

SUPREME COURT OF KENTUCKY

MARCH 25, 2021 RULINGS

RELEASED: 10:00 A.M.

29. VIWIN TECH WINDOWS & DOORS, INC. V. MARK E. IVEY, ET AL.

[2019-SC-0370-WC](#)
TO BE PUBLISHED

COURT OF
APPEALS

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

ALL SITTING. MINTON, C.J.; CONLEY, HUGHES, AND LAMBERT, JJ., CONCUR. KELLER AND NICKELL, JJ., CONCUR IN RESULT ONLY.

Questions Presented:

Workers' Compensation. Impairment Rating. Pre-existing Condition. Claimant's pre-employment lower back disc herniation and two surgeries required an impairment rating to be carved out of his permanent partial disability rating for which the employer would be responsible. Administrative Law Judge misapplied American Medical Association *Guides to the Evaluation of Permanent Impairment*, which expressly provide a carve-out for individuals who had surgery for radiculopathy but are now asymptomatic.

30. KAREN C. BRITT V. UNIVERSITY OF LOUISVILLE, ET AL.

[2019-SC-0399-DG](#)
TO BE PUBLISHED

FRANKLIN

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

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

Questions Presented:

Breach of Employment Contract. Governmental Immunity. Statute of Limitations. University's recommendation and subsequent appointment letters over five years constituted lawfully authorized and express written contracts sufficient to waive University's governmental immunity in a tenure dispute. However, the professor's breach of contract claim is time-barred under KRS 45A.260 because the last written executed contract contained a termination date of July 30, 2010 and she did not bring a claim until January 2012, even though she continued working through 2011.

31. UNIVERSITY OF KENTUCKY V.
THE KERNEL PRESS, INC. D/B/A THE
KENTUCKY KERNEL

[2019-SC-0468-DG](#)
TO BE PUBLISHED

FAYETTE

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

ALL SITTING. ALL CONCUR.

Questions Presented:

Open Records Act. Title IX Investigation. Family Education Rights and Privacy Act. University failed to comply with its obligations under the Open Records Act (ORA) by refusing to identify or categorize various documents in its 470-page file concerning a sexual assault investigation. Federal law exceptions for education records should be narrowly construed and those documents which qualify for protection may still be subject to production in redacted form. Reviewing court must consider whether record production under ORA will result in an unwarranted invasion of privacy which would outweigh the public's interest in ensuring that public institutions respond appropriately to accusations of sexual harassment by a public employee, and privacy concerns can likely be resolved through redactions. Parts of the investigative file that were once preliminary in nature lost that exempt status when the University agreed to end the investigation and proceedings by accepting professor's resignation and entering into a separation agreement.

32. JONATHAN F. DAVIS V.
COMMONWEALTH OF KENTUCKY

[2019-SC-0530-MR](#)
TO BE PUBLISHED

FAYETTE

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

ALL SITTING. ALL CONCUR.

Questions Presented:

Mail Theft. KRS 514.140. Authorized Depository. Opinion of the Court affirming Fayette Circuit Court's denial of appellant's motion for a directed verdict on the charge of theft of mail matter, holding that guilt may be found not only by theft of mail matter from an "adjacent location" named in statute, but also by the theft of mail matter from an authorized depository, which includes any place where a mail recipient specifically directs or would reasonably expect mail to be placed or stored for delivery, such as a mail recipient's porch.

33. RICK AARON FISHER V.
COMMONWEALTH OF KENTUCKY

[2019-SC-0738-MR](#)
TO BE PUBLISHED

HARDIN

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

ALL SITTING. ALL CONCUR.

Questions Presented:

Matter of Right Appeal. Confrontation Clause. Hearsay. Defendant's rights under the Confrontation Clause were not violated by admitting incriminating hearsay offered by co-defendant's cellmate. The out-of-court statements were not testimonial consistent with *Crawford v. Washington*, 541 U.S. 36 (2004), and were admissions against interest. The admission of appellant's phone call from jail was not inadmissible hearsay because it was offered to establish why investigators contacted the informant and not to prove the truth of the matter asserted. The Commonwealth Attorney's aggressive questioning techniques to establish the timeline of the investigation were improper but do not warrant reversal.

