

SUPREME COURT OF KENTUCKY

OCTOBER 26, 2023 RULINGS

RELEASED: 10:00 A.M.

112. CHRISTIAN RICHARD MARTIN V.
COMMONWEALTH OF KENTUCKY

[2021-SC-0399-MR](#)
TO BE PUBLISHED

CHRISTIAN

**OPINION OF THE COURT BY JUSTICE
BISIG-AFFIRMING IN PART, REVERSING
IN PART, AND REMANDING**

VANMETER, C.J.; BISIG, CONLEY, KELLER,
LAMBERT, AND NICKELL, JJ., SITTING.
VANMETER, C.J.; KELLER, AND LAMBERT,
JJ., CONCUR. NICKELL, J., DISSENTS BY
SEPARATE OPINION IN WHICH CONLEY, J.,
JOINS. THOMPSON, J., NOT SITTING.

Questions Presented:

Hearsay. Forfeiture by Wrongdoing Hearsay Exception. Fifth Amendment Privilege. Directed Verdict. In this matter of right appeal, the Court reviews whether victim's out-of-court statements about fearing defendant were admissible under KRE 804(b)(5) forfeiture by wrongdoing hearsay exception. Other issues presented include whether trial court properly permitted witnesses to invoke Fifth Amendment privilege against testifying; whether defendant was entitled to a directed verdict on arson and attempted arson charge.

113. LARRY MOULDER V.
COMMONWEALTH OF KENTUCKY

[2022-SC-0155-MR](#)
TO BE PUBLISHED

BARREN

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

ALL SITTING. VANMETER, C.J.; KELLER,
LAMBERT, AND THOMPSON, JJ., CONCUR.
NICKELL, J., DISSENTS BY SEPARATE
OPINION IN WHICH BISIG, J., JOINS.

Questions Presented:

Juries. For Cause Strikes. Juror Impartiality. In this matter of right appeal, the Court considers whether a juror's repeated statements casting doubt on the juror's ability to be fair and impartial required striking the juror for cause.

114. MR. ROOF OF LOUISVILLE, LLC V.
THE ESTATE OF AYANNA HENRY,
DECEASED (SUCCESSOR ADMINISTRATOR
NOT YET APPOINTED), ET AL.

[2022-SC-0177-DG](#)
TO BE PUBLISHED

JEFFERSON

AND

AMERICAN WATER HEATER COMPANY V.
THE ESTATE OF AYANNA HENRY,
DECEASED (SUCCESSOR ADMINISTRATOR
NOT YET APPOINTED), ET AL.

[2022-SC-0178-DG](#)
TO BE PUBLISHED

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

VANMETER, C.J.; CONLEY, KELLER,
LAMBERT, NICKELL, AND THOMPSON, JJ.,
SITTING. CONLEY, LAMBERT, NICKELL,
AND THOMPSON, JJ., CONCUR. KELLER, J.,
DISSENTS BY SEPARATE OPINION. BISIG,
J., NOT SITTING.

Questions Presented:

Revival of Action. Substitution of Parties.
Successor Administrator. KRS 395.280. In this
discretionary appeal, the Court considers whether
an action must be revived by a successor personal
representative of an estate within one year of the
death of a prior personal representative.

115. LEWIS CARPENTER V.
COMMONWEALTH OF KENTUCKY

[2022-SC-0179-MR](#)
TO BE PUBLISHED

BOYD

**OPINION OF THE COURT BY JUSTICE
LAMBERT-AFFIRMING IN PART,
REVERSING IN PART, AND REMANDING**

ALL SITTING. VANMETER, C.J.; BISIG,
CONLEY, NICKELL, AND THOMPSON, JJ.,
CONCUR. KELLER, J., CONCURS IN RESULT
ONLY.

Questions Presented:

Child Pornography. KRE 403. Abuse of
Discretion. Directed Verdict. In this matter of
right appeal, the Court considers whether a trial
court abused its discretion when it allowed a jury
to see videos portraying child pornography
without first reviewing videos to determine
prejudicial value to defendant. Other issues
presented include whether trial court should have
directed verdict on possession of child
pornography charges.

