

SUPREME COURT OF KENTUCKY

OCTOBER 21, 2010 MINUTES

RELEASED: 10:00 A.M.

226. H.C. "BLUE" HILL V. PETROTECH RESOURCES CORPORATION AND JOHN BURNES
OPINION OF THE COURT BY JUSTICE VENTERS – DISSOLVING TEMPORARY INJUCTION
CUNNINGHAM, J., CONCURS IN RESULT ONLY BY SEPARATE OPINION.
- [2010-SC-000182-1](#) BARREN
TO BE PUBLISHED
- Questions Presented:**
Court's broad-sweeping and vaguely worded injunction against future expression, before final adjudication of its defamatory character, constituted an improper prior restraint on speech in violation of the First Amendment of the United States Constitution and Section Eight of the Kentucky Constitution. CR 65.09 relief is granted, and the circuit court's temporary injunction is vacated as an impermissible prior restraint on speech.
227. JERRY WOOLUM, M.D., INDIVIDUALLY; WOOLUM & COMBS-WOOLUM, P.S.C. V. LISA ANN HILLMAN, AS ADMINISTRATRIX OF THE ESTATE OF CAITLYNN HILLMAN, DECEASED, ET AL.
OPINION OF THE COURT BY JUSTICE NOBLE – AFFIRMING
MINTON, C.J., CONCURS BY SEPARATE OPINION IN WHICH ABRAMSON, J., JOINS.
CUNNINGHAM, J., DISSENTS BY SEPARATE OPINION.
- [2008-SC-000396-DG](#) BELL
TO BE PUBLISHED
- Questions Presented:**
Medical Malpractice. Expert Witnesses. Bias. Issues include whether commonality of malpractice insurance carrier may be admitted to show witness bias.
228. DEPARTMENT OF REVENUE, FINANCE AND ADMINISTRATION CABINET, COMMONWEALTH OF KENTUCKY V. MITZI D. WYRICK
OPINION OF THE COURT BY JUSTICE SCHRODER – AFFIRMING
- [2008-SC-000468-DG](#) FRANKLIN
[2009-SC-000543-DG](#)
TO BE PUBLISHED
- Questions Presented:**
Open Records Act. Issues include whether the Party Litigation Limitation to the Open Records Act prohibits discovery of certain documents.

SUPREME COURT OF KENTUCKY

OCTOBER 21, 2010 MINUTES

RELEASED: 10:00 A.M.

229. ZURICH AMERICAN INSURANCE COMPANY V. JOURNEY OPERATING, LLC, ET AL. [2009-SC-000796-WC](#) FROM COURT OF APPEALS
TO BE PUBLISHED
OPINION OF THE COURT – AFFIRMING

Questions Presented:
Workers' Compensation. Whether KRS 342.125(1) permits reopening in order to prevent an insurer from benefiting from its constructive fraud on the tribunal and, if so, whether substantial evidence of constructive fraud supported the decision to estop the insurer from denying liability at reopening.

230. GARY LLOYD V. COMMONWEALTH OF KENTUCKY [2008-SC-000206-MR](#) WHITLEY
TO BE PUBLISHED
OPINION OF THE COURT BY CHIEF JUSTICE MINTON – AFFIRMING, IN PART, AND REVERSING AND REMANDING, IN PART
CUNNINGHAM, J., CONCURS BY SEPARATE OPINION.

Questions Presented:
Conviction on both robbery and felony theft for stealing the same drugs from a drugstore violates double jeopardy principles. The General Assembly has made plain its intent that a person may not be convicted of both robbery and theft by unlawful taking based upon one theft.

231. KENTUCKY PUBLIC SERVICE COMMISSION V. COMMONWEALTH OF KENTUCKY, EX REL., JACK CONWAY, ET AL. [2009-SC-000134-DG](#) FRANKLIN
TO BE PUBLISHED
AND
DUKE ENERGY KENTUCKY, INC. (F/K/A THE UNION LIGHT, HEAT, AND POWER COMPANY) V. COMMONWEALTH OF KENTUCKY, EX REL., JACK CONWAY, ET AL. [2009-SC-000150-DG](#) FRANKLIN
TO BE PUBLISHED
OPINION OF THE COURT BY CHIEF JUSTICE MINTON – AFFIRMING, IN PART, AND REVERSING AND REMANDING, IN PART

Questions Presented:
Public Utilities. Rate Riders. This is a public utilities case concerning the Public Service Commission's authority to approve a rider; the proper procedure for approving said rider, and the constitutionality of KRS 278 .509.