34. EUNICE BARNES V. HONORABLE
JULIE GOODMAN, FAYETTE CIRCUIT
COURT, DIVISION 4, FORMERLY
HONORABLE JOHN REYNOLDS, ET AL.

[2020-SC-0088-MR](#)
TO BE PUBLISHED

COURT OF
APPEALS

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

ALL SITTING. ALL CONCUR. KELLER,
J., CONCURS BY SEPARATE OPINION
IN WHICH LAMBERT, J., JOINS.

Questions Presented:

Writ of Prohibition and/or Mandamus. Discovery. Defendant in wrongful death/negligence action was not entitled to a writ to stay discovery pending the completion of a parallel criminal case; Court of Appeals properly denied writ where the petitioner failed to establish a great and irreparable harm and staying criminal discovery was not being sought to protect the integrity of the criminal proceeding. A stay in a civil case is not constitutionally mandated when a parallel criminal case is pending, and petitioner may seek a protective order during discovery to shield her without insulating other defendants who would not require protection.

35. NATHANIEL EDWARD MAYSEY V.
EXPRESS SERVICES, INC., ET AL.

[2020-SC-0132-WC](#)
TO BE PUBLISHED

COURT OF
APPEALS

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

ALL SITTING. ALL CONCUR.

Questions Presented:

Workers' Compensation. Temporary Employees. Workplace Safety Violations. Temporary staffing company employee was not entitled to recover the 30% enhancement of benefits allowed under KRS 342.165 for intentional failure of an employer to comply with safety regulations. The statute requires that employee show the temporary staffing employer, not the host employer, intentionally failed to comply with a specific statute or administrative regulation.

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

[2020-SC-0205-DGE](#)
TO BE PUBLISHED

HARRISON

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

ALL SITTING. ALL CONCUR.

Questions Presented:

Termination of Parental Rights. Best Interests of the Child. Reasonable Efforts. Substantial evidence in the case supported trial court judge's decision to terminate parental rights despite acknowledged cultural barriers and the children's express wishes to return to their parents. Children were subject of allegations of abuse or neglect based on multiple incidents, the gravity of which the parents seemed not to acknowledge. The Cabinet made reasonable efforts to reunify the family through four years of case planning and services and multiple extensions by the trial court allowed the parents ample opportunity to show progress towards reunification.

37. DIANE ANDERSON V. MOUNTAIN
COMPREHENSIVE HEALTH
CORPORATION, ET AL.

[2020-SC-0133-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. Cumulative Trauma Injuries. It was error for the Administrative Law Judge (ALJ) to apply the notice provisions of KRS 342.185(1) and dismiss worker's claim as untimely. KRS 342.185(3), regarding cumulative trauma injuries, defines the new notice requirements. Employer was notified that cumulative trauma injuries were sustained within the two-year statutory limitations period and well within the five-year repose period since her last exposure.

38. BRYAN GREENWELL V.
COMMONWEALTH OF KENTUCKY
AND

[2018-SC-0496-MR](#)
NOT TO BE PUBLISHED

JEFFERSON

JODIE CECIL V. COMMONWEALTH OF
KENTUCKY

[2018-SC-0682-MR](#)
NOT TO BE PUBLISHED

JEFFERSON

**MEMORANDUM OPINION OF THE
COURT - AFFIRMING**

ALL SITTING. ALL CONCUR.

39. BRETT CARROLL V.
COMMONWEALTH OF KENTUCKY

[2019-SC-0253-MR](#)
NOT TO BE PUBLISHED

WARREN

**MEMORANDUM OPINION OF THE
COURT - AFFIRMING**

ALL SITTING. ALL CONCUR.