116. COMMONWEALTH OF KENTUCKY V.
DANIEL MORELAND

[2022-SC-0245-DG](#)
TO BE PUBLISHED

CLINTON

AND

DANIEL MORELAND V.
COMMONWEALTH OF KENTUCKY

[2022-SC-0414-DG](#)
TO BE PUBLISHED

**OPINION OF THE COURT BY JUSTICE
CONLEY-AFFIRMING IN PART AND
REVERSING IN PART**

ALL SITTING. ALL CONCUR.

Questions Presented:

Probation. Split Sentence. KRS Chapter 533. Revocation. In this discretionary appeal, the Court considers whether plea agreement to a split sentence imposing 10 years' imprisonment followed by 10 years' probation constituted an illegal sentence.

117. PAUL W. JAMES V.
COMMONWEALTH OF KENTUCKY

[2022-SC-0299-MR](#)
TO BE PUBLISHED

GRANT

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

ALL SITTING. ALL CONCUR.

Questions Presented:

Jury Instructions. Lesser Included Offenses. Mistrial. Improper Opinion Testimony. In this matter of right appeal, the Court considers whether jury's misunderstanding of jury instructions should have entitled appellant to mistrial. Other issues include whether improper opinion testimony of two police officers constituted palpable error.

118. LARRY FINCH V.
COMMONWEALTH OF KENTUCKY

[2022-SC-0432-MR](#)
TO BE PUBLISHED

JEFFERSON

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

ALL SITTING. VANMETER, C.J.; BISIG,
CONLEY, KELLER, AND NICKELL, JJ.,
CONCUR. THOMPSON, J., CONCURS IN
RESULT ONLY BY SEPARATE OPINION.

Questions Presented:

Prosecutorial Misconduct. Comment on Right to Remain Silent. Jury Strikes. Cumulative Error. In this matter of right appeal, the Court considers whether a prosecutor's comments to jury venire about defendant's right to remain silent constituted prosecutorial misconduct. Other issues include whether jurors' answers to questions about potential bias mandated for cause strikes.

119. JOHN GILES V. [2021-SC-0558-MR](#) GRAVES
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
- MEMORANDUM OPINION OF THE COURT AFFIRMING**
- ALL SITTING. VANMETER, C.J.; BISIG, KELLER, LAMBERT, AND NICKELL, JJ., CONCUR. THOMPSON, J., DISSENTS IN PART, CONCURS IN PART, AND CONCURS IN RESULT ONLY IN PART BY SEPARATE OPINION IN WHICH CONLEY, J., JOINS.
120. CODY ALAN ARNETT V. [2022-SC-0006-MR](#) SCOTT
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
- MEMORANDUM OPINION OF THE COURT AFFIRMING**
- ALL SITTING. VANMETER, C.J.; BISIG, KELLER, LAMBERT, NICKELL, AND THOMPSON, JJ., CONCUR. CONLEY, J., CONCURS BY SEPARATE OPINION.
121. NATHAN A. ANDERSON V. [2022-SC-0123-MR](#) MCCracken
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
- AND**
- NATHAN ANDERSON V. [2022-SC-0183-TG](#)
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
- MEMORANDUM OPINION OF THE COURT AFFIRMING**
- VANMETER, C.J.; BISIG, CONLEY, KELLER, LAMBERT, AND THOMPSON, JJ., SITTING. ALL CONCUR. NICKELL, J., NOT SITTING.
122. DARREN BOUNDS V. [2022-SC-0126-MR](#) CAMPBELL
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
- MEMORANDUM OPINION OF THE COURT AFFIRMING**
- ALL SITTING. ALL CONCUR.

123. COLIN JARED MONTGOMERY V.
COMMONWEALTH OF KENTUCKY [2022-SC-0353-MR](#) BOYLE
NOT TO BE PUBLISHED
**MEMORANDUM OPINION OF THE
COURT AFFIRMING**
ALL SITTING. ALL CONCUR.

124. KENTUCKY COMMUNITY & TECHNICAL
COLLEGE SYSTEM, ET AL. V.
HONORABLE THOMAS DAWSON
WINGATE, ET AL. [2023-SC-0181-MR](#) FRANKLIN
NOT TO BE PUBLISHED
**MEMORANDUM OPINION OF THE
COURT AFFIRMING**
ALL SITTING. ALL CONCUR.

