

Supreme Court of Kentucky

AUGUST 20, 2020 MINUTES

RELEASED: 10:00 A.M.

79. LAYW THOMAS V. COMMONWEALTH OF KENTUCKY

OPINION OF COURT BY CHIEF JUSTICE MINTON - VACATING AND REMANDING

ALL SITTING. ALL CONCUR.

[2018-SC-0437-MR](#)
TO BE PUBLISHED

CHRISTIAN

Questions Presented:

Youthful Offenders. Sentencing. Defendant, who was nineteen years old when he pleaded guilty to serious crimes which would place him in the violent offender category, failed to appear at sentencing and was accordingly sentenced with a “hammer clause” imposing the maximum sentence. Trial court found that Defendant was ineligible for probation, but this Court determined that the violent offender statute does not apply to a youthful offender’s eligibility for probation, holding that trial courts must consider probation for youthful offenders who also qualify as violent offenders before committing them to the Department of Corrections.

80. DENNIS THOMAS, AS ADMINISTRATOR OF THE ESTATE OF GLENDA THOMAS, DECEASED, ET AL. V. UNIVERSITY MEDICAL CENTER, INC. D/B/A UNIVERSITY OF LOUISVILLE HOSPITAL, ET AL.

OPINION OF COURT BY JUSTICE KELLER - AFFIRMING

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

[2018-SC-0454-D](#)
TO BE PUBLISHED

JEFFERSON

Questions Presented:

Medical Malpractice. Negligent Training and Supervision. The trial court erred in excluding a Root Cause Analysis (“RCA”) under KRE 407, as the remedial measure recommended in the RCA was not taken, and the RCA itself was not a remedial measure. However, that error was harmless because the trial court properly excluded the RCA under KRE 403, as its probative value was minimal but its potential for undue prejudice, confusion of the issues, or misleading the jury was high. Further, the trial court did not err in excluding the RCA when offered for impeachment purposes, as it did not directly contradict the witness’s statements. Finally, the trial court did not err in granting a directed verdict for NIK, as Thomas failed to present sufficient evidence that the contract at issue obligated NIK to supervise and train UMC’s resident physicians.

81. RICARDO D. TAYLOR V.
COMMONWEALTH OF KENTUCKY
AND
CONRAI ANDRE KABALLAH JR V.
COMMONWEALTH OF KENTUCKY
**OPINION OF COURT BY JUSTICE
VANMETER - AFFIRMING**
ALL SITTING. ALL CONCUR.

[2018-SC-0605-MR](#)
TO BE PUBLISHED

JEFFERSON

[2018-SC-0613-MR](#)
TO BE PUBLISHED

JEFFERSON

Questions Presented:

Criminal Attempt – Murder. First Degree Assault. Persistent Felony Offender. On appeal from conviction alleging multiple errors, both Defendants should have received *Miranda* warnings prior to interrogation where evidence showed questioning was in-custody and that no knowing and voluntary waiver of rights occurred. Trial court should not have allowed a transcript of one Defendant’s phone call drafted by the Commonwealth to be shown to the jury during closing arguments. However, both errors were harmless and neither had substantial influence on the verdict, so no cumulative error occurred.

82. LP LOUISVILLE EAST, LLC D/B/A
SIGNATURE HEALTHCARE OF EAST
LOUISVILLE, ET AL. V.
KENNETH R. PATTON
**OPINION OF COURT BY JUSTICE
HUGHES - AFFIRMING AND REVERSING
IN PART AND REMANDING**
MINTON, C.J.; LAMBERT AND
VANMETER, JJ., CONCUR. KELLER AND
WRIGHT, JJ., CONCUR IN RESULT ONLY.
HUGHES CONCURS BY SEPARATE
OPINION IN WHICH MINTON, C.J., AND
VANMETER, J., JOIN. NICKELL, J., NOT
SITTING.