40. MARCELLUS PHAGAN V.
COMMONWEALTH OF KENTUCKY

[2019-SC-0445-MR](#)
NOT TO BE PUBLISHED

MCCRACKEN

**MEMORANDUM OPINION OF THE
COURT - AFFIRMING**

ALL SITTING. ALL CONCUR.

- | | | | |
|-----|--|---|-----------|
| 41. | DEANGELO POLLARD V.
COMMONWEALTH OF KENTUCKY

MEMORANDUM OPINION OF THE
COURT - <u>AFFIRMING</u>

ALL SITTING. ALL CONCUR. | 2019-SC-0471-MR
NOT TO BE PUBLISHED | HENDERSON |
| 42. | TRAVIS DURRUM V.
COMMONWEALTH OF KENTUCKY

MEMORANDUM OPINION OF THE
COURT - <u>AFFIRMING</u>

ALL SITTING. ALL CONCUR. | 2019-SC-0591-MR
NOT TO BE PUBLISHED | FRANKLIN |
| 43. | HUMBERTO MESA-VASQUEZ A/K/A
ALEJANDRO ARTURO VASQUEZ
CABRERA V. COMMONWEALTH OF
KENTUCKY

MEMORANDUM OPINION OF THE
COURT - <u>AFFIRMING</u>

ALL SITTING. ALL CONCUR. | 2019-SC-0604-MR
NOT TO BE PUBLISHED | PULASKI |
| 44. | BRADLEY TYSON MORRIS V.
COMMONWEALTH OF KENTUCKY

MEMORANDUM OPINION OF THE
COURT - <u>AFFIRMING IN PART AND
REVERSING IN PART AND
REMANDING</u>

ALL SITTING. ALL CONCUR. | 2019-SC-0606-MR
NOT TO BE PUBLISHED | GRAVES |

45. JAMES GARTIN V. COMMONWEALTH OF KENTUCKY [2019-SC-0628-MR](#) LAWRENCE
NOT TO BE PUBLISHED
- MEMORANDUM OPINION OF THE COURT - REVERSING AND REMANDING**
- ALL SITTING. MINTON, C.J.; HUGHES, NICKELL, AND VANMETER, JJ., CONCUR. LAMBERT, J. DISSENTS. KELLER, J., DISSENTS IN PART AND CONCURS IN RESULT ONLY IN PART BY SEPARATE OPINION IN WHICH CONLEY, J., JOINS.
46. DANIEL SCOTT NEAL V. COMMONWEALTH OF KENTUCKY [2019-SC-0649-MR](#) DAVIESS
NOT TO BE PUBLISHED
- MEMORANDUM OPINION OF THE COURT - AFFIRMING**
- ALL SITTING. ALL CONCUR.
47. RICKY SIMPSON V. COMMONWEALTH OF KENTUCKY [2019-SC-0734-MR](#) CASEY
NOT TO BE PUBLISHED
- MEMORANDUM OPINION OF THE COURT - AFFIRMING**
- ALL SITTING. ALL CONCUR.
48. CHASE WESTON HELVEY V. COMMONWEALTH OF KENTUCKY [2020-SC-0119-MR](#) FAYETTE
NOT TO BE PUBLISHED
- MEMORANDUM OPINION OF THE COURT - AFFIRMING**
- ALL SITTING. ALL CONCUR.

