

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2012 MINUTES

RELEASED: 10:00 A.M.

172. ANGELA BAUMIA V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE SCOTT -
AFFIRMING**
MINTON, C.J.; ABRAMSON, NOBLE,
AND VENTERS, JJ., CONCUR.
CUNNINGHAM, J., CONCURS IN
RESULT BY SEPARATE OPINION.
SCHRODER, J., NOT SITTING.

[2011-SC-000279-MR](#)
TO BE PUBLISHED

JEFFERSON

Questions Presented:

Murder, first-degree wanton endangerment, first-degree criminal mischief and driving under the influence-35 years. Commonwealth's introduction in its case in chief of defendant's invocation of her right to remain silent was error but said error was harmless beyond a reasonable doubt. Admission of accident scene video, 911 recording, evidence of defendant's post-collision use of profanity and her misdemeanor theft by deception conviction, during the sentencing phase of the trial, did not constitute error.

173. RANDAL KEITH KIPER V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE VENTERS -
AFFIRMING IN PART AND REVERSING
AND REMANDING IN PART**
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, AND SCOTT,
JJ., CONCUR. SCHRODER, J., NOT
SITTING.

[2010-SC-000768-MR](#)
TO BE PUBLISHED

JEFFERSON

Questions Presented:

Attempted murder, two counts of first-degree assault, first-degree wanton endangerment and first-degree PFO-70 years. Convictions for both attempted murder and first-degree assault for the same shooting resulted in a double jeopardy violation of KRS 505.020. Allegations of prosecutorial misconduct did not constitute reversible error.

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2012 MINUTES

RELEASED: 10:00 A.M.

174. BASS WEBB V. [2011-SC-000594-MR](#) BOURBON
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY JUSTICE SCOTT -
AFFIRMING IN PART AND VACATING
AND REMANDING IN PART**
MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, AND VENTERS, JJ., CONCUR. SCHRODER, J., NOT SITTING.
- Questions Presented:**

Two counts of attempted murder and first-degree PFO-50 years. Prosecution exceeded the scope of KRS 532.055 in telling jurors about defendant's prior convictions entitling defendant to a directed verdict on the PFO charge (correct procedure is explained). Trial court properly admitted for purposes of identification, evidence that defendant was a former inmate. Evidence that defendant threatened a prison guard during apprehension was properly admitted as an ongoing part of the crime.
175. JONATHAN CRAIG CARDWELL V. [2011-SC-000383-MR](#) MUHLENBERG
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE COURT – AFFIRMING
MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT, AND VENTERS, JJ., CONCUR. SCHRODER, J., NOT SITTING.
176. OHIO VALLEY BISTROS, INC., D/B/A T.G.I. FRIDAYS; AND THE BISTRO GROUP, D/B/A T.G.I. FRIDAY'S V. [2012-SC-000117-MR](#) FROM COURT OF APPEALS
HONORABLE CRAIG Z. CLYMER, JUDGE, MCCRACKEN CIRCUIT COURT, ET AL.
MEMORANDUM OPINION OF THE COURT – AFFIRMING
MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT, AND VENTERS, JJ., CONCUR. SCHRODER, J., NOT SITTING.

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2012 MINUTES

RELEASED: 10:00 A.M.

177. ALAN SCOTT WILLIAMS V. [2011-SC-000644-MR](#) BOYD
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
MEMORANDUM OPINION OF
THE COURT – AFFIRMING IN PART
AND VACATING AND REMANDING IN
PART
MINTON, C.J.; ABRAMSON,
NOBLE, SCOTT, AND VENTERS,
JJ., CONCUR. CUNNINGHAM, J.,
CONCURS IN RESULT BY SEPARATE
OPINION. SCHRODER, J., NOT
SITTING.

OPINIONS AND ORDERS – NOVEMBER 21, 2012

KENTUCKY BAR ASSOCIATION V. [2012-SC-000148-KB](#) IN SUPREME
FRED G. GREENE **TO BE PUBLISHED** COURT
OPINION AND ORDER SUSPENDED
RESPONDENT FROM THE PRACTICE
OF LAW FOR A PERIOD OF 30 DAYS WITH
CONDITIONS.
MINTON, C.J.; ABRAMSON, CUNNINGHAM,
NOBLE, SCOTT, AND VENTERS, JJ., CONCUR.
SCHRODER, J., NOT SITTING.

LAMAR ADVANTAGE GP COMPANY, LLC, 2012-SC-000154-D KENTON
ETC. V.

NICHOLAS M. NIGHSWANDER, ET AL.

AND

NICHOLAS M. NIGHSWANDER, ET AL. V. 2012-SC-000156-D KENTON
LAMAR ADVANTAGE GP COMPANY, LLP,
ETC., ET AL.