VENTERS, J., DISSENTS BY SEPARATE OPINION. SCHRODER, J., NOT SITTING.

SUPREME COURT OF KENTUCKY

OCTOBER 21, 2010 MINUTES

RELEASED: 10:00 A.M.

232. ALLEN WILEY, III V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE SCOTT – AFFIRMING IN
PART AND REVERSING IN PART**

[2009-SC-000702-MR](#)
TO BE PUBLISHED

JEFFERSON

Questions Presented:

Two counts of first-degree robbery and one count of second-degree robbery-45 years. Trial court erred when it imposed court costs, despite finding defendant to be indigent and when it ordered restitution without offering the defendant an opportunity to be heard. While it was harmless error to allow a police officer to repeat another officer's hearsay statement, when that officer forgot same, it was prejudicial error to admit key witness's hearsay testimony that unnamed sources provided him with information to verify that appellant's Social Security number was used in the robbery.

233. COMMONWEALTH OF KENTUCKY V.
ANGELLA PRATER
**OPINION OF THE COURT BY
CHIEF JUSTICE MINTON –
REVERSING**

[2009-SC-000352-DG](#)
TO BE PUBLISHED

BREATHITT

Questions Presented:

Criminal Law. Reckless Homicide. Evidence. Impeachment on Collateral Facts. Preservation of Error. Where defendant testified that drugs in her system at time of fatal auto accident were taken as aftercare following nasal surgery, issues include whether Commonwealth was properly permitted to later introduce medical records showing that surgery occurred after the accident; and whether defense objection to Commonwealth's evidence on grounds of relevancy was inadequate to preserve assignment of error on grounds of improper impeachment on collateral facts.

SUPREME COURT OF KENTUCKY

OCTOBER 21, 2010 MINUTES

RELEASED: 10:00 A.M.

234. JOHN MARRION TERRY V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE SCOTT – REVERSING**
ABRAMSON AND NOBLE, JJ.,
CONCUR IN RESULT ONLY.

[2009-SC-000497-DG](#)
TO BE PUBLISHED

JEFFERSON

Questions Presented:

Criminal Law. Discovery. Strikes for Cause. The issues include 1. Whether a defendant must give notice per RCr. 7.24(3)(B)(i) of his intent to introduce expert testimony concerning false confessions and 2. Whether the trial court erred by failing to excuse for cause a juror who said he would "lean toward law enforcement" but "bend over backwards to be fair?"

235. STEVEN PAULLEY V.
COMMONWEALTH OF KENTUCKY
AND
HENNY L. GUNN
(A/K/A HENRY L. GUNN) V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
CHIEF JUSTICE MINTON –
VACATING AND REMANDING**
VENTERS, J., CONCURS IN PART,
AND DISSENTS IN PART, BY
SEPARATE OPINION IN WHICH
CUNNINGHAM AND SCHRODER,
JJ., JOIN.

[2009-SC-000024-MR](#)
TO BE PUBLISHED

JEFFERSON

[2009-SC-000033-MR](#)
TO BE PUBLISHED

JEFFERSON

Questions Presented:

Convictions vacated and cases remanded because the trial court improperly failed to grant requests to strike a juror for cause. Issue properly preserved because the trial preceded this Court's ruling in Gabbard v. Commonwealth, 297 S.W.3d 844 (Ky. 2009).

236. ROBERT LADRIERE V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE ABRAMSON –
VACATING AND REMANDING**
SCHRODER, J., NOT SITTING.

[2009-SC-000758-MR](#)
TO BE PUBLISHED

CAMPBELL

Questions Presented:

Judgment entered on guilty plea to kidnapping a minor properly imposed lifetime registration and accompanying residency requirements; the imposition of the felony conditional discharge period and accompanying conditions as well as orders to submit to HIV testing and to complete SOTP were not authorized by statute. Court improperly imposed court costs upon indigent defendant.

SUPREME COURT OF KENTUCKY

OCTOBER 21, 2010 MINUTES

RELEASED: 10:00 A.M.

