

Supreme Court of Kentucky

APRIL 30, 2020 MINUTES

RELEASED: 10:00 A.M.

36. JOHN HAUBER AND CHERI HAUBER [2018-SC-000394-DG](#) JEFFERSON
V. HARRY W. HAUBER, III AND [2019-SC-000154-DG](#)
REBECCA L. ALTER **TO BE PUBLISHED**
OPINION OF THE COURT BY JUSTICE
VANMETER– AFFIRMING
ALL SITTING. ALL CONCUR.

Questions Presented:

Jurisdiction. KRS Chapter 386B. Trusts and Estates. Whether circuit court has jurisdiction over trust matter that differs from the trust dispute in district court, though involving same parties and same trust. While KRS Chapter 386B provides for concurrent jurisdiction for district and circuit courts over many trust-related matters and disputes, the language of KRS 386B.2-030(2) focuses on *matters* arising from any given trust in determining exclusive jurisdiction. The term “matter” as used in KRS 386B.2-030(2) refers to a discrete event arising from the trust, rather than the trust itself. Thus, the circuit court had jurisdiction over the matter arising from trust.

37. DAWAN Q. MULAZIM V. [2018-SC-000466-MR](#) FAYETTE
COMMONWEALTH OF KENTUCKY [2018-SC-000471-MR](#)
AND **TO BE PUBLISHED**
QUINCINO DEONTE CANADA V.
COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY JUSTICE
HUGHES – AFFIRMING
ALL SITTING. ALL CONCUR.

Questions Presented:

Robbery in First Degree. Tampering with Physical Evidence. Persistent Felony Offender. Trial court properly admitted evidence of victim’s pretrial photo identification of defendant because under the specific circumstances of the case, the identification procedures were not unduly suggestive. Sufficient evidence existed to overcome motion for directed verdict on robbery charge. Commonwealth’s closing argument did not impermissibly shift the burden of proof as the comments did not imply that the defense had an obligation to talk to victims that they failed to meet, and trial court did not err in denying an admonition that the victims had no duty to cooperate with defense. No errors occurred in jury selection wherein both sides received extra peremptory strikes and the error in permitting the shackling of defendants’ ankles during sentencing phase was harmless under the circumstances.

38. STEVEN DALE EVERSOLE V. COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY JUSTICE WRIGHT – REVERSING, VACATING, AND REMANDING
ALL SITTING. ALL CONCUR.
- [2018-SC-000656-MR](#)
TO BE PUBLISHED
- LAUREL

Questions Presented:

Fleeing and Evading in First Degree. Wanton Endangerment. Reckless Driving. Persistent Felony Offender. Where juror reported to the judge in an ex parte discussion that she had been offered a bribe, the trial court's failure to include counsel in a colloquy with the juror or to provide an admonition to the juror was improper and denied defendant's right to an impartial jury.

39. STEVEN ZAPATA V. COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY JUSTICE WRIGHT – AFFIRMING
ALL SITTING. ALL CONCUR.
- [2018-SC-000666-MR](#)
TO BE PUBLISHED
- JEFFERSON

Questions Presented:

Murder. Trial court did not err in refusing to allow defendant to withdraw a guilty plea due to ineffective assistance of counsel, counsel's alleged disqualifying conflict of interest, and his incorrect belief of his absolute right to withdraw his guilty plea at any time prior to sentencing. The trial court determined the guilty plea was voluntary based on the totality of the circumstances and did not abuse its discretion when it denied his motion to withdraw.

40. JASSICA SNEED V. UNIVERSITY OF LOUISVILLE HOSPITAL; DR. TANYA FRANKLIN; AND DR. JENNIFER FORD ALLEN
OPINION OF THE COURT BY JUSTICE KELLER - AFFIRMING
ALL SITTING. ALL CONCUR.
- [2019-SC-000048-DG](#)
TO BE PUBLISHED
- JEFFERSON

Questions Presented:

Medical Malpractice. Under the facts presented, the Court declined to extend the continuous treatment doctrine to toll the statute of limitation in regard to the Appellant's claims against the allegedly negligent physicians. Alleged fraudulent concealment of medical records did not merit equitable tolling of the statute of limitations where appellant possessed all necessary knowledge to file a claim without any of the allegedly concealed information. Allegedly negligent treating physicians were not ostensible agents of the Hospital where the Hospital attempted to alert its patients that the physicians who provided treatment at the Hospital were not employees of the Hospital and there was no evidence of any intent of the Hospital to deceive its patients into believing physicians were employees or of the Hospital holding the physicians out to be employees.