[2019-SC-0016-D](#)
[2019-SC-0211-D](#)
TO BE PUBLISHED

JEFFERSON

Questions Presented:

Power of Attorney. Arbitration. Wrongful Death. Attorney-in-fact disputed the applicability of an arbitration agreement to wrongful death claim, while long-term care facility argued it was binding on the attorney-in-fact in both his representative and individual capacities. The Court found the arbitration agreement was enforceable as to the estate because a power of attorney expressing general authority to make necessary health care decisions includes the incidental or reasonably necessary authority to enter into an arbitration agreement which is presented as a condition of admission to a nursing home. Arbitration agreement was also binding as to the beneficiary’s individual claim for wrongful death where he signed in his individual capacity in addition to signing as his father’s authorized representative.

83. RICKY ALLEN BOWEN V.
COMMONWEALTH OF KENTUCKY
**OPINION OF COURT BY JUSTICE
KELLER - AFFIRMING**

ALL SITTING. HUGHES, KELLER,
LAMBERT, NICKELL, AND WRIGHT, JJ.,
CONCUR. MINTON, C.J., CONCURS IN
PART AND DISSENTS IN PART BY
SEPARATE OPINION IN WHICH
VANMETER, J., JOINS.

[2019-SC-0473-MR](#)
TO BE PUBLISHED

MASON

Questions Presented:

Attempted Murder and Theft By Unlawful Taking.
The trial court did not err in declining the
defendant's request for a renunciation jury
instruction, as there was no evidence that the
defendant made any efforts to abandon his
commission of the crime or took any steps to
avoid its commission *prior* to the shooting. Rather,
he completed the act of shooting his girlfriend, but
failed to kill her as he had intended. The trial court
did not err in denying the defendant's motion for a
directed verdict on the theft by unlawful taking
charge, because, under the evidence as a whole,
a reasonable jury could infer the defendant
intended to permanently deprive the owner of the
gun.

84. SAMUEL HUNTER V. COMMONWEALTH
OF KENTUCKY
**MEMORANDUM OPINION OF THE COURT
- AFFIRMING**

ALL SITTING. ALL CONCUR. LAMBERT, J.,
CONCURS BY SEPARATE OPINION.

[2019-SC-0165-MR](#)
NOT TO BE PUBLISHED

MCCRACKEN

85. DEWAYNE C. ZACHERY V.
COMMONWEALTH OF KENTUCKY
**MEMORANDUM OPINION OF THE COURT
- AFFIRMING IN PART AND VACATING IN
PART AND REMANDING**

ALL SITTING. ALL CONCUR.

[2019-SC-0221-MR](#)
NOT TO BE PUBLISHED

BELL

86. CLAYTON LOCKABY V.
COMMONWEALTH OF KENTUCKY
**MEMORANDUM OPINION OF THE COURT
- AFFIRMING**

ALL SITTING. ALL CONCUR.

[2019-SC-0270-MR](#)
NOT TO BE PUBLISHED

LAUREL

87. JAMES RICHARDSON V.
COMMONWEALTH OF KENTUCKY
**MEMORANDUM OPINION OF THE
COURT - AFFIRMING**

ALL SITTING. ALL CONCUR.

[2019-SC-0356-MR](#)
NOT TO BE PUBLISHED

HARDIN

OPINION AND ORDERS - August 17, 2020

MICHAEL STEPHEN WADE V.
KENTUCKY BAR ASSOCIATION
DENYING REINSTATEMENT
ALL SITTING. ALL CONCUR.

[2020-SC-0050-KB](#)
TO BE PUBLISHED

IN
SUPREME
COURT

KENTUCKY BAR ASSOCIATION V.
GEORGE MICHAEL INGRAM
30 DAY SUSPENSION WITH CONDITIONS
ALL SITTING. ALL CONCUR.

[2020-SC-0070-KB](#)
TO BE PUBLISHED

IN
SUPREME
COURT

KENTUCKY BAR ASSOCIATION V. MARK
PATRICK NIEMI
SUSPENDING FOR 181 DAYS
ALL SITTING. ALL CONCUR.