- | | | | |
|--|--|---|-----------|
| 237. | L.D. HARRISON AND
DEBRA HARRISON V.
CHRISTOPHER LEACH
OPINION OF THE COURT BY
CHIEF JUSTICE MINTON –
VACATING AND REMANDING
CUNNINGHAM, J., DISSENTS BY
SEPARATE OPINION IN WHICH
SCOTT, J., JOINS. | 2010-SC-000018-DGE
TO BE PUBLISHED | ESTILL |
| <p>Questions Presented:
Child Custody. Do nonparents with physical custody (but who are not "de facto custodians") of children have jurisdiction to petition for custody under the UCCJEA, KRS 403.800-.880, effective 7/13/04?</p> | | | |
| 238. | RONNIE LEE BOWLING V.
TOM SIMPSON, WARDEN,
KENTUCKY STATE PENITENTIARY
MEMORANDUM OPINION OF
THE COURT – AFFIRMING
SCOTT AND VENTERS, JJ.,
NOT SITTING. | 2008-SC-000245-TG
NOT TO BE PUBLISHED | LYON |
| 239. | STEVEN BRADLEY GILES V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF
THE COURT – AFFIRMING | 2009-SC-000137-DG
NOT TO BE PUBLISHED | MCCRACKEN |
| 240. | STEVE ALLEN V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF
THE COURT – AFFIRMING | 2009-SC-000493-MR
NOT TO BE PUBLISHED | JESSAMINE |
| 241. | WILLIAM EUGENE THOMPSON V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF
THE COURT – AFFIRMING
CUNNINGHAM, J., NOT SITTING. | 2009-SC-000557-MR
NOT TO BE PUBLISHED | LYON |
| 242. | RANDY MULLINS V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF
THE COURT – AFFIRMING
ABRAMSON, J., CONCURS IN
RESULT ONLY. | 2009-SC-000566-MR
NOT TO BE PUBLISHED | BREATHITT |

SUPREME COURT OF KENTUCKY

OCTOBER 21, 2010 MINUTES

RELEASED: 10:00 A.M.

243. CHRISTOPHER DOUGLAS BANKS V. [2009-SC-000631-MR](#) MONTGOMERY
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
**MEMORANDUM OPINION OF
THE COURT – AFFIRMING**
244. WALTER A. STONE V. [2009-SC-000650-MR](#) FAYETTE
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
**MEMORANDUM OPINION OF
THE COURT – AFFIRMING**
245. KENTUCKY EMPLOYERS' MUTUAL [2009-SC-000808-WC](#) FROM COURT
INSURANCE (KEMI) V. **NOT TO BE PUBLISHED** OF APPEALS
TAYLOR CONTRACTING/TAYLOR
READY MIX, LLC, ET AL.
**MEMORANDUM OPINION OF
THE COURT – AFFIRMING**

OPINIONS AND ORDERS – OCTOBER 13, 2010

ANDRE LAW V. 2009-SC-000682-DG PULASKI
COMMONWEALTH OF KENTUCKY
**OPINION AND ORDER GRANTED MOTION FOR
DISCRETIONARY REVIEW, VACATED COURT
OF APPEALS' DECISION AND REMANDED THE
MATTER TO THE COURT OF APPEALS FOR
CONSIDERATION IN LIGHT OF THIS COURT'S
RECENT DECISION IN JONES V. COMMONWEALTH,
___ S.W.3D ___ (KY.2010)**

RHODA FALLER V. 2009-SC-000824-DG JEFFERSON
ENDICOTT-MAYFLOWER, LLC, ET AL.
**OPINION AND ORDER GRANTED MOTION FOR
DISCRETIONARY REVIEW, VACATED COURT
OF APPEALS' DECISION AND REMANDED THE
MATTER TO THE COURT OF APPEALS FOR
FURTHER CONSIDERATION IN LIGHT OF THIS
COURT'S RECENT DECISION IN KENTUCKY
RIVER MEDICAL CENTER V. MCINTOSH,
___ S.W.3D ___ (KY.2010) (FINAL SEPTEMBER 16, 2010).**
CUNNINGHAM AND SCOTT, JJ., WOULD DENY
DISCRETIONARY REVIEW. ABRAMSON, J., NOT SITTING.