41. NATHANIEL L BREAZEALE V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE LAMBERT – AFFIRMING**
ALL SITTING. ALL CONCUR

[2019-SC-000113-MR](#)
TO BE PUBLISHED

TRIGG

Questions Presented:

First Degree Assault. First Degree Criminal Abuse. Defendant’s convictions for first-degree assault and first-degree criminal abuse did not violate his rights against being subjected to double jeopardy where convictions under each offense clearly required proof that the other did not. The right to unanimous verdict was not violated where there was sufficient evidence to support a finding under each alternative theory presented in the jury instructions. There was no error in allowing evidence of prior bad acts or photographs of the child’s injuries where the high probative value of the evidence substantially outweighed any risk of undue prejudice.

42. COMMONWEALTH OF KENTUCKY
V. HONORABLE MARY SHAW,
JUDGE, JEFFERSON CIRCUIT
COURT, AND CHARLES
RUTLEDGE
**OPINION OF THE COURT BY
JUSTICE VANMETER –
REVERSING AND REMANDING**
ALL SITTING. ALL CONCUR.

[2019-SC-000218-MR](#)
TO BE PUBLISHED

JEFFERSON

Questions Presented:

Writ of Prohibition. Criminal Law. Process for *in camera* review of potentially exculpatory therapy records. Commonwealth is not required to retrieve medical providers’ names from witness, however, under the new process detailed by the Court, if a defendant meets the requirements for an *in camera* review, the witness must give the trial court the names of his or her providers or the court may exclude the witness’s testimony.

43. COMMONWEALTH OF KENTUCKY,
KENTUCKY UNEMPLOYMENT
INSURANCE COMMISSION V.
ELIZABETH MILES AND DJ
LETCHER MANOR
**MEMORANDUM OPINION OF THE
COURT - REVERSING**
WRIGHT, J., NOT SITTING.
MINTON, C.J.; HUGHES, KELLER,
LAMBERT, NICKELL, AND
VANMETER, JJ., CONCUR.

[2018-SC-000455-DG](#)
NOT TO BE PUBLISHED

LETCHER

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| 44. JAMES M. SPAULDING V. COMMONWEALTH OF KENTUCKY MEMORANDUM OPINION OF THE COURT - <u>AFFIRMING</u> ALL SITTING. ALL CONCUR. | 2018-SC-000615-MR NOT TO BE PUBLISHED | JEFFERSON |
| 45. CODY BATES V. COMMONWEALTH OF KENTUCKY MEMORANDUM OPINION OF THE COURT – <u>AFFIRMING</u> ALL SITTING. ALL CONCUR. | 2019-SC-000121-MR 2019-SC-000141-MR NOT TO BE PUBLISHED | JEFFERSON |
| 46. LARRY BRATCHER V. COMMONWEALTH OF KENTUCKY MEMORANDUM OPINION OF THE COURT - <u>AFFIRMING</u> ALL SITTING. ALL CONCUR. | 2019-SC-000135-MR NOT TO BE PUBLISHED | MUHLENBERG |
| 47. DOMINIC HODGE V. COMMONWEALTH OF KENTUCKY MEMORANDUM OPINION OF THE COURT – <u>AFFIRMING</u> ALL SITTING. ALL CONCUR. | 2019-SC-000159-MR NOT TO BE PUBLISHED | HARDIN |
| 48. KEVIN IPINA-GARCIA V. COMMONWEALTH OF KENTUCKY MEMORANDUM OPINION OF THE COURT – <u>AFFIRMING</u> VANMETER, J., NOT SITTING. MINTON, C.J.; HUGHES, KELLER, LAMBERT, NICKELL, AND WRIGHT, JJ., CONCUR. | 2019-SC-000189-MR NOT TO BE PUBLISHED | FAYETTE |
| 49. R & T ACOUSTICS V. BERNABE AGUIRRE; HON. STEPHANIE L. KINNEY, ADMINISTRATIVE LAW JUDGE; AND WORKERS’ COMPENSATION BOARD MEMORANDUM OPINION OF THE COURT – <u>AFFIRMING</u> ALL SITTING. MINTON, C.J.; HUGHES, KELLER, LAMBERT, NICKELL, AND WRIGHT, JJ., CONCUR. VANMETER, J., CONCURS IN RESULT ONLY. | 2019-SC-000214-WC NOT TO BE PUBLISHED | COURT OF APPEALS |