OPINION AND ORDERS - September 29, 2023

KENTUCKY BAR ASSOCIATION V.
DAVID CURLIN

[2023-SC-0084-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

AND

KENTUCKY BAR ASSOCIATION V.
DAVID CURLIN

[2023-SC-0085-KB](#)
TO BE PUBLISHED

**OPINION AND ORDER INDEFINITELY
SUSPENDING.**

ALL SITTING. ALL CONCUR.

**OPINION AND ORDER GRANTING DISCRETIONARY REVIEW AND REMANDING-October 18,
2023**

FERGUSON ENTERPRISES, INC.
V.
DREAMLAND HOSPITALITY, LLC

[2023-SC-0240-DG](#)

JEFFERSON

OPINION AND ORDER - October 26, 2023

ARKK PROPERTIES, LLC., ET. AL. V.
DANIEL J. CAMERON, IN HIS OFFICIAL
CAPACITY AS ATTORNEY GENERAL OF
THE COMMONWEALTH OF KENTUCKY,
ET. AL.

**OPINION AND ORDER BY CHIEF
JUSTICE VANMETER GRANTING
SUPERVISORY WRIT**

ALL SITTING. BISIG, KELLER, LAMBERT,
NICKELL, AND THOMPSON, JJ., CONCUR.
CONLEY, J., DISSENTS BY SEPARATE
OPINION.

[2023-SC-0196-OA](#)
TO BE PUBLISHED

FRANKLIN

Questions Presented:

Supervisory Writ. Senate Bill 126. Separation of Powers. Venue. In this original action, the Court considers whether Senate Bill 126's mandatory transfer procedure unconstitutionality violates Kentucky's separation of powers doctrine. Other issues include whether the Court should grant comity to Senate Bill 126 notwithstanding its unconstitutionality.

OPINION AND ORDERS - October 26, 2023

KENTUCKY BAR ASSOCIATION V.
BRITTANY LAWRYN OLIVER

**OPINION AND ORDER INDEFINITELY
SUSPENDING**

ALL SITTING. ALL CONCUR.

[2023-SC-0223-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

KENTUCKY BAR ASSOCIATION V.
BRITTANY LAWRYN OLIVER

**OPINION AND ORDER INDEFINITELY
SUSPENDING**

ALL SITTING. ALL CONCUR.

[2023-SC-0224-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

KENTUCKY BAR ASSOCIATION V.
BRITTANY LAWRYN OLIVER

**OPINION AND ORDER INDEFINITELY
SUSPENDING**

ALL SITTING. ALL CONCUR.

[2023-SC-0225-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

KENTUCKY BAR ASSOCIATION V.
JAY ARTHUR ROSENBERG

[2023-SC-0273-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

**OPINION AND ORDER PERMANENTLY
DISBARRING**
ALL SITTING. ALL CONCUR.

KENTUCKY BAR ASSOCIATION V.
ERIC TULEY WEINER

[2023-SC-0290-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

**OPINION AND ORDER PERMANENTLY
DISBARRING**
ALL SITTING. ALL CONCUR.

INQUIRY COMMISSION V.
JARED ANDREW COX

[2023-SC-0297-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

**OPINION AND ORDER TEMPORARILY
SUSPENDING**
ALL SITTING. ALL CONCUR.

KENTUCKY BAR ASSOCIATION V.
KAYCE RENAE POWELL

[2023-SC-0308-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

**OPINION AND ORDER IMPOSING ONE-
YEAR SUSPENSION**
ALL SITTING. ALL CONCUR.

ORDER GRANTING DISCRETIONARY REVIEW (ORAL ARGUMENT) - October 18, 2023

COMMONWEALTH OF KENTUCKY V.
DARRYL ELLERY

[2023-SC-0228-DG](#)

JEFFERSON

BILL DUNN, MCCRACKEN COUNTY
PROPERTY VALUATION ADMINISTRATOR
V.
SOLOMON FOUNDATION, ET AL.

[2023-SC-0235-DG](#)

MCCRACKEN

DEPARTMENT OF REVENUE, FINANCE
AND ADMINISTRATION CABINET V.
THE SOLOMON FOUNDATION, INC.