SUPREME COURT OF KENTUCKY

OCTOBER 21, 2010 MINUTES

RELEASED: 10:00 A.M.

OPINIONS AND ORDERS – OCTOBER 21, 2010

KENTUCKY BAR ASSOCIATION,
CLE COMMISSION V.
D. ANTHONY BRINKER

[2010-SC-000004-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

**OPINION AND ORDER SUSPENDED
RESPONDENT FROM THE PRACTICE
OF LAW UNTIL SUCH TIME AS THIS
COURT ENTERS AN ORDER
RESTORING OR REINSTATING HIS
MEMBERSHIP IN THE KENTUCKY
BAR ASSOCIATION.**

INQUIRY COMMISSION V.
BARBARA E. YEAGER
**OPINION AND ORDER TEMPORARILY
SUSPENDED RESPONDENT FROM
THE PRACTICE OF LAW IN THE
COMMONWEALTH OF KENTUCKY,
EFFECTIVE THE DATE OF THIS
ORDER AND UNTIL SUPERSEDED
BY SUBSEQUENT ORDER OF
THIS COURT.**

[2010-SC-000514-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

KENTUCKY BAR ASSOCIATION V.
WILLIAM J. GRIDER
**OPINION AND ORDER SUSPENDED
RESPONDENT FROM THE PRACTICE
OF LAW FOR 1 YEAR FROM THE
DATE OF THIS ORDER.**

[2010-SC-000522-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

SUPREME COURT OF KENTUCKY

OCTOBER 21, 2010 MINUTES

RELEASED: 10:00 A.M.

OPINIONS AND ORDERS – OCTOBER 21, 2010

JOHN H. CALLIS, III V. KENTUCKY BAR ASSOCIATION OPINION AND ORDER SUSPENDED RESPONDENT FROM THE PRACTICE OF LAW FOR 30 DAYS, PROBATED FOR 2 YEARS PROVIDED HE INCURS NO OTHER DISCIPLINARY CHARGE DURING THAT TIME PERIOD.	2010-SC-000616-KB NOT TO BE PUBLISHED	IN SUPREME COURT
---	---	---------------------

HEATHER CLARK REYNOLDS V. KENTUCKY BAR ASSOCIATION OPINION AND ORDER PERMANENTLY DISBARRED MOVANT FROM THE PRACTICE OF LAW IN THE COMMONWEALTH OF KENTUCKY.	2010-SC-000617-KB TO BE PUBLISHED	IN SUPREME COURT
--	---	---------------------

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
OCTOBER 13, 2010**

JAMES JACKSON V. COMMONWEALTH OF KENTUCKY	2009-SC-000115-DG	MCCRACKEN
JANE COLLEEN YOUNGER V. S.D. ENVIRONMENTAL, INC., ET AL.	2009-SC-000814-DG	JEFFERSON
COMMONWEALTH OF KENTUCKY V. ANTHONY NASH	2010-SC-000065-DG	FAYETTE
GARNETT GIBSON, AS EXECUTOR AND PERSONAL REPRESENTATIVE OF THE ESTATE OF TOPSIE GIBSON V. FUEL TRANSPORT, INC.	2010-SC-000072-DG	KNOTT
COMMONWEALTH OF KENTUCKY V. ANGELA PETERS	2010-SC-000074-DG	SHELBY
KENNETH WILLIAMS V. COMMONWEALTH OF KENTUCKY	2010-SC-000138-DG	JEFFERSON

SUPREME COURT OF KENTUCKY

OCTOBER 21, 2010 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
OCTOBER 13, 2010**

