ALL SITTING. ALL CONCUR.

[2020-SC-000012-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

MAURY DAVID KOMMOR V.
KENTUCKY BAR ASSOCIATION
**ORDER OF SUSPENSION
FROM THE PRACTICE OF LAW
FOR 181 DAYS, TO BE
PROBATED FOR 2 YEARS**
ALL SITTING. ALL CONCUR.

[2020-SC-000035-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW – MARCH 18, 2020:

CHRIS MEINHART, ADMINISTRATOR OF THE ESTATE OF DEMETRA BOYD, ET AL. V. LOUISVILLE METRO GOVERNMENT, ET AL.	2019-SC-000237-DG	JEFFERSON
BRIANNA ROBINSON V. MONROE GUARANTEE INSURANCE COMPANY, ET AL.	2019-SC-000451-DG	CALLOWAY
COMMONWEALTH OF KENTUCKY EX REL. ANDY BESHEAR, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF KENTUCKY V. AMERICAN NATIONAL UNIVERSITY OF KENTUCKY, INC.	2019-SC-000533-DG	FAYETTE
LOUISVILLE SW HOTEL, LLC, ET AL. V. CHARLESTINE LINDSEY, ET AL.	2019-SC-000539-DG	JEFFERSON
JUSTIN PINTO V. VAN ROBISON, ET AL. LAMBERT, J. NOT SITTING.	2019-SC-000615-DGE	PULASKI
COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES V. K.S., ET AL.	2019-SC-000692-DGE	CALLOWAY

COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW – MARCH 18, 2020

DR. JASON HUNT, ET AL. V. JAKE RICHMOND, ET AL. AND EDWARD T. MURDOCK, D.O. V. JAKE RICHMOND, ET AL. VANMETER, J., WOULD GRANT DISCRETIONARY REVIEW.	2019-SC-000240-D 2019-SC-000246-D	MONTGOMERY
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TRISTAN HALL V. COMMONWEALTH OF KENTUCKY NICKELL, J., NOT SITTING.	2019-SC-000300-D	LAUREL
FEDERATED TRANSPORTATION SERVICES OF THE BLUEGRASS, INC. V. CHERYL WALLING, EXECUTRIX OF THE ESTATE OF PEGGY WALLING NICKELL, J., NOT SITTING.	2019-SC-000310-D	FAYETTE
WILLIAM ROBERTS V. COMMONWEALTH OF KENTUCKY NICKELL, J., NOT SITTING.	2019-SC-000311-D	JEFFERSON
SHAINA M. GERON V. THE JEFFERSON COUNTY BOARD OF EDUCATION D/B/A JEFFERSON COUNTY PUBLIC SCHOOLS, ET AL. NICKELL, J., NOT SITTING.	2019-SC-000312-D	JEFFERSON
DERECK A. RICHMOND V. COMMONWEALTH OF KENTUCKY NICKELL, J., NOT SITTING.	2019-SC-000313-D	JEFFERSON
JULIE WILLIAMS V. CANDY ROGERS, AS MOTHER AND NEXT FRIEND OF Z.R. NICKELL, J., NOT SITTING.	2019-SC-000322-D	JEFFERSON
WAYNE MURPHY V. COMMONWEALTH OF KENTUCKY LAMBERT, J., NOT SITTING.	2019-SC-000327-D	GREENUP
GEOFFREY YOUNG V. AMY MCGRATH KELLER, J., NOT SITTING.	2019-SC-000439-D	SCOTT

BRIAN BAKER, ET AL. V. LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT KELLER, J., WOULD GRANT DISCRETIONARY REVIEW.	2019-SC-000528-D	FAYETTE
ROBERT LAMONT MIZE V. COMMONWEALTH OF KENTUCKY NICKELL, J., NOT SITTING.	2019-SC-000529-D	JEFFERSON
PILOT CORPORATION V. TIM LYNCH, ET AL. NICKELL, J., NOT SITTING.	2019-SC-000542-D	BOONE
ANGELA JOHNSON, ET AL. V. STEVEN DIVINE, ET AL.	2019-SC-000558-D	CAMPBELL
WILLIAM D. SLONE V. DEEDRA HART, WARDEN, ET AL.	2019-SC-000569-D	LYON
WILLIE C. THOMPSON V. GARY MCCOY, ET AL. NICKELL, J., NOT SITTING. THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2019-SC-000580-D	LAWRENCE
JOHN AUBREY, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS SHERIFF OF JEFFERSON COUNTY, ET AL. V. KENTUCKY RETIREMENT SYSTEMS WRIGHT, J., WOULD GRANT DISCRETIONARY REVIEW. THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2019-SC-000581-D	FRANKLIN
BLUE EQUITY HOLDINGS KENTUCKY, LLC V. COBALT RIVERFRONT PROPERTIES, LLC, ET AL.	2019-SC-000584-D	JEFFERSON