ORDER GRANTED DISCRETIONARY
REVIEW, VACATED THE COURT OF APPEALS
OPINION AND REMANDED BACK TO THE
COURT OF APPEALS.

MINTON, C.J.; ABRAMSON, CUNNINGHAM,
NOBLE, SCOTT AND VENTERS, JJ.,
CONCUR. SCHRODER, J., NOT
SITTING.

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2012 MINUTES

RELEASED: 10:00 A.M.

OPINIONS AND ORDERS – NOVEMBER 21, 2012

KENTUCKY BAR ASSOCIATION V. JOSHUA MICHAEL ROBINSON ORDER SUSPENDED RESPONDENT FROM THE PRACTICE OF LAW FOR 181 DAYS. MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT, AND VENTERS, JJ., CONCUR. SCHRODER, J., NOT SITTING.	2012-SC-000397-KB TO BE PUBLISHED	IN SUPREME COURT
KENTUCKY BAR ASSOCIATION V. EDWARD L. JACOBS ORDER SUSPENDED RESPONDENT FROM THE PRACTICE OF LAW FOR 30 DAYS. MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT, AND VENTERS, JJ., CONCUR. SCHRODER, J., NOT SITTING.	2012-SC-000413-KB TO BE PUBLISHED	IN SUPREME COURT
JOHN BRANDON BRUCE V. KENTUCKY BAR ASSOCIATION ORDER RESTORED MOVANT TO THE PRACTICE OF LAW. MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT, AND VENTERS, JJ., CONCUR. SCHRODER, J., NOT SITTING.	2012-SC-000611-KB TO BE PUBLISHED	IN SUPREME COURT
ROBERT LEE MCINTRYE V. KENTUCKY BAR ASSOCIATION ORDER RESTORED MOVANT TO THE PRACTICE OF LAW WITH CONDITIONS. MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT, AND VENTERS, JJ., CONCUR. SCHRODER, J., NOT SITTING.	2012-SC-000612-KB	IN SUPREME COURT
EMILY FRITTS WHITTY V. KENTUCKY BAR ASSOCIATION ORDER RESTORED MOVANT TO THE PRACTICE OF LAW. MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT, AND VENTERS, JJ., CONCUR. SCHRODER, J., NOT SITTING.	2012-SC-000613-KB NOT TO BE PUBLISHED	IN SUPREME COURT

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2012 MINUTES

RELEASED: 10:00 A.M.

OPINIONS AND ORDERS – NOVEMBER 21, 2012

CHARLES DAVID KEEN V. KENTUCKY BAR ASSOCIATION ORDER PUBLICLY REPRIMANDED MOVANT WITH CONDITIONS. MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT, AND VENTERS, JJ., CONCUR. SCHRODER, J., NOT SITTING.	2012-SC-000648-KB TO BE PUBLISHED	IN SUPREME COURT
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**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
NOVEMBER 14, 2012**

ERICK VEGA V. COMMONWEALTH OF KENTUCKY SCHRODER, J., NOT SITTING.	2012-SC-000111-DG	FAYETTE
R.S., A CHILD UNDER EIGHTEEN V. COMMONWEALTH OF KENTUCKY SCHRODER, J., NOT SITTING.	2012-SC-000116-DG	BOONE
ERIC HENDERSON V. COMMONWEALTH OF KENTUCKY SCHRODER, J., NOT SITTING.	2012-SC-000120-DG	JEFFERSON
JAMES RATLIFF, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED V. MERCK & COMPANY, INC. SCHRODER, J., NOT SITTING.	2012-SC-000162-DG	PIKE
COMMONWEALTH OF KENTUCKY V. JOSEPH WILLIAM PARKER SCHRODER, J., NOT SITTING.	2012-SC-000164-DG	FAYETTE
LEONARD LAWSON V. OFFICE OF THE ATTORNEY GENERAL, ET AL. SCHRODER, J., NOT SITTING.	2012-SC-000201-DG	FRANKLIN

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2012 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
NOVEMBER 14, 2012**

DEBORAH MANNING, TERRY LITTLETON V. 2012-SC-000296-DG MAGOFFIN
AND WILMA LITTLETON V.
ROBERT KNOX LEWIS
SCHRODER, J., NOT SITTING.

SHAWN TIGUE V. 2012-SC-000599-DG BELL
COMMONWEALTH OF KENTUCKY
SCHRODER, J., NOT SITTING.