WILLIE CARTER V. COMMONWEALTH OF KENTUCKY	2010-SC-000197-D	JEFFERSON
MELISSA HUNTER V. COMMONWEALTH OF KENTUCKY	2010-SC-000214-D	HENDERSON
PATRICIA RAGLAND MCGEHEE AND RICHARD MCGEHEE V. TRANSPORTATION CABINET, DEPARTMENT OF HIGHWAYS, COMMONWEALTH OF KENTUCKY	2010-SC-000317-D	HARDIN
DARLENE JONES V. KENTUCKY RETIREMENT SYSTEMS	2010-SC-000330-D	FRANKLIN
RAYMOND ANDERSON, JR. V. COMMONWEALTH OF KENTUCKY	2010-SC-000345-D	HENDERSON
PHILLIP LANHAM V. COMMONWEALTH OF KENTUCKY	2010-SC-000360-D	GARRARD
DESIRA LOUISMAS V. COMMONWEALTH OF KENTUCKY	2010-SC-000362-D	FAYETTE
ANDRE LYDIAN V. COMMONWEALTH OF KENTUCKY	2010-SC-000372-D	NELSON
ERNEST ALLEN V. WINN-DIXIE STORES, INC., ET AL.	2010-SC-000449-D	JEFFERSON
RHODA TERESA BUNCH V. COMMONWEALTH OF KENTUCKY	2010-SC-000477-D	MARSHALL
T.W. V. COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES, ET AL.	2010-SC-000530-DE	HICKMAN

SUPREME COURT OF KENTUCKY

OCTOBER 21, 2010 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
OCTOBER 19, 2010**

LAURA BAILEY V. 2009-SC-000551-D FAYETTE
MCM BUSINESS SERVICES, INC.,
D/B/A MCM SIGNS, ET AL.
**THE OPINION OF THE COURT OF APPEALS
IS ORDERED NOT TO BE PUBLISHED.**

**COURT ORDERS DENYING BELATED MOTION FOR ENLARGEMENT OF TIME TO FILE
MOTION FOR DISCRETIONARY REVIEW – OCTOBER 14, 2010**

GERALD R. WOODEN V. 2010-SC-000500-D HARDIN
COMMONWEALTH OF KENTUCKY

COURT ORDERS DENYING MOTION TO TRANSFER – OCOTBER 21, 2010

KENTUCKY UNEMPLOYMENT INSURANCE 2010-SC-000468-T FAYETTE
COMMISSION V.
MARK W. SCHLICKMAN, ET AL.

COURT ORDERS DISMISSING

DESHON M. OGBURN V. 2009-SC-000512-MR WARREN
COMMONWEALTH OF KENTUCKY
ENTERED: OCTOBER 14, 2010

COMMONWEALTH OF KENTUCKY V. 2008-SC-000956-DG KENTON
DERAY FRYE
ENTERED: OCTOBER 18, 2010

SUPREME COURT OF KENTUCKY

OCTOBER 21, 2010 MINUTES

RELEASED: 10:00 A.M.

COURT ORDERS

NORMAN GRAHAM V. [2009-SC-000069-MR](#) TODD
COMMONWEALTH OF KENTUCKY
**ORDER CORRECTED OPINION OF THE
COURT BY SUBSTITUTION OF PAGE 2
WITH NEW PAGE 2.**
ENTERED: SEPTEMBER 10, 2010.

BRIAN FERGUSON V. 2010-SC-000038-MR GRAVES
COMMONWEALTH OF KENTUCKY
**ORDER GRANTED THE MOTION TO
RECONSIDER THIS COURT'S ORDER
ENTERED JUNE 17, 2010 DISMISSING
THE APPEAL IS GRANTED AND THE
COURT OF APPEALS IS DIRECTED TO
ACCEPT APPELLANT'S BELATED APPEAL.**
ENTERED: SEPTEMBER 22, 2010.

ERNST & YOUNG LLP, ET AL. V. 2007-SC-000770-TG FRANKLIN
JULIE MIX MCPEAK, EXECUTIVE
DIRECTOR, KENTUCKY OFFICE OF
INSURANCE AS REHABILITATOR OF AIK
COMP, FOR AN ON BEHALF OF AIK COMP,
ET AL.

AND
ERNST & YOUNG LLP V. 2007-SC-000936-TG FRANKLIN
APPALACHIAN REGIONAL HEALTHCARE,
INC., ET AL.
**ORDER DENIED MOTION FOR STAY
PENDING REVIEW BY THE UNITED STATES
SUPREME COURT.**
ENTERED: OCTOBER 15, 2010.

**COURT ORDERS PERMITTING MOVANT TO WITHDRAW AS A MEMBER OF THE
KENTUCKY BAR ASSOCIATION – SEPTEMBER 24, 2010**

PAUL BRENT CALICO V. 2010-SC-000631-KB IN SUPREME
KENTUCKY BAR ASSOCIATION COURT