- | | | | |
|-----|--|---|------------------|
| 49. | JIMMY R. BALDWIN V.
COMMONWEALTH OF KENTUCKY | 2020-SC-0141-MR
NOT TO BE PUBLISHED | HARLAN |
| | MEMORANDUM OPINION OF THE COURT - <u>AFFIRMING</u> | | |
| | ALL SITTING. MINTON, C.J.; HUGHES, KELLER, LAMBERT, NICKELL, AND VANMETER, JJ., CONCUR. CONLEY, J. CONCURS IN RESULT ONLY. | | |
| | | | |
| 50. | PACKERS SANITATION SERVICES V.
JORGE MARTELL CABRERA, ET AL. | 2020-SC-0215-WC
NOT TO BE PUBLISHED | COURT OF APPEALS |
| | MEMORANDUM OPINION OF THE COURT - <u>AFFIRMING</u> | | |
| | ALL SITTING. ALL CONCUR. | | |
| | | | |
| 51. | ARMSTRONG COAL COMPANY, INC. V.
BRIAN PIPER, ET AL. | 2020-SC-0226-WC
NOT TO BE PUBLISHED | COURT OF APPEALS |
| | MEMORANDUM OPINION OF THE COURT - <u>AFFIRMING</u> | | |
| | ALL SITTING. ALL CONCUR. | | |
| | | | |
| 52. | HAYNES TRUCKING, LLC, ET AL. V.
HONORABLE ERNESTO M. SCORSONE,
FAYETTE CIRCUIT JUDGE, ET AL. | 2020-SC-0495-MR
NOT TO BE PUBLISHED | COURT OF APPEALS |
| | MEMORANDUM OPINION OF THE COURT - <u>AFFIRMING</u> | | |
| | ALL SITTING. ALL CONCUR. | | |

OPINION AND ORDERS - March 25, 2021

C. C., A JUVENILE V.
HONORABLE CHRISTOPHER J. MEHLING,
KENTON CIRCUIT COURT JUDGE, ET AL.

[2020-SC-0138-MR](#)
NOT TO BE PUBLISHED

COURT OF
APPEALS

OPINION AND ORDER DISMISSING

ALL SITTING. ALL CONCUR.

ROBERT LEE MCKINNEY, II V.
KENTUCKY BAR ASSOCIATION

[2021-SC-0049-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

**OPINION AND ORDER GRANTING
RESTORATION**

ALL SITTING. ALL CONCUR.

ORDER GRANTING DISCRETIONARY REVIEW (ORAL ARGUMENT) - March 17, 2021

BORDERS SELF-STORAGE & RENTALS, LLC
V. KENTUCKY TRANSPORTATION
CABINET, DEPARTMENT OF HIGHWAYS

[2020-SC-0339-DG](#)

LAWRENCE

CHRISTOPHER HARR, INDIVIDUALLY, ET.
AL. V. BLUE SKY, INC., ET AL.

[2020-SC-0371-DG](#)

JEFFERSON

MILLERS LANE CENTER, LLC, ET AL. V.
BLUE SKY, INC., ET AL.

[2020-SC-0384-DG](#)

JEFFERSON

CITY OF VERSAILLES, ET AL. V. SHIRLEY
JANE JOHNSON

[2020-SC-0431-DG](#)

WOODFORD

CHARMIN WATSON, ET AL. V. LANDMARK
UROLOGY, P.S.C., ET AL.

[2020-SC-0587-DG](#)

SCOTT

ORDER GRANTING DISCRETIONARY REVIEW (NO ORAL ARGUMENT) - March 17, 2021

LEGACY CONSULTING GROUP, LLC, ET AL. [2020-SC-0288-DG](#) FAYETTE
V. BRENDA GUTZMAN, IN HER CAPACITY
AS THE EXECUTRIX OF THE ESTATE OF
GRACE W. MCGAUGHEY, DECEASED, ET
AL.

LAWRENCE RICHARDSON V. [2020-SC-0300-DG](#) NICHOLAS
COMMONWEALTH OF KENTUCKY

MITZI SIMPSON, AS CO-ADMINISTRATOR [2020-SC-0567-DG](#) MARION
OF THE NANNIE CATHERINE WETHINGTON
ESTATE, ET AL. V. KERRY T. WETHINGTON,
ET AL.

ORDER DENYING DISCRETIONARY REVIEW - March 17, 2021

LOUISVILLE/JEFFERSON COUNTY METRO [2020-SC-0272-D](#) JEFFERSON
GOVERNMENT V. BRENT T. ACKERSON,
P.S.C., ET AL.