[2020-SC-0072-KB](#)
TO BE PUBLISHED

IN
SUPREME
COURT

KENTUCKY BAR ASSOCIATION V. KIMBERLY
SHAWN ISON GEVEDON
PERMANENT DISBARMENT
ALL SITTING. ALL CONCUR.

[2020-SC-0182-KB](#)
TO BE PUBLISHED

IN
SUPREME
COURT

SANDS MORRIS CHEWNING V. KENTUCKY BAR
ASSOCIATION
30 DAY SUSPENSION WITH CONDITIONS
ALL SITTING. ALL CONCUR.

[2020-SC-0259-KB](#)
TO BE PUBLISHED

IN
SUPREME
COURT

ORDER GRANTING DISCRETIONARY REVIEW (ORAL ARGUMENT) - August 12, 2020

DAVID JONES, ON BEHALF OF ALL PERSONS SIMILARLY SITUATED, ET AL. V. CLARK COUNTY, KENTUCKY, ET AL. [2020-SC-0107-D](#) CLARK

ORDER GRANTING DISCRETIONARY REVIEW (ORAL ARGUMENT) - August 13, 2020

M. C. V. COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES, ET AL. [2020-SC-0191-DE](#) CALLOWAY

AND

M. C. V. COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES, ET AL. [2020-SC-0192-DE](#) CALLOWAY

AND

M. C. V. COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES, ET AL. [2020-SC-0193-DE](#) CALLOWAY

ORDER GRANTING DISCRETIONARY REVIEW (NO ORAL ARGUMENT) - August 12, 2020

JULIE G. THOMAS, INDIVIDUALLY, ET AL. V. STATE FARM FIRE AND CASUALTY COMPANY, ET AL. [2020-SC-0061-D](#) MADISON

ORDER GRANTING DISCRETIONARY REVIEW (NO ORAL ARGUMENT) - August 13, 2020

LESHAI PHELPS V. BLUEGRASS HOSPITALITY MANAGEMENT LLC [2019-SC-0613-D](#) FAYETTE

CHARLES ADAMSON V. JONATHAN ADAMSON ET AL. [2020-SC-0175-D](#) UNION

BILLY CHADWELL V. COMMONWEALTH OF KENTUCKY [2020-SC-0201-D](#) MADISON

ORDER GRANTING CROSS MOTION FOR DISCRETIONARY REVIEW - August 13, 2020

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| CINCINNATI INSURANCE COMPANY V HALEY BELT | <u>2020-SC-0310-D</u> | BULLITT |
| ROOM TO GROW PRESCHOOL, LLC, ET AL. V. BRIANNA ROBINSON, ET AL. | <u>2020-SC-0153-D</u> | CALLOWAY |

ORDER DENYING DISCRETIONARY REVIEW - August 12, 2020

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| ALAN HUMMEL V. COMMONWEALTH OF KENTUCKY | <u>2020-SC-0108-D</u> | KENTON |
| DONTE PIERRE BANKS-BROWN V. COMMONWEALTH OF KENTUCKY | <u>2020-SC-0160-D</u> | FAYETTE |
| MILLER ENTERPRISES, LLC V. CITY OF SHEPHERDSVILLE | <u>2020-SC-0163-D</u> | BULLITT |
| SHELBY NIX V. COMMONWEALTH OF KENTUCKY | <u>2020-SC-0179-D</u> | BULLITT |

ORDER DENYING DISCRETIONARY REVIEW - August 13, 2020

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| ADAM L. COLEMAN V. EPHRAIM MCDOWELL REGIONAL MEDICAL CENTER | <u>2019-SC-0457-D</u> | BOYLE |
| LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT V. THE COURIER-JOURNAL, INC. | <u>2019-SC-0541-D</u> | JEFFERSON |
| NEAL TECHAU, ET AL. V. TRILOGY HEALTHCARE OF FAYETTE I, LLC, D/B/A THE WILLOWS AT HAMBURG ET AL. LAMBERT, J., NOT SITTING. | <u>2019-SC-0562-D</u> | FAYETTE |