SANDRA DENISE MESSERLY, ET AL. V. 2012-SC-000615-DG BOONE
NISSAN NORTH AMERICA, INC., ET AL.
SCHRODER, J., NOT SITTING.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
NOVEMBER 14, 2012**

COMMONWEALTH OF KENTUCKY, 2011-SC-000730-D FRANKLIN
DEPARTMENT OF ALCOHOLIC BEVERAGE
CONTROL V.
BEVERAGE WAREHOUSE, INC., ET AL.

AND
LIQUOR BARN #5, LLC V. 2011-SC-000731-D FRANKLIN
BEVERAGE WAREHOUSE, INC., ET AL.
SCHRODER, J., NOT SITTING.

MARK WHITE, ET AL. V. 2012-SC-000089-D PIKE
DENNIE WILLIAMSON, ET AL.
SCHRODER, J., NOT SITTING.

THOMAS SCOTT SOUTHERN V. 2012-SC-000098-D BELL
COMMONWEALTH OF KENTUCKY
SCHRODER, J., NOT SITTING.

LACY NICOLE BURDEN V. 2012-SC-000108-D KENTON
MARK HAMPTON AND MATT HICKS
SCHRODER, J., NOT SITTING.

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2012 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
NOVEMBER 14, 2012**

EDWARD BOWLES V. COOKIE CREWS, WARDEN CUNNINGHAM AND SCOTT, JJ., WOULD GRANT. SCHRODER, J., NOT SITTING.	2012-SC-000118-D	OLDHAM
EDWARD STOESS V. COMMONWEALTH OF KENTUCKY CUNNINGHAM AND SCOTT, JJ., WOULD GRANT. SCHRODER, J., NOT SITTING.	2012-SC-000119-D	OLDHAM
JUSTIN COPLEY AND MELISSA HOWELL V. DANITA COPLEY AND CAROLINE COPLEY SCHRODER, J., NOT SITTING.	2012-SC-000129-D	MARTIN
JAMES STRICKLAND V. COMMONWEALTH OF KENTUCKY NOBLE AND VENTERS, JJ., WOULD GRANT. SCHRODER, J., NOT SITTING.	2012-SC-000138-D	JEFFERSON
REYNOLDS ENTERPRISES, INC., D/B/A TRI-STATE CREMATORY V. KENTUCKY BOARD OF EMBALMERS AND FUNERAL DIRECTORS SCHRODER, J., NOT SITTING.	2012-SC-000159-D	FRANKLIN
CARL SINKHORN V. OXFORD APARTMENT CLUB RESORT, LLC, D/B/A THE PARK AT HURSTBOURNE ("OXFORD") SCHRODER, J., NOT SITTING.	2012-SC-000168-D	JEFFERSON

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2012 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
NOVEMBER 14, 2012**

FRANK GREGORY MOORE, ET AL. V. COMMONWEALTH OF KENTUCKY, TRANSPORTATION CABINET, DEPARTMENT OF HIGHWAYS AND FRANK GREGORY MOORE, ET AL. V. COMMONWEALTH OF KENTUCKY, TRANSPORTATION CABINET, DEPARTMENT OF HIGHWAYS AND FRANK GREGORY MOORE, ET AL. V. COMMONWEALTH OF KENTUCKY, TRANSPORTATION CABINET, DEPARTMENT OF HIGHWAYS SCHRODER, J., NOT SITTING.	2012-SC-000175-D 2012-SC-000176-D 2012-SC-000177-D	PIKE PIKE PIKE
K.B., A CHILD UNDER EIGHTEEN V. COMMONWEALTH OF KENTUCKY SCHRODER, J., NOT SITTING.	2012-SC-000182-D	MCCRACKEN
DAVID CHRISTOPHER EATON V. KRISTINA NICOLE JOHNSON SCHRODER, J., NOT SITTING.	2012-SC-000184-D	FAYETTE
PAMELA ADAMS AND THOMAS ADAMS V. RANDALL MILLER AND STATE FARM INSURANCE COMPANIES SCHRODER, J., NOT SITTING.	2012-SC-000198-D	CAMPBELL
CLYDE LITTON V. COMMONWEALTH OF KENTUCKY SCHRODER, J., NOT SITTING.	2012-SC-000202-D	MARTIN
KELVIN HAYNES, JR. V. COMMONWEALTH OF KENTUCKY SCHRODER, J., NOT SITTING.	2012-SC-000203-D	HARDIN

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2012 MINUTES

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**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
NOVEMBER 14, 2012**