NATASHA MARSHALL, INDIVIDUALLY, ET [2020-SC-0274-D](#) MASON
AL. V. KENTUCKY FARM BUREAU MUTUAL
INSURANCE COMPANY, ET AL.

DAVID HENRY WISE V. RICKY NEWTON, ET [2020-SC-0306-D](#) HARDIN
AL.

AMY JOHNSON, ET AL. V. COMMUNITY [2020-SC-0309-D](#) PIKE
TRUST & INVESTMENT CO., AS EXECUTOR
OF THE ESTATE OF HOBART C. JOHNSON,
ET AL.

JOHN HASKIELL V. JOYCE RELIFORD, ET [2020-SC-0346-D](#) ADAIR
AL.

ORDER DENYING DISCRETIONARY REVIEW - March 17, 2021

MOORE PROPERTY INVESTMENTS, LLC V. DR. LAURA FULKERSON	<u>2020-SC-0347-D</u>	JEFFERSON
ED RICHERSON, ET AL. V. CITY OF MT. WASHINGTON, ET AL.	<u>2020-SC-0377-D</u>	BULLITT
GEORGE A. SPENCER V. TRAVIS A. ARNOLD, ET AL.	<u>2020-SC-0397-D</u>	JEFFERSON
GARY J. RICHARD, ET AL. V. THC KENTUCKY COAL VENTURE I, LLC	<u>2020-SC-0398-D</u>	PIKE
KAMRON GOFF V. COMMONWEALTH OF KENTUCKY	<u>2020-SC-0482-D</u>	JEFFERSON
ANTHONY CHAMBERS V. COMMONWEALTH OF KENTUCKY	<u>2020-SC-0483-D</u>	MADISON
TEDDY COOPER, ET AL. V. AJITH NAIR, M.D., ET AL.	<u>2020-SC-0490-D</u>	JEFFERSON
LEONARD HORNSBY V. COMMONWEALTH OF KENTUCKY	<u>2020-SC-0515-D</u>	KENTON
GLENN KERNS V. JOSEPH A. WINKLE	<u>2020-SC-0529-D</u>	JEFFERSON
ELIZABETH TURPIN V. JANET CONOVER, WARDEN, KENTUCKY CORRECTIONAL INSTITUTION FOR WOMEN	<u>2020-SC-0532-D</u>	SHELBY

ORDER DENYING DISCRETIONARY REVIEW - March 17, 2021

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, ET AL. V. MARK EDWARD PORTWOOD	2020-SC-0545-D	FAYETTE
KENNEY CROSS, ET AL. V. L-M ASPHALT PARTNERS, LTD. D/B/A ATS CONSTRUCTION, ET AL. LAMBERT, J., WOULD GRANT DISCRETIONARY REVIEW.	2020-SC-0549-D	FAYETTE
GLENN KERNS V. JOSEPH A. WINKLE	2020-SC-0551-D	JEFFERSON
PAUL ESTES V. COMMONWEALTH OF KENTUCKY	2020-SC-0556-D	MERCER
BRENT MICHAEL WATSON V. COMMONWEALTH OF KENTUCKY	2020-SC-0557-D	JEFFERSON
BRANDON LAMONT BAILEY V. COMMONWEALTH OF KENTUCKY	2020-SC-0570-D	FAYETTE
S. T. V. B. F. (NOW S.), ET AL.	2020-SC-0578-DE	KENTON
ERIC STRECK V. JIGNESH SHAH, ET AL.	2020-SC-0579-D	JEFFERSON
CHRISTOPHER C. BABCOCK, DMD, MD, ET AL. V. RENEE ESTRIDGE, ET AL.	2020-SC-0581-D	JEFFERSON
CITY OF CAMPBELLSVILLE, KENTUCKY, ET AL. V. CHRISTOPHER D. WILLIAMS	2020-SC-0583-D	TAYLOR

ORDER DENYING DISCRETIONARY REVIEW - March 17, 2021

A. M. R. V. CABINET FOR HEALTH AND FAMILY SERVICES, COMMONWEALTH OF KENTUCKY, ET. AL.
LAMBERT, KELLER, AND NICKELL, JJ., WOULD GRANT DISCRETIONARY REVIEW.