ORDER DENYING DISCRETIONARY REVIEW - August 13, 2020

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| LESLIE WHALEY V. LEXINGTON FAYETTE URBAN COUNTY HUMAN RIGHTS COMMISSION (HRC) ON BEHALF OF ASHLEY BRADFORD, ET AL. | 2019-SC-0572-D | FAYETTE |
| MACK MATTHEWS V. COMMONWEALTH OF KENTUCKY NICKELL, J., NOT SITTING. | 2019-SC-0573-D | JEFFERSON |
| SHERRI MARLENE NOFFSINGER V. CHRISTOPHER HAYDEN NOFFSINGER | 2019-SC-0576-D | FAYETTE |
| BILLY S. JEFFRIES V. JUSTICE AND PUBLIC SAFETY CABINET, ET AL. | 2019-SC-0577-D | FRANKLIN |
| COMMONWEALTH OF KENTUCKY V. ARGIE L. DALE KELLER AND WRIGHT, JJ., WOULD GRANT DISCRETIONARY REVIEW. NICKELL, J., NOT SITTING. | 2019-SC-0590-D | JEFFERSON |
| BELINDA TYGRET V. BAPTIST HEALTHCARE SYSTEM, INC. | 2019-SC-0607-D | JEFFERSON |
| STANLEY JERVIS V. COMMONWEALTH OF KENTUCKY | 2019-SC-0632-D | FLOYD |
| CHRISTOPHER J. MCGORMAN V. COMMONWEALTH OF KENTUCKY | 2019-SC-0633-D | MADISON |
| JIMMY DEAN CORNETTE, JR. V. COMMONWEALTH OF KENTUCKY | 2019-SC-0659-D | MARTIN |

ORDER DENYING DISCRETIONARY REVIEW - August 13, 2020

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| BECKY HARILSON IN HER OFFICIAL CAPACITY AS FORMER CO-DIRECTOR OF THE KENTUCKY LEGISLATIVE RESEARCH COMMISSION, ET AL. V. LEX H-L SERVICES, INC., D/B/A LEXINGTON HERALD-LEADER | 2020-SC-0081-D | FRANKLIN |
| MARCUS CAUDILL, ET AL. V. VERDURE, LLC | 2020-SC-0082-D | CLARK |
| ERIC RAMSEY V. COMMONWEALTH OF KENTUCKY | 2020-SC-0093-D | JEFFERSON |
| JESSICA TUCKER V. JANET CONOVER, ET AL. LAMBERT, J., WOULD GRANT DISCRETIONARY REVIEW. | 2020-SC-0100-D | SHELBY |
| COMMONWEALTH OF KENTUCKY CABINET FOR HEALTH AND FAMILY SERVICES, ET AL. V. S.J. NICKELL AND VANMETER JJ., WOULD GRANT DISCRETIONARY REVIEW. | 2020-SC-0106-DE | MCCRACKEN |
| SHANNAN WHITE V. COMMONWEALTH OF KENTUCKY D/B/A KENTUCKY STATE POLICE KELLER, J., WOULD GRANT DISCRETIONARY REVIEW. | 2020-SC-0124-D | FRANKLIN |
| COMMONWEALTH OF KENTUCKY V. GEORGE GOODMAN | 2020-SC-0135-D | EDMONSON |
| SHERRY L STIVERS, INDIVIDUALLY, ET AL. V. MICHELLE STIVERS ENGLISH, ET AL. | 2020-SC-0162-D | FAYETTE |
| L.S.C. V. COMMONWEALTH OF KENTUCKY CABINET FOR HEALTH AND FAMILY SERVICES, ET AL. | 2020-SC-0165-DE | BOONE |