REBECCA HILES V. COMMONWEALTH OF KENTUCKY LAMBERT, J., WOULD GRANT DISCRETIONARY REVIEW.	2019-SC-000601-D	BRACKEN
JOHN C. BUCKLEY, IV V. COMMONWEALTH OF KENTUCKY NICKELL, J., NOT SITTING.	2019-SC-000610-D	FAYETTE
UNITED PARCEL SERVICE, INC., ET AL. V. ALONZO MORTON	2019-SC-000611-D	FAYETTE
ALAN SCOTT WILLIAMS V. COMMONWEALTH OF KENTUCKY	2019-SC-000616-D	BOYD
FRANK SEDDIO V. GOLDEN RESOURCES, LLC VANMETER, J., WOULD GRANT REVIEW. LAMBERT, J., NOT SITTING.	2019-SC-000621-D	FAYETTE
DAVID WARSOW, ET AL. V. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY	2019-SC-0000640-D	GRAVES
LLOYD BLACKMAN V. COMMONWEALTH OF KENTUCKY NICKELL, J., NOT SITTING.	2019-SC-000642-D	HENDERSON
BOBBY LEE WILSON, JR. V. DUSTIN CLEM THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2019-SC-000652-D	BOYLE
JAMES BREWER V. COMMONWEALTH OF KENTUCKY	2019-SC-000650-D	PERRY

R.P. V. COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES, ET AL. 2019-SC-000702-DE JEFFERSON

THOMAS SLIDER V. COMMONWEALTH OF KENTUCKY 2019-SC-000707-D GARRARD

BRANDI DAMRON V. GARY GARRETT, ET AL. 2019-SC-000719-D FLOYD
THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED. NICKELL, J., NOT SITTING.

COMMONWEALTH OF KENTUCKY V. H.K., THE JUVENILE'S LEGAL MOTHER AND CUSTODIAN, ET AL. 2020-SC-000005-DE KENTON
NICKELL, J., NOT SITTING.

COURT ORDERS DENYING PETITION FOR REHEARING – MARCH 26, 2020

HUBERT MCGUIRE V. COMMONWEALTH OF KENTUCKY 2017-SC-000404-MR HENDERSON
MINTON, C.J.; HUGHES, KELLER, NICKELL, AND WRIGHT, JJ., CONCUR. **ORDER DENYING PETITION FOR REHEARING AND MODIFICATION. LAMBERT AND VANMETER, JJ., WOULD GRANT REHEARING.**

GREGORY Q. POSEY V. COMMONWEALTH OF KENTUCKY 2018-SC-000085-MR LOGAN
ALL SITTING. ALL CONCUR.

<p>LAMONT JOHNSON V. COMMONWEALTH OF KENTUCKY ORDER DENYING PETITION FOR REHEARING AND MODIFYING OPINION. ALL SITTING. ALL CONCUR.</p>	<p>2018-SC-000133-MR</p>	<p>KENTON</p>
<p>RONALD BULLITT JR. V. COMMONWEALTH OF KENTUCKY MINTON, C.J.; HUGHES, KELLER, LAMBERT, VANMETER, WRIGHT, JJ. CONCUR. NICKELL, J., NOT SITTING.</p>	<p>2018-SC-000190-MR</p>	<p>JEFFERSON</p>
<p>ERIC LEE ANTHONY V. COMMONWEALTH OF KENTUCKY MINTON, C.J.; HUGHES, LAMBERT, NICKELL, VANMETER, AND WRIGHT, JJ. CONCUR. KELLER, J., WOULD GRANT REHEARING.</p>	<p>2018-SC-000206-MR</p>	<p>JEFFERSON</p>
<p>LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT V. JOHN BAKER; HONORABLE GRANT ROARK, ADMINISTRATIVE LAW JUDGE; AND WORKERS' COMPENSATION BOARD. MINTON, C.J.; HUGHES, KELLER, NICKELL, VANMETER, AND WRIGHT, JJ. SITTING. ALL CONCUR. LAMBERT, J., NOT SITTING.</p>	<p>2019-SC-00032-WC</p>	<p>COURT OF APPEALS</p>

JERRY W. WELLS V. HON.
CATHERINE HOLDERFIELD,
JUDGE, WARREN FAMILY
COURT, DIV. IV AND ROBBIN
NELSON; ROBERT ANDREW
SHARP, JR.; A.K.S., A MINOR
CHILD; AND R.A.S. III, A MINOR
CHILD

2019-SC-000093-MR

WARREN

**ORDER DENYING PETITION
FOR REHEARING AND SUA
SPONTE CORRECTING STYLE
OF CASE**

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

COURT ORDERS

COMMONWEALTH OF
KENTUCKY V. MARQUIS
DWAYNE THURMAN
ORDER TO DISMISS
HUGHES; KELLER, LAMBERT,
AND NICKELL, JJ., SITTING. ALL
CONCUR.

2019-SC-000239-TG

FAYETTE

SHEILA MASON REECE V.
BENNIS MASON
ORDER TO DISMISS
HUGHES; KELLER, LAMBERT,
AND NICKELL, JJ., SITTING. ALL
CONCUR.

2019-SC-000669-D

WHITLEY

AMITY BRANNOCK V. WILLIAM
BRANNOCK
ORDER TO DISMISS
HUGHES; KELLER, LAMBERT,
AND NICKELL, JJ., SITTING. ALL
CONCUR.

2019-SC-000710-D

SCOTT