MAY 19, 2011 MINUTES

RELEASED: 10:00 A.M.

82. DAVID LEE SANDERS V.
COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY
JUSTICE VENTERS – AFFIRMING
MINTON, C.J., NOT SITTING.

2008-SC-000825-MR MADISON TO BE PUBLISHED

Questions Presented:

Petition for post-conviction relief pursuant to CR 60.02 denied. Appointment of Special Judge by Chief Senior Status Judge upheld.

83. AARON ALLEN V.
COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY
JUSTICE ABRAMSON –
AFFIRMING

2009-SC-000842-MR KENTON TO BE PUBLISHED

Questions Presented:

Wanton Murder-30 year sentence. Trial court properly refused to give first degree manslaughter instruction which was not supported by the evidence.

84. ANTHONY WAYNE GARRISON V. COMMONWEALTH OF KENTUCKY **OPINION OF THE COURT BY** JUSTICE NOBLE – AFFIRMING ABRAMSON, J., JOINED BY MINTON, C.J., AND VENTERS, J., CONCUR BUT WOULD STATE THAT THE PROCEDURE EMPLOYED BY THE COMMONWEALTH'S ATTORNEY OF READING INTO THE RECORD THE DEFENDANT'S PRIOR RECORD IS ACCEPTABLE IF THE DEFENDANT STIPULATES ON THE **RECORD TO THIS INFORMATION:** ABSENT A STIPULATION, THE PROSECUTOR IS ESSENTIALLY SERVING AS A WITNESS BY OFFERING EVIDENCE FOR THE JURY'S CONSIDERATION, A PRACTICE THAT IMPLICATES **RULE 3.7 OF THE KENTUCKY RULES** OF PROFESSIONAL CONDUCT.

2010-SC-000039-MR TO BE PUBLISHED

FAYETTE

Questions Presented:

Second Degree Robbery, Tampering with Physical Evidence, and Second Degree PFO-20 year sentence. Prior parole violations properly introduced during the sentencing phase of the trial.

MAY 19, 2011 MINUTES

RELEASED: 10:00 A.M.

85. J.A.S. V.
HON. LISA O. BUSHELMAN,
JUDGE, KENTON CIRCUIT
COURT, ET AL.
OPINION OF THE COURT BY
JUSTICE VENTERS – AFFIRMING
MINTON, C.J., DISSENTS BY
SEPARATE OPINION. CUNNINGHAM,
J., DISSENTS BY SEPARATE
OPINION IN WHICH, SCOTT, J.,
JOINS.

2010-SC-000045-MR KENTON TO BE PUBLISHED

Questions Presented:

Trial court had jurisdiction over a claim brought by a putative father under KRS Chapter 406 to establish the paternity of a child born to a married woman and conceived while maintaining sexual relations with her husband. Overruling J.N.R. v. O'Reilly, 264 S.W.3d 587 (Ky. 2008).

86. MICHAEL MCQUEEN V.
COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY
JUSTICE SCOTT – AFFIRMING

2010-SC-000186-MR

LAUREL

TO BE PUBLISHED

Questions Presented:

Intentional Murder-32 year sentence. A timely challenge to the jury panel must be made or it is waived. Equitable caveat to RCr 9.34 is adopted. Character evidence. Demeanor evidence.

87. JERRY WAYNE BLADES V.
COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY
JUSTICE SCOTT – AFFIRMING

2010-SC-000187-MR TO BE PUBLISHED

MCCRACKEN

Questions Presented:

Complicity to manufacture methamphetamine, first-degree possession of methamphetamine, possession of marijuana, possession of drug paraphernalia, first-degree PFO-40 year sentence. Trial court did not err in refusing to suppress evidence discovered in a warrantless search of a hotel room or in failing to enter a directed verdict.

MAY 19, 2011 MINUTES

RELEASED: 10:00 A.M.