ORDER DENYING DISCRETIONARY REVIEW - August 13, 2020

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| R.S.A.A.C. V. CABINET FOR HEALTH AND FAMILY SERVICES, ET AL. | <u>2020-SC-0177-DE</u> | OHIO |
| AUGUST PROPERTIES, LLC D/B/A PIONEER PLAZA OF GEORGETOWN V. COMMONWEALTH OF KENTUCKY, FINANCE AND ADMINISTRATION CABINET, ET AL. | <u>2020-SC-0184-D</u> | FRANKLIN |
| CARLOS ORDWAY V. COMMONWEALTH OF KENTUCKY | <u>2020-SC-0208-D</u> | FAYETTE |
| RANDALL WHITWORTH V. COMMONWEALTH OF KENTUCKY | <u>2020-SC-0219-D</u> | CALDWELL |
| OWEN POWELL V. LACY POWELL (NOW RAN) | <u>2020-SC-0221-DE</u> | JEFFERSON |
| HITACHI AUTOMOTIVE SYSTEMS AMERICAS, INC. V. RONALD D. HELD, JR., ET AL. | <u>2020-SC-0252-DE</u> | MADISON |

ORDER DENYING DISCRETIONARY REVIEW AND DEPUBLISHING - August 13, 2020

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| JOHN DAVID LEE V. ANGELA JEAN KING | <u>2020-SC-0222-DE</u> | JEFFERSON |
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ORDER DENYING DISCRETIONARY REVIEW AND DEPUBLISHING - August 13, 2020

S.B., ET AL. V. [2020-SC-0253-DE](#) JEFFERSON
CABINET FOR HEALTH AND FAMILY
SERVICES, ET AL.

ORDER AFFIRMING EQUALLY DIVIDED COURT - August 20, 2020

CSX TRANSPORTATION, INC V. LARRY M. [2018-SC-0191-D](#) JEFFERSON
BOGGS

AND
LARRY M. BOGGS V. CSX, INC [2018-SC-0440-D](#) JEFFERSON
TRANSPORTATION, INC
KELLER, LAMBERT, AND WRIGHT, JJ.,
WOULD AFFIRM THE OPINION OF THE
COURT OF APPEALS. MINTON, C.J.; HUGHES,
AND VANMETER, JJ., WOULD REVERSE
THE OPINION OF THE COURT OF APPEALS.
NICKELL, J., NOT SITTING.

SEAN M. MAGUIRE V. JAMES WILLIAM [2018-SC-0290-D](#) HOPKINS
CROOK
KELLER, LAMBERT, AND WRIGHT, JJ.,
WOULD AFFIRM THE OPINION OF THE
COURT OF APPEALS. MINTON, C.J.;
HUGHES, AND VANMETER, JJ., WOULD
REVERSE THE OPINION OF THE COURT
OF APPEALS ON OTHER GROUNDS.
NICKELL, J., NOT SITTING.

ORDER GRANTING TRANSFER - August 07, 2020

OFFICE OF THE GOVERNOR, ET AL. V. [2020-SC-0331-T](#) BOONE
FLORENCE SPEEDWAY, INC. ET AL.

ORDER DISMISSING - July 20, 2020

RICHARD ELY V. COMMONWEALTH OF [2020-SC-0054-D](#) BELL
KENTUCKY

TERRANCE SIMS V. [2020-SC-0166-D](#) FAYETTE
COMMONWEALTH OF KENTUCKY

ORDER DISMISSING - July 21, 2020

JAMES R. THOMAS V.
COMMONWEALTH OF KENTUCKY

[2020-SC-0149-D](#)

OWEN

ORDER DISMISSING - July 30, 2020

ANDERSON, ROBERT V. COMMONWEALTH
OF KENTUCKY

[2020-SC-0258-D](#)

CAMPBELL

ORDER DISMISSING - August 03, 2020

QUEST ENERGY CORPORATION V.
RAY SLONE, ET AL.