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| 50. | JOHN TABOR V. COMMONWEALTH OF KENTUCKY MEMORANDUM OPINION OF THE COURT - <u>AFFIRMING</u> ALL SITTING. ALL CONCUR. | 2019-SC-000233-MR NOT TO BE PUBLISHED | FRANKLIN |
| 51. | WILLIAM MATTINGLY V. COMMONWEALTH OF KENTUCKY MEMORANDUM OPINION OF THE COURT - <u>AFFIRMING</u> ALL SITTING. ALL CONCUR. | 2019-SC-000242-MR NOT TO BE PUBLISHED | JEFFERSON |
| 52. | LEONARD BATES III V. COMMONWEALTH OF KENTUCKY MEMORANDUM OPINION OF THE COURT - <u>AFFIRMING</u> ALL SITTING. ALL CONCUR. | 2019-SC-000243-MR NOT TO BE PUBLISHED | HARDIN |
| 53. | JENNIFER CREAGER V. FORD MOTOR COMPANY (LAP); HON. TANYA PULLIN, ADMINISTRATIVE LAW JUDGE; AND WORKERS' COMPENSATION BOARD MEMORANDUM OPINION OF THE COURT - <u>AFFIRMING</u> ALL SITTING. ALL CONCUR. | 2019-SC-000272-WC NOT TO BE PUBLISHED | COURT OF APPEALS |
| 54. | JACOR BROADCASTING OF LEXINGTON V. LEANN TRUE NORTON; HON. DOUGLAS W. GOTT, ALJ; AND WORKERS' COMPENSATION BOARD MEMORANDUM OPINION OF THE COURT - <u>AFFIRMING</u> ALL SITTING. ALL CONCUR. | 2019-SC-000320-WC NOT TO BE PUBLISHED | COURT OF APPEALS |

OPINIONS AND ORDERS – APRIL 30, 2020

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| JONATHAN L. SMITH V. KENTUCKY BAR ASSOCIATION ORDER OF SUSPENSION ALL SITTING. ALL CONCUR. | 2020-SC-000046-KB TO BE PUBLISHED | IN SUPREME COURT |
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COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –APRIL 22, 2020:

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| LINDSEY CHILDERS, AS ADMINISTRATIX OF THE ESTATE OF CAMERON PEARSON, ET AL. V. WILLIAM S. ALBRIGHT, ET AL. LAMBERT, NICKELL, JJ., NOT SITTING. LEWIS AND TENNYSON, SJ., SITTING. | 2019-SC-000226-D | JEFFERSON |
| ESTATE OF JOHN C. BENTON, JR., BY MARY M. MARCUM AS EXECUTRIX V. TIM THOMAS CURRIN, ET AL. | 2019-SC-000279-D | BOONE |
| SHAYNE BLACKABY V. NANCY BARNES | 2020-SC-000004-DE | SHELBY |
| COMMONWEALTH OF KENTUCKY V. IKIA ANDERSON CLAYBORNE | 2020-SC-000058-D | FAYETTE |

COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW – APRIL 22, 2020

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| ROBERT A. BRAMBLETT, ET AL. V. PENSKE TRUCK LEASING CO., L.P., ET AL. | 2019-SC-000186-D | JESSAMINE |
| HEIDI WEATHERLY D/B/A TARTAN MEDICAL SERVICES, ET AL. V. HOSPICE OF LAKE CUMBERLAND, INC. LAMBERT, J., NOT SITTING. | 2019-SC-000259-D | LAUREL |
| HENRY JUNIE CRAWFORD, JR. V. COMMONWEALTH OF KENTUCKY | 2019-SC-000271-D | JEFFERSON |
| RICHARD MORSE, ET AL. V. JOHN MORSE | 2019-SC-000347-D | JEFFERSON |

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| DANA JEFFRIES V. JUDITH BARNES, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF NORVEL C. BARNES, DECEASED, ET AL. | 2019-SC-000351-D | TRIMBLE |
| MARK BRENGELMAN V. ELMER C. MAGGARD, PH.D. KELLER, J., WOULD GRANT DISCRETIONARY REVIEW. | 2019-SC-000362-D | FRANKLIN |
| TINA BRIDGEWATER, ET AL. V. COURTNEY LEYVA, ET AL. | 2019-SC-000336-D | JEFFERSON |
| 3 BRIDGES, INC. V. J.W. LUTTRELL, ET AL. | 2019-SC-000401-D | FRANKLIN |
| FRED MESSER V. UNIVERSAL UNDERWRITERS INSURANCE COMPANY LAMBERT AND WRIGHT, JJ., WOULD GRANT DISCRETIONARY REVIEW. | 2019-SC-000403-D | PERRY |
| MARCUS PERRY GREEN V. COMMONWEALTH OF KENTUCKY NICKELL, J., NOT SITTING. | 2019-SC-000422-D | FAYETTE |
| BETHANY L. STANZIANO, ET AL. V. ANDREW COOLEY, M.D., ET AL. LAMBERT AND NICKELL, JJ., NOT SITTING. HAUSER AND ROBERTS, SJ., SITTING. KELLER, J., AND ROBERTS, SJ., WOULD GRANT DISCRETIONARY REVIEW. | 2019-SC-000436-D | FAYETTE |
| JIMMY DALE NEW V. COMMONWEALTH OF KENTUCKY NICKELL, J., NOT SITTING. | 2019-SC-000480-D | PERRY |

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| KARL KRAUS, JR. V. COMMONWEALTH OF KENTUCKY | 2019-SC-000487-D | LIVINGSTON |
| TONY SHACKELTON V. ESTATE OF JOHN P. FRIES, ET AL. LAMBERT, J., NOT SITTING. THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED. WRIGHT, J., WOULD LEAVE PUBLISHED THE OPINION OF THE COURT OF APPEALS. | 2019-SC-000517-D | FAYETTE |
| PUBLIC SERVICE COMMISSION OF KENTUCKY V. BRANDENBURG TELEPHONE COMPANY AND SPRINT COMMUNICATIONS COMPANY, L.P. V. BRANDENBURG TELEPHONE COMPANY, ET AL. NICKELL, J., NOT SITTING. | 2019-SC-000605-D 2019-SC-000609-D | FRANKLIN |
| TAMARA V. ZUSSTONE V. BANK OF AMERICA, N.A. | 2019-SC-000608-D | OLDHAM |
| LAVERNE BEASLEY V. REBECCA KAELIN, ET AL. | 2019-SC-000612-D | JEFFERSON |
| ISAIAH TYLER V. COMMONWEALTH OF KENTUCKY | 2019-SC-000645-D | HENDERSON |
| JERRY W. BLADES V. COMMONWEALTH OF KENTUCKY | 2019-SC-000661-D | MCCRACKEN |
| KEWAN HACKETT V. COMMONWEALTH OF KENTUCKY | 2019-SC-000673-D | JEFFERSON |
| ISAIAH TYLER V. COMMONWEALTH OF KENTUCKY | 2019-SC-000681-D | HENDERSON |