88. KROGER V.
JAPHETH LIGON, ET AL.
AND
JAPHETH LIGON V.
KROGER, ET AL.
OPINION OF THE COURT –
AFFIRMING

2010-SC-000385-WC FROM COURT OF APPEALS

2010-SC-000403-WC FROM COURT OF APPEALS

Questions Presented:

Workers' Compensation. Whether evidence that injury required surgical implantation of hardware compelled future medical benefits despite findings that it produced a 0% permanent impairment rating and required no treatment at MMI or when claim was heard. Whether the evidence compelled permanent income benefits.

89. RON BURROUGHS V.
MARTCO, ET AL.
OPINION OF THE COURT –
AFFIRMING

2010-SC-000431-WC FROM COURT TO BE PUBLISHED OF APPEALS

Questions Presented:

Workers' Compensation. Whether KRS 342.125(3) limits the time for filing a motion to reopen based on a mistake of law. Whether Chapter 342 authorizes a motion under CR 60.01 and CR 60.02 to correct such an error.

90. STATE FARM INSURANCE
COMPANY V.
HONORABLE BRIAN C. EDWARD,
JUDGE, JEFFERSON CIRCUIT
COURT, ET AL.
OPINION OF THE COURT BY
JUSTICE ABRAMSON –
AFFIRMING

VENTERS, J., DISSENTS BY SEPARATE OPINION.

2010-SC-000521-MR TO BE PUBLISHED

JEFFERSON

Questions Presented:

No entitlement to a writ where the party may obtain ordinary appellate review of its objection to the use of the Master Commissioner in default judgment cases.

MAY 19, 2011 MINUTES

RELEASED: 10:00 A.M.

91. PERRY BENNINGTON V.
COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY
JUSTICE NOBLE –
AFFIRMING IN PART,
REVERSING IN PART,
AND REMANDING
CUNNINGHAM, J., CONCURS IN
PART AND DISSENTS IN PART BY
SEPARATE OPINION IN WHICH
SCOTT, J., JOINS.

92. NESCO V.
JACKLYN HADDIX, ET AL.
AND
JACKLYN HADDIX V.
NESCO, ET AL.
OPINION OF THE COURT –
AFFIRMING IN PART AND
REVERSING IN PART

93. JASON RILEY, ET AL. V.
HONORABLE
SUSAN SCHULTZ GIBSON,
JUDGE, JEFFERSON
CIRCUIT COURT, ET AL.
OPINION OF THE COURT BY
JUSTICE NOBLE- REVERSING
SCHRODER, J., CONCURS IN
RESULT ONLY BY SEPARATE
OPINION IN WHICH SCOTT, J.,
JOINS.

2009-SC-000521-MR BULLITT TO BE PUBLISHED

Questions Presented:

Four counts of first degree sodomy, three counts of rape, and six counts of incest-70 year sentence. Remanded to amend judgment to reflect that one sodomy conviction was for the crime of indecent or immoral practices with a child under the age of fifteen in violation of KRS 435.105, the statute in effect at the time of the crime.

2010-SC-000216-WC FROM COURT OF APPEALS

2010-SC-000247-WC FROM COURT TO BE PUBLISHED OF APPEALS

Questions Presented:

Workers' Compensation. Whether failure to specify the subsection of KRS 342.140(1) used to calculate average weekly wage for temporary worker's sporadic employment required a remand for analysis under subsection (1)(e). Whether the evidence compelled a particular figure.

2010-SC-000619-MR TO BE PUBLISHED

JEFFERSON

Questions Presented:

Media right of access extends to a juror criminal contempt hearing.

MAY 19, 2011 MINUTES

RELEASED: 10:00 A.M.

- 94. WILLIAM ALFORD V.
 COMMONWEALTH OF KENTUCKY
 OPINION OF THE COURT –
 REVERSING AND REMANDING
 CUNNINGHAM, J., CONCURS BY
 SEPARATE OPINION IN WHICH
 ABRAMSON AND SCOTT, JJ., JOIN.
 VENTERS, J., CONCURS IN RESULT
 BY SEPARATE OPINION IN WHICH
 SCHRODER, J., JOINS.
- 95. KERRY DREW WOODSON V.
 KIMBERLA WOODSON
 OPINION OF THE COURT BY
 JUSTICE CUNNINGHAM –
 REVERSING AND REMANDING

2009-SC-000141-MR HARDIN TO BE PUBLISHED

Questions Presented:

First Degree Sodomy, First Degree Sexual Abuse-Life Imprisonment. Extensive use of inadmissible hearsay mandates reversal and remand for retrial.