[2020-SC-0144-D](#)

KNOTT

ORDER DISMISSING – August 13, 2020

ART DAVIS, ET AL. V. ROSE LOWERY
**THE PARTIES’ JOINT MOTION TO DISMISS
THE APPELLANTS’ MOTION FOR
DISCRETIONARY REVIEW AS SETTLED IS
GRANTED.**

[2019-SC-0302-D](#)

MCCRACKEN

KELLER, LAMBERT, VANMETER AND
WRIGHT, JJ., SITTING. ALL CONCUR.

ORDER DISMISSING – August 14, 2020

COMMONWEALTH OF KENTUCKY V.
ADRIAN L. DUNN
**APPELLANT’S MOTION TO DISMISS THE
APPEAL IS GRANTED.**
KELLER, LAMBERT, NICKELL, AND
VANMETER JJ., SITTING. ALL CONCUR.

[2019-SC-0238-T](#)

FAYETTE

ORDER DENYING - August 20, 2020

CHARLES LAMAR RICHARDSON V.
COMMONWEALTH OF KENTUCKY
**ORDER DENYING PETITION FOR
REHEARING**
ALL SITTING. ALL CONCUR.

[2019-SC-0438-MR](#)

JEFFERSON

ORDER DENYING – August 20, 2020

ANTWOIN WILLIAMS V. COMMONWEALTH OF KENTUCKY
ORDER DENYING PETITION FOR REHEARING
ALL SITTING. ALL CONCUR. [2019-SC-0288-MR](#) JEFFERSON

JOHN W. BYRNES V. ERIE INSURANCE COMPANY
ORDER DENYING MOTION TO TRANSFER
ALL SITTING. ALL CONCUR. [2020-SC-0206-T](#) JEFFERSON

ORDER CORRECTING – August 20, 2020

GWEN MEEHAN V. KENTUCKY BAR ASSOCIATION [2020-SC-0195-KB](#)
TO BE PUBLISHED IN SUPREME COURT

ORDER TEMPORARILY SUSPENDING - August 17, 2020

INQUIRY COMMISSION V. TRACI LEE TIDBALL PEPPERS
ALL SITTING. MINTON, C.J.; HUGHES, KELLER, LAMBERT, NICKELL, AND VANMETER, JJ., CONCUR. WRIGHT, J., WOULD DENY THE PETITION FOR TEMPORARY SUSPENSION. [2020-SC-0172-KB](#)
TO BE PUBLISHED IN SUPREME COURT

ORDER WITHDRAWING - July 15, 2020

WILLIAM R BROWN, II V. KENTUCKY BAR ASSOCIATION IN SUPREME COURT

ANDREW ALAN PAISLEY V. KENTUCKY BAR ASSOCIATION IN SUPREME COURT

ORDER WITHDRAWING - July 30, 2020

WALTER ELLIOTT HAGGERTY V. KENTUCKY BAR ASSOCIATION IN SUPREME COURT

WILLIAM GRANVILLE MADDOX V. KENTUCKY BAR ASSOCIATION IN SUPREME COURT

ORDER WITHDRAWING - August 04, 2020

MARGARET ANN MILLER V. KENTUCKY BAR ASSOCIATION IN SUPREME COURT

ORDER WITHDRAWING - August 05, 2020

LARRY THOMAS MOSCOE V.
KENTUCKY BAR ASSOCIATION

IN SUPREME
COURT

ORDER WITHDRAWING - August 07, 2020

MAXINE PATRICIA GORDON V.
KENTUCKY BAR ASSOCIATION

IN SUPREME
COURT

KAREN ANN BROCKENBROW V.
KENTUCKY BAR ASSOCIATION

IN SUPREME
COURT

CYNTHIA BIBB PECTOL V.
KENTUCKY BAR ASSOCIATION

IN SUPREME
COURT

JAMES AUMAN HALTOM V.
KENTUCKY BAR ASSOCIATION

IN SUPREME
COURT

ORDER WITHDRAWING - August 10, 2020

DENISE HOUGH MCCLELLAND V. KENTUCKY
BAR ASSOCIATION

IN SUPREME
COURT