ZORIN PROPERTIES, LLC V. DAVID DENNEY SCHRODER, J., NOT SITTING.	2012-SC-000211-D	HART
FREELAND THOMAS RILEY V. COMMONWEALTH OF KENTUCKY SCHRODER, J., NOT SITTING.	2012-SC-000229-D	MCCRACKEN
SEAN STUDER AND CATHLEEN D. STUDER V. CYNTHIANA-HARRISON COUNTY-BERRY JOINT PLANNING COMMISSION, ET AL. SCHRODER, J., NOT SITTING.	2012-SC-000231-D	HARRISON
JOE A. BROWDER, JR V. ROBERT PARKER, TAMI DARNELL AND BYRON JASIS SCHRODER, J., NOT SITTING.	2012-SC-000236-D	LYON
SHANNON RAY BURGHER V. COMMONWEALTH OF KENTUCKY SCHRODER, J., NOT SITTING.	2012-SC-000239-D	POWELL
BENJAMIN CLINE, II V. COMMONWEALTH OF KENTUCKY THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED. SCHRODER, J., NOT SITTING.	2012-SC-000240-D	HART
LEONARD ROBINSON AND CHERYL ROBINSON V. COUNTRYWIDE HOME LOANS SERVICING, L.L.P. SCHRODER, J., NOT SITTING.	2012-SC-000270-D	JEFFERSON
PEGGY HAMILTON V. RICHARD EUGENE MEYERS, ET AL. SCHRODER, J., NOT SITTING.	2012-SC-000282-D	LAWRENCE

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2012 MINUTES

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**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
NOVEMBER 14, 2012**

PAULA K. GILL, D.M.D. V. 2012-SC-000286-D FAYETTE
SUSAN M. BURRESS, M.D.
SCHRODER, J., NOT SITTING.

LARRY JOE BASHAM V. 2012-SC-000298-D HARDIN
COMMONWEALTH OF KENTUCKY
SCHRODER, J., NOT SITTING.

COURT ORDERS DENYING PETITION FOR REHEARING – NOVEMBER 21, 2012

GREGORY WILSON V. 2010-SC-000573-MR KENTON
COMMONWEALTH OF KENTUCKY
**MINTON, C.J.; ABRAMSON, CUNNINGHAM,
NOBLE, SCOTT, AND VENTERS, JJ., CONCUR.
SCHRODER, J., NOT SITTING.**

GREG'S CONSTRUCTION V. 2011-SC-000605-WC FROM COURT
JERRY KEETON, ET AL.
**MINTON, C.J.; ABRAMSON, CUNNINGHAM,
NOBLE, SCOTT, AND VENTERS, JJ., CONCUR.
SCHRODER, J., NOT SITTING.**

COURT ORDERS DISMISSING

ERICK HENDRIX V. 2011-SC-000231-MR HOPKINS
COMMONWEALTH OF KENTUCKY
ENTERED: NOVEMBER 15, 2012

COMMONWEALTH OF KENTUCKY V. 2012-SC-000453-MR FROM COURT
JOHN GRISE, JUDGE, WARREN APPEALS
CIRCUIT COURT, ET AL.
ENTERED: NOVEMBER 1, 2012

JAMES L. GRADY V. 2012-SC-000588-MR FROM COURT
COMMONWEALTH OF KENTUCKY APPEALS
ENTERED: OCTOBER 26, 2012

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2012 MINUTES

RELEASED: 10:00 A.M.

COURT ORDERS DISMISSING

ROGER EPPERSON V. 2012-SC-000606-OA FROM COURT
MARTIN MCDONALD, SPECIAL SENIOR APPEALS
JUDGE, WARREN CIRCUIT COURT, ET AL.
ENTERED: OCTOBER 29, 2012

RONALD K. ROBERTS V. 2012-SC-000641-MR FROM COURT
VERNON MINIARD, JUDGE, WAYNE APPEALS
CIRCUIT COURT, ET AL.
ENTERED: NOVEMBER 2, 2012

**COURT ORDERS PERMITTING MOVANT TO WITHDRAW AS A MEMBER OF THE
KENTUCKY BAR ASSOCIATION**

BEVERLY SUSAN KIRCH V. 2012-SC-000706-KB IN SUPREME
KENTUCKY BAR ASSOCIATION COURT
ENTERED: NOVEMBER 2, 2012

RICHARD EDWARD MYERS V. 2012-SC-000722-KB IN SUPREME
KENTUCKY BAR ASSOCIATION COURT
ENTERED: NOVEMBER 8, 2012

MELANIE S. CORWIN V. 2012-SC-000741-KB IN SUPREME
KENTUCKY BAR ASSOCIATION COURT
ENTERED: NOVEMBER 14, 2012

MARY ANN VIOLA KIWALA V. 2012-SC-000742-KB IN SUPREME
KENTUCKY BAR ASSOCIATION COURT
ENTERED: NOVEMBER 14, 2012

EMMERLINE FOOTE V. 2012-SC-000745-KB IN SUPREME
KENTUCKY BAR ASSOCIATION COURT
ENTERED: NOVEMBER 14, 2012