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| MICHAEL NICHOLS V. NORTON HEALTHCARE SYSTEM, INC. LAMBERT, J., NOT SITTING. | 2019-SC-000687-D | JEFFERSON |
| ABDULAZIZ AL HASSAWI V. LAKE CUMBERLAND MARINE HOLDINGS, LLC LAMBERT, J., NOT SITTING. | 2019-SC-000697-D | PULASKI |
| WARWICK FOUNDATION, INC. V. CARL E. HEBROCK, ET AL. | 2019-SC-000701-D | MERCER |
| AMITY BRANNOCK V. WILLIAM BRANNOCK NICKELL, J., NOT SITTING. | 2019-SC-000711-D | SCOTT |
| FREDERICK KOSZAREK V. MARGARET MINZNER | 2019-SC-000722-D | CAMPBELL |
| DENNIS CALLOWAY V. COMMONWEALTH OF KENTUCKY LAMBERT, J., NOT SITTING. | 2019-SC-000723-D | LOGAN |
| TERRY W. ROACH V. COMMONWEALTH OF KENTUCKY | 2019-SC-000733-D | MCCRACKEN |
| COMMONWEALTH OF KENTUCKY V. DANIEL JORDAN | 2019-SC-000735-D | KENTON |
| E.D.B. V. CABINET FOR HEALTH AND FAMILY SERVICES, ET AL. | 2020-SC-000014-DE | FAYETTE |
| TRAVIS SMITH V. COMMONWEALTH OF KENTUCKY | 2020-SC-000016-D | HICKMAN |
| PATRICK BAHIL, ET AL. V. FLEXSTEEL INDUSTRIES, INC., ET AL. | 2020-SC-000033-D | JEFFERSON |

GEOFFREY M. YOUNG V. ADAM
EDELLEN, ET AL.
**ORDER ENFORCING
SANCTIONS**
ALL SITTING. ALL CONCUR.
ENTERED: APRIL 30, 2020

2019-SC-000625-I

FAYETTE

WILLIAM LEWIS MILLS V.
COMMONWEALTH OF
KENTUCKY
**ORDER DENYING MOTION FOR
RELIEF UNDER CR 60.02**
HUGHES, KELLER, VANMETER,
AND WRIGHT, JJ., SITTING. ALL
CONCUR.
ENTERED: APRIL 24, 2020

2019-SC-000672-D

BUTLER

DERRICK AMMONS, ET AL. V.
JANET C. BOOTH, 13TH
JUDICIAL DISTRICT, ET AL.
**ORDER DENYING PETITION TO
EXERCISE ORIGINAL
JURISDICTION UNDER
KENTUCKY CONSTITUTION
§110(2)(A)**
ALL SITTING. ALL CONCUR.
ENTERED: APRIL 30, 2020

2020-SC-000031-OA

IN SUPREME
COURT

G.R. V. COMMONWEALTH OF
KENTUCKY, CABINET FOR
HEALTH AND FAMILY
SERVICES, ET AL.
**ORDER GRANTING MOTION TO
DISMISS**
HUGHES, KELLER, VANMETER,
AND WRIGHT, JJ., SITTING. ALL
CONCUR.
ENTERED: APRIL 27, 2020

2020-SC-000039-TE
2020-SC-000049-TE

WARREN

GARY D. WARICK V.
PAINTSVILLE HOSPITAL CO.
LLC D/B/A PAUL B. HALL
REGIONAL MEDICAL CENTER,
ET AL.

2020-SC-000057-D

JOHNSON

**ORDER DENYING MOVANT'S
MOTION TO PROCEED IN
FORMA PAUPERIS ON
BELATED MOTION FOR
DISCRETIONARY REVIEW AND
APPOINTMENT OF COUNSEL**
HUGHES, KELLER, VANMETER,
AND WRIGHT, JJ., SITTING. ALL
CONCUR.
ENTERED: APRIL 24, 2020

GINI G. GRACE V.
COMMONWEALTH OF
KENTUCKY, TRANSPORTATION
CABINET, ET AL.

2020-SC-000079-D

MCCRACKEN

**ORDER DENYING MOTION FOR
EXTENSION**
HUGHES, KELLER, VANMETER,
AND WRIGHT, JJ., SITTING. ALL
CONCUR.
ENTERED: APRIL 27, 2020