<u>2010-SC-000053-DG</u> JEFFERSON **TO BE PUBLISHED**

Questions Presented:

Domestic Relations. Maintenance. Issues include whether the rule set out in Dame v. Dame, 628 S.W.2d 625 (Ky. 1982), that lump sum maintenance is not modifiable should be revisited.

96. COMMONWEALTH OF KENTUCKY V. ANTHONY NASH

OPINION OF THE COURT BY

JUSTICE SCHRODER –

VACATING AND REMANDING

VENTERS, J., DISSENTS BY

SEPARATE OPINION IN WHICH
MINTON, C.J., JOINS.

2010-SC-000065-DG FAYETTE TO BE PUBLISHED

Questions Presented:

Criminal Law. Sex Offender Registration Act (SORA). Ex post facto law. Issues include the effects of the 2006 Amendments to SORA on this Court's opinion in Peterson v. Shake, 120 S.W.3d 707 (Ky. 2003); and whether the increased penalty for failure to register as a sex offender is an ex post facto violation where the duty to register began prior to the 2000 Amendments to SORA and the violation occurred after 2006 Amendments to SORA.

MAY 19, 2011 MINUTES

97.	BRUCE E. HARTLEY V. COMMONWEALTH OF KENTUCKY MEMORANDUM OPINION OF THE COURT – AFFIRMING MINTON, C.J., CONCURS IN RESULT ONLY WITHOUT SEPARATE OPINION. SCOTT, J., CONCURS IN RESULT ONL BY SEPARATE OPINION IN WHICH CUNNINGHAM, J., JOINS.	2009-SC-000640-MR NOT TO BE PUBLISHED	ESTILL
98.	KENNETH P. GATEWOOD V. COMMONWEALTH OF KENTUCKY MEMORANDUM OPINION OF THE COURT- AFFIRMING	2009-SC-000644-MR NOT TO BE PUBLISHED	JEFFERSON
99.	MICHAEL C. DUMAS V. COMMONWEALTH OF KENTUCKY MEMORANDUM OPINION OF THE COURT – AFFIRMING	2010-SC-000378-MR NOT TO BE PUBLISHED	MARSHALL
100.	WILLIAM GERALD SEIDL V. COMMONWEALTH OF KENTUCKY MEMORANDUM OPINION OF THE COURT – AFFIRMING	2010-SC-000387-MR NOT TO BE PUBLISHED	JEFFERSON
101.	DANIEL KEITH GABBARD V. COMMONWEALTH OF KENTUCKY MEMORANDUM OPINION OF THE COURT – AFFIRMING SCHRODER, J., NOT SITTING.	2010-SC-000435-MR NOT TO BE PUBLISHED	PENDLETON
102.	PALM BEACH COMPANY V. NORMA TARTAR, ET AL. MEMORANDUM OPINION OF THE COURT – AFFIRMING	2010-SC-000501-WC NOT TO BE PUBLISHED	FROM COURT OF APPEALS
103.	GARY WATKINS V . L3 COMMUNICATIONS, ET AL. MEMORANDUM OPINION OF THE COURT – <u>AFFIRMING</u>	2010-SC-000551-WC NOT TO BE PUBLISHED	FROM COURT OF APPEALS

MAY 19, 2011 MINUTES

RELEASED: 10:00 A.M.