[2020-SC-0590-DE](#) JEFFERSON

WILLIE JAMES SMITH V. COMMONWEALTH OF KENTUCKY

[2021-SC-0012-D](#) BELL

THE CARDINALS' NEST EGG TRUST V. SANDTON CREDIT SOLUTIONS MASTER FUND III, LP

[2021-SC-0030-D](#) JEFFERSON

JORDAN SHOEMAKER V. COMMONWEALTH OF KENTUCKY

[2021-SC-0031-D](#) BOYLE

ORDER DENYING DISCRETIONARY REVIEW AND DEPUBLISHING - March 17, 2021

JENNIFER FORD, M.D. V. BAPTIST HEALTH MEDICAL GROUP, INC. D/B/A BAPTIST NEUROLOGICAL SURGERY, ET AL.
LAMBERT, J., NOT SITTING.

[2020-SC-0494-D](#) JEFFERSON

PETITION FOR REHEARING DENIED - March 23, 2021

ARTHUR LONG V. COMMONWEALTH OF KENTUCKY [2019-SC-0002-MR](#) LYON

COMMONWEALTH OF KENTUCKY EX REL. J. MICHAEL BROWN, SECRETARY OF THE GOVERNOR'S EXECUTIVE CABINET V. STARS INTERACTIVE HOLDINGS (IOM) LTD., F/K/A AMAYA GROUP HOLDINGS (IOM) LTD., ET AL. [2019-SC-0058-DG](#) FRANKLIN

AND

STARS INTERACTIVE HOLDINGS (IOM) LTD., F/K/A AMAYA GROUP HOLDINGS (IOM) LTD., ET AL. V. COMMONWEALTH OF KENTUCKY EX REL. J. MICHAEL BROWN, SECRETARY OF THE GOVERNOR'S EXECUTIVE CABINET [2019-SC-0209-DG](#) FRANKLIN

ORDER DENYING TRANSFER - March 03, 2021

EMMONS FARTHING V. COMMONWEALTH OF KENTUCKY [2020-SC-0607-T](#) ESTILL

ORDER DISMISSING - March 03, 2021

CHARTER COMMUNICATIONS, LLC V.
KRUTI DESAI, ET AL.

[2020-SC-0547-CL](#)

IN SUPREME
COURT

**THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT HAVING
INFORMED THE COURT IT HAS
WITHDRAWN ITS NOVEMBER 9, 2020
ORDER OF CERTIFICATION, AND THERE
BEING NO FURTHER ACTION TO BE
TAKEN HEREIN, THE ABOVE-STYLED
MATTER IS HEREBY DISMISSED.**

CONLEY, LAMBERT, NICKELL, AND
VANMETER, JJ., SITTING. ALL CONCUR.

APRIL LYNCH V. GEICO GENERAL
INSURANCE COMPANY

[2019-SC-0502-DG](#)

JEFFERSON

**THE PARTIES JOINT MOTION TO DISMISS
APPEAL IS GRANTED.**

CONLEY, LAMBERT, NICKELL, AND
VANMETER, JJ., SITTING. ALL CONCUR.

DONALD VIOLETT V. JOHN R. GRISE

[2021-SC-0048-D](#)

WARREN

**MOVANT'S MOTION FOR EXTENSION OF
TIME TO FILE DISCRETIONARY REVIEW
IS DENIED AND THE APPEAL IS HEREBY
DISMISSED.**

CONLEY, LAMBERT, NICKELL, AND
VANMETER, JJ., SITTING. ALL CONCUR.

ORDER WITHDRAWING FROM KENTUCKY BAR ASSOCIATION - March 01, 2021

SANDRA L MCLAUGHLIN V.
KENTUCKY BAR ASSOCIATION

[2021-SC-0046-KB](#)

IN SUPREME
COURT