[2023-SC-0236-DG](#)

MCCRACKEN

ORDER GRANTING DISCRETIONARY REVIEW (ORAL ARGUMENT) - October 18, 2023

T-MOBILE SOUTH LLC (D/B/A T-MOBILE USA), SUCCESSOR-IN-INTEREST TO POWERTEL MEMPHIS, INC. V. KENTUCKY COMMERCIAL MOBILE RADIO SERVICE EMERGENCY TELECOMMUNICATIONS BOARD (N/K/A KENTUCKY 911 SERVICES BOARD) [2023-SC-0245-DG](#) FRANKLIN

ORDER GRANTING DISCRETIONARY REVIEW (NO ORAL ARGUMENT) - October 18, 2023

ANNETTE WILEY, INDIVIDUALLY AND AS ADMINISTRATRIX AND PERSONAL REPRESENTATIVE OF THE ESTATE OF CHARLOTTE BLAIR, ET AL. V. MASONIC HOMES OF KENTUCKY, INC. D/B/A MASONIC HOME OF LOUISVILLE [2023-SC-0249-DG](#) JEFFERSON

ORDER DENYING DISCRETIONARY REVIEW - October 18, 2023

CHRISTINA MARCUM V. COMMONWEALTH OF KENTUCKY [2023-SC-0143-D](#) MADISON

ZHENGYA QI, AS THE FATHER OF T.Q., A MINOR V. TRACY BRUNO, ET AL. [2023-SC-0238-D](#) FAYETTE

VANMETER, C.J., NOT SITTING.

THOMPSON, J., WOULD GRANT DISCRETIONARY REVIEW.

JAMES HARRIS V. COMMONWEALTH OF KENTUCKY [2023-SC-0243-D](#) LAUREL

GARY PAYNE V. AGGREGATE PROCESSING, INC. [2023-SC-0244-D](#) BULLITT

QUEEN DEBORAH CA'MEL V. LOUISVILLE/JEFFERSON COUNTY METROPOLITAN (METRO) GOVERNMENT [2023-SC-0263-D](#) JEFFERSON

ORDER DENYING DISCRETIONARY REVIEW - October 18, 2023

KENTUCKY RETIREMENT SYSTEMS, NOW [2023-SC-0266-D](#) FRANKLIN
KENTUCKY PUBLIC PENSIONS
AUTHORITY V.
DEPARTMENT OF PUBLIC ADVOCACY

JEWISH HOSPITAL, AN ASSUMED NAME [2023-SC-0270-D](#) JEFFERSON
OF JEWISH HOSPITAL & ST. MARY'S
HEALTHCARE, INC., ET AL. V.
KAREN REDDINGTON, INDIVIDUALLY, ET
AL.

MICHAEL L. DENNISON V. [2023-SC-0274-D](#) JEFFERSON
COMMONWEALTH OF KENTUCKY

JENNIFER C. HAYS, ET AL. V. [2023-SC-0307-D](#) ANDERSON
RICHARD A. CASE, II, ET AL.

KATHERINE BARRETT V. [2023-SC-0312-D](#) OHIO
COMMONWEALTH OF KENTUCKY

CALEB L. RICE V. [2023-SC-0323-D](#) FULTON
COMMONWEALTH OF KENTUCKY

J.Q.W. V. [2023-SC-0355-DE](#) CALLOWAY
COMMONWEALTH OF KENTUCKY

ORDER DENYING DISCRETIONARY REVIEW AND DEPUBLISHING - October 18, 2023

LUIS O. GARCIA MARTINEZ V. [2022-SC-0449-D](#) JEFFERSON
COMMONWEALTH OF KENTUCKY

**VANMETER, C.J.; CONLEY, KELLER,
LAMBERT, AND NICKELL, JJ., SITTING.
BISIG AND THOMPSON, JJ., NOT
SITTING. SPECIAL JUSTICE BRUCE K.
DUDLEY AND SPECIAL JUSTICE
CYNTHIA W. CROCKER SITTING.**

ORDER DENYING DISCRETIONARY REVIEW AND DEPUBLISHING - October 18, 2023

NICOLE RENEE ZOGLMANN V.
GABRIEL JOSEPH WEBER

[2023-SC-0326-DE](#)

JEFFERSON

ORDER DENYING PETITION FOR REHEARING - October 26, 2023

JAMES A. SANDERS V.
COMMONWEALTH OF KENTUCKY

[2022-SC-0084-MR](#)

OHIO

**ORDER DENYING PETITION FOR
REHEARING**

ALL SITTING. ALL CONCUR.