104. JOHN ROSCOE GARLAND V. COMMONWEALTH OF KENTUCKY MEMORANDUM OPINION OF THE COURT – AFFIRMING IN PART, REVERSING IN PART, AND REMANDING	2009-SC-000035-MR 2009-SC-000361-MR NOT TO BE PUBLISHED	MCCREARY MCCREARY
OPINIONS AND ORDERS - MAY 11, 2011		
LEONDO HARRIS V. COMMONWEALTH OF KENTUCKY ORDER GRANTED DISCRETIONARY REVIEW, VACATED THE COURT OF APPEALS' OPINION AND REMANDED TO THE COURT OF APPEALS FOR FURTHER PROCEEDINGS.	2009-SC-000394-DG	JEFFERSON
KENTUCKY RETIREMENT SYSTEMS V. ROGER WEST ORDER GRANTED DISCRETIONARY REVIEW, VACATED THE COURT OF APPEALS' OPINION AND REMANDED TO THE COURT OF APPEALS FOR FURTHER PROCEEDINGS.	2010-SC-000433-DG	FRANKLIN
OPINIONS AND ORDERS - MAY 19, 2011		
KENTUCKY BAR ASSOCIATION V. RONALD DEAN HARRIS ORDER SUSPENDED RESPONDENT FROM THE PRACTICE OF LAW FOR 181 DAYS WITH CONDITIONS.	2011-SC-000123-KB TO BE PUBLISHED	IN SUPREME COURT
MICHAEL D. LUTES V. KENTUCKY BAR ASSOCIATION ORDER PUBLICLY REPRIMANDED	2011-SC-000148-KB TO BE PUBLISHED	IN SUPREME COURT

MOVANT WITH CONDITIONS.

MAY 19, 2011 MINUTES

RELEASED: 10:00 A.M.

OPINIONS AND ORDERS - MAY 19, 2011

IN RE: MICHAEL LEE GOFF ORDER DENIED RELIEF.	2011-SC-000179-CF NOT TO BE PUBLISHED	IN SUPREME COURT
LEONARD K. NAVE V. KENTUCKY BAR ASSOCIATION ORDER SUSPENDED MOVANT FROM THE PRACTICE OF LAW FOR A PERIOD OF FIVE YEARS.	2011-SC-000204-KB TO BE PUBLISHED	IN SUPREME COURT
BENJAMIN CLAY JOHNSON V. KENTUCKY BAR ASSOCIATION ORDER RESTORED MOVANT TO THE PRACTICE OF LAW WITH CONDITIONS.	2011-SC-000211-KB TO BE PUBLISHED	IN SUPREME COURT
LESA GAIL BRIDGES V. KENTUCKY BAR ASSOCIATION ORDER SUSPENDED MOVANT FROM THE PRACTICE OF LAW FOR A PERIOD OF TWO YEARS.	2011-SC-000214-KB TO BE PUBLISHED	IN SUPREME COURT

<u>COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW – MAY 11, 2011</u>

DAVID STIGER V. COMMONWEALTH OF KENTUCKY	2008-SC-000864-DG	JEFFERSON
KENTON SMITH, ET AL. V. RICHARD WILLIAMS, ET AL.	2010-SC-000332-DG	MEADE
GABRIELLA SIMONE ALLEN V. COMMONWEALTH OF KENTUCKY	2010-SC-000353-DG	JEFFERSON
HON. CLAUDE R. PRATHER V. JUSTIN BRYANT	2010-SC-000375-DG	JEFFERSON
CHARLES L. WILSON, JR. V. CITY OF CENTRAL CITY, KENTUCKY	2010-SC-000394-DG	MUHLENBERG

MAY 19, 2011 MINUTES

COURT ORDERS GRANTING MOTION FOR DISMAY 11, 2011	SCRETIONARY REVIEW –	
BRENDA C. OSBORNE V. STEVEN H. KEENEY, ET AL. AND	2010-SC-000397-DG	JEFFERSON
STEVEN H. KEENEY V. BRENDA C. OSBORNE, ET AL.	2010-SC-000430-DG	JEFFERSON
MARK BOLTON, DIRECTOR METRO CORRECTIONS V. RICKIE IRVIN	2010-SC-000520-DG	JEFFERSON
COMMONWEALTH OF KENTUCKY V. RUSSELL TIM PRIDHAM, JR.	2011-SC-000126-DG	HARDIN
DIANE WHALEN, ET AL. V. HAROLD GENE CUNNINGHAM, ET AL.	2011-SC-000174-DG	BOONE
COURT ORDERS DENYING MOTION FOR DISC	CRETIONARY REVIEW –	
MAY 11, 2011		
WILLIAM WALTON, M.D., ET AL. V. PATRICIA JOHNSON, ET AL.	2010-SC-000294-D	FAYETTE
GEORGE ROBERT SHERMAN V . COMMONWEALTH OF KENTUCKY	2010-SC-000324-D	LAUREL
HENRY WAYNE TUCKER V. CSX TRANSPORTATION, INC.,	2010-SC-000373-D	PERRY
SCOT-BILT HOMES, INC., ET AL. V. JOSEPH L. HARDESTY, ET AL.	2010-SC-000377-D	JEFFERSON
LINDA FIELDS COATNEY V. COMMONWEALTH OF KENTUCKY	2010-SC-000382-D	LAUREL
JOHN KEVIN STEELE V. KIMBERLY ANN STEELE, ET AL.	2010-SC-000389-D	SHELBY

MAY 19, 2011 MINUTES

COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW -			
MAY 11, 2011			
MARK G. TABLER, ET AL. V. JOHN WOLHOY, ET AL.	2010-SC-000411-D	GREENUP	
DAVID WINSTEAD V. HOLLY WINSTEAD	2010-SC-000413-D	KENTON	
DAVID SMITH V. COMMONWEALTH OF KENTUCKY	2010-SC-000414-D	BRECKINRIDGE	
LAUREL CONSTRUCTION COMPANY, INC. V. PAINTSVILLE UTILITY COMMISSION	2010-SC-000422-D	JOHNSON	
LUTHER N. NORENE V. MARK E. LINEBAUGH, ET AL.	2010-SC-000441-D	EDMONSON	
OLDHAM COUNTY SHERIFF'S DEPARTMENT V. ROB JONES, ET AL.	2010-SC-000454-D	OLDHAM	
DAFFERE LESLIE V. LCA VISION, INC., D/B/A LASIKPLUS VISION CENTER, ET AL.	2010-SC-000486-D	JEFFERSON	
SEAN STUDER, ET AL. V. WALTER JACKSON, ET AL.	2010-SC-000495-D	HARRISON	
CELIA DVORAK V. JEROME DVORAK	2010-SC-000496-D	JEFFERSON	
COMMONWEALTH OF KENTUCKY, TRANSPORTATION CABINET, DEPARTMENT OF HIGHWAYS V. THOMAS BLACKBURN, ET AL. THE OPINION OF THE COURT OF APPEALS IS ORDERED TO BE PUBLISHED.	2010-SC-000512-D	PIKE	
MARGARET H. BROWN, ET AL. V. PHILLIP KERR, ET AL.	2010-SC-000518-D	HARDIN	

MAY 19, 2011 MINUTES

COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW -		
MAY 11, 2011		
MARION MIHALEK, ET AL. V. RUSSELL KOGER, ET AL.	2010-SC-000565-D	WAYNE
TERESA SHEFFIELD, MONROE COUNTY CLERK, ET AL. V. WILBUR GRAVES, COUNTY JUDGE/EXECUTIVE, ET AL.	2010-SC-000593-D	OHIO MONROE
DELMAR PARTIN V. COMMONWEALTH OF KENTUCKY THE OPINION OF THE COURT OF APPEALS IS ORDERED TO BE PUBLISHED.	2010-SC-000637-D	KNOX
COUNTY FISCAL COURTS V. COMMONWEALTH OF KENTUCKY, JUSTICE AND PUBLIC SAFETY CABINET, KENTUCKY DEPARTMENT OF CORRECTIONS, ET AL.	2010-SC-000641-D	FRANKLIN
WILLIAM C. ERIKSEN, P.S.C. V. KENTUCKY FARM BUREAU MUTUAL INSURANCE COMPANY	2010-SC-000652-D	HARDIN
RANDY GLEN CAMPBELL, ET AL. V. BARRY L. BINGHAM THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2010-SC-000661-D	GRANT
DAN R. JACKSON V. PATTY A. JACKSON	2010-SC-000692-D	OHIO
DARYL GLENN SHULTZ V. COMMONWEALTH OF KENTUCKY	2010-SC-000731-D	JEFFERSON
PATRICK SEEWRIGHT V. COMMONWEALTH OF KENTUCKY, DEPARTMENT OF CORRECTIONS, ET AL.	2010-SC-000805-D	FRANKLIN

MAY 19, 2011 MINUTES

RELEASED: 10:00 A.M.

<u>COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW – MAY 11, 2011</u>

JAMES ALLEN PETERS V. COMMONWEALTH OF KENTUCKY	2010-SC-000821-D	NELSON
DAVID WAYNE ALLEN V. COMMONWEALTH OF KENTUCKY	2011-SC-000006-D	JEFFERSON
JELLICO COMMUNITY HOSPITAL, INC. V. RHONDA WIDENER, ET AL.	2011-SC-000020-D	WHITLEY
COMMONWEALTH OF KENTUCKY V. J. K. B., A CHILD UNDER EIGHTEEN	2011-SC-000107-DE	HARDIN

COURT ORDERS DENYING MOTION TO TRANSFER – MAY 19, 2011

WALTER WILKENING, ET AL. V.	2010-SC-000748-T	FRANKLIN
BOARD OF EDUCATION OF OLDHAM		
COUNTY KENTUCKY, ET AL.		

COURT ORDERS DENYING PETITION FOR REHEARING – MAY 19, 2011

JAMES RISTER V .	2010-SC-000296-WC	FROM COURT
SCRUBET, INC.; ET AL.		OF APPEALS

COURT ORDERS DISMISSING

TONYA STAPLETON V.	2010-SC-000098-DG	JOHNSON
CITIZENS NATIONAL CORPORATION,		
AND UNKNOWN EMPLOYEES, AGENTS		
AND/OR CONTRACTORS EMPLOYED BY		
CITIZENS NATIONAL CORPORATION FOR		
REMOVAL OF SNOW, ICE AND DEBRIS		
FROM PARKING AREA		
ENTERED: MAY 10, 2011		

MAY 19, 2011 MINUTES

RELEASED: 10:00 A.M.

COURT ORDERS

PRINCE WILBERT WOOLFOLK V. <u>2010-SC-000331-MR</u> DAVIESS

COMMONWEALTH OF KENTUCKY ORDER CORRECTED THE OPINION OF THE COURT BY JUSTICE VENTERS, RENDERED APRIL 21, 2011 BY SUBSTITUTION OF PAGE 1

IN LIEU OF THE ORIGINAL PAGE 1.

ENTERED: APRIL 27, 2011

JESSE MCNUTT V. 2010-SC-000741-D CALLOWAY

STEPHEN COOK SANDERS

ORDER DENIED MOVANT'S MOTION

TO RECONSIDER.

ENTERED: MAY 12, 2011

WESLEY S. ANGLIN V. 2011-SC-000011-MR BRECKINRIDGE

HON. BRUCE BUTLER, JUDGE,

BRECKINRIDGE CIRCUIT COURT, ET AL.
ORDER DENIED APPELLANT'S MOTION
FOR AN ENLARGEMENT OF TIME IN
WHICH TO FILE HIS BRIEF AND PERFECT

THE APPEAL.

ENTERED: MAY 12, 2011

KENTUCKY BAR ASSOCIATION. 2011-SC-000153-KB IN SUPREME

CLE COMMISSION V. COURT

ROBERT CRAIG MCLAUGHLIN ORDER DENIED RESPONDENT'S MOTION FOR RECONSIDERATION.

ENTERED: MAY 19, 2011

<u>COURT ORDERS PERMITTING MOVANT TO WITHDRAW AS A MEMBER OF THE</u> KENTUCKY BAR ASSOCIATION –

MURRAY WILLIAM GRIESS V. 2011-SC-000241-KB IN SUPREME

KENTUCKY BAR ASSOCIATION COURT

ENTERED: APRIL 28, 2011