

**KENTUCKY SUPREME COURT
SEPTEMBER 2023**

CRIMINAL LAW:

NICHOLAS BEHRENS V. COMMONWEALTH OF KENTUCKY

2022-SC-0060-MR

September 28, 2023

Opinion of the Court by Justice Bisig. All sitting. All concur.

Nicholas Behrens appealed as a matter of right from the Campbell Circuit Court judgment sentencing him to fifty years in prison for his convictions of three counts of first-degree sexual abuse, tampering with physical evidence, two counts of incest, two counts of sodomy, and one count of possession of matter portraying a sexual performance by a minor. All the convictions relate to sexual abuse perpetrated by Behrens against his eight-year-old son, Behrens' possession of child pornography, and Behrens' efforts to erase his digital footprint after law enforcement began its investigation.

The Supreme Court held the tampering instruction did not violate the unanimous jury verdict requirement. Applying *Johnson v. Commonwealth*, No. 2021-SC-0541-MR, 2023 WL 4037845, at *5 (June 15, 2023), the Court reasoned that Behrens' tampering charge resulted from the whole ensemble of incriminating data that Behrens sought to erase, including an iPad, MacBook, and iCloud account. The individual devices and accounts were all components of a sole evidentiary source: Behrens' digital footprint. The Court further held the trial court did not err in denying Behrens' renewed motion to sever the remaining child pornography charge after severing nineteen child pornography charges from the sex offense and tampering charges. The remaining child pornography charge was properly joined and Behrens did not suffer undue prejudice. Next, the Court held that the trial court did not err in admitting evidence of Behrens' adult messaging app communications because that evidence was strongly probative of both motive and knowledge for the crimes charged. Finally, the Court held that the Commonwealth's closing argument comments about the acts Behrens perpetrated against his son did not warrant reversal because the comments merely used layman's terms to describe the conduct, were isolated, did not mislead the jury, and the evidence in the case weighed heavily against Behrens. The Court affirmed the judgment of the Campbell Circuit Court.

JOSEPH MEREDITH V. COMMONWEALTH OF KENTUCKY

2022-SC-0442-MR

September 28, 2023

Opinion of the Court by Justice Bisig. All sitting. All concur.

Joseph Meredith shot and killed Angela Kerr then recorded himself having sex with her corpse. Meredith was convicted by a Hardin Circuit Court of murder, abuse of a corpse, being a convicted felon in possession of a handgun, and being a first-degree persistent felony offender. The trial court sentenced Meredith to seventy years in prison consistent with the jury's recommendation.

On appeal, the Supreme Court held that the trial court properly admitted a limited portion of the abuse of a corpse video. The abuse of a corpse statute requires that a person treat a corpse in a way "that would outrage ordinary family sensibilities." Kentucky Revised Statute 525.120. As such, the video clip was relevant to the jury's determination of whether Meredith satisfied the elements of the crime. The video was probative, and not unduly prejudicial because the evidence was limited to only what was necessary to establish the elements of the offense. Additionally, the parties pointed to no other evidence of what the video depicted, what acts were perpetrated upon Kerr's corpse, or who any perpetrator may have been. Further, neither the trial court nor the Commonwealth was obligated to accept Meredith's offer to stipulate to the existence and contents of the videos, or his offer to show still photos taken from the videos. Next, the Court held that the trial court properly declined to instruct the jury on extreme emotional disturbance (EED) because Meredith's testimony regarding the events leading to the murder did not support an EED instruction. Meredith failed to establish that he was extremely disturbed, much less that he acted under the influence of any disturbance in killing Kerr. The Court affirmed the judgment of the Hardin Circuit Court.

WORKERS' COMPENSATION:

FRANCISCO RODARTE V. BLUELINX CORPORATION, ET AL.

[2022-SC-0423-WC](#)

September 28, 2023

AND

FRANCISCO RODARTE V. BLUELINX CORPORATION, ET AL.

[2022-SC-0428-WC](#)

September 28, 2023

Opinion of the Court by Justice Lambert. All sitting. All concur.

Rodarte sustained a work-related knee injury in January 2016. After he returned to work from that injury, he sustained a second, work-related injury to his shoulder in August 2018. Rodarte filed a Form 101 for his knee injury in March 2019, and a settlement agreement for that injury was reached in October 2019. The settlement agreement contained no language regarding his shoulder injury. Rodarte filed a Form 101 for his shoulder injury in December 2020. BlueLinx denied his shoulder claim and asserted that it should have been joined to his knee claim before a settlement was reached for that injury in accordance with KRS 342.270, the joinder statute for worker's compensation claims. Rodarte filed a motion to reopen his knee claim, asserting there was a mutual mistake of fact because both parties had intended to include language regarding his shoulder injury in the settlement agreement for his knee claim, which BlueLinx did not concede. The ALJ denied the motion to reopen, and a different ALJ dismissed his shoulder claim.

In separate opinions, the Worker's Compensation Board affirmed the denial of the motion to reopen but reversed the dismissal of the shoulder claim. The Board concluded that Rodarte's shoulder claim had not accrued when the settlement agreement for his knee injury was reached because he was still receiving TTD payments for his shoulder injury. The Court of Appeals consolidated the cases; it affirmed the denial of the motion to reopen the knee injury claim but reinstated the ALJ's ruling that Rodarte should have joined his shoulder claim to his knee claim prior to the settlement agreement being reached. The court reasoned that Rodarte's shoulder injury claim accrued the day he was injured and while the payment of TTD benefits tolled the statute of limitations, it did not change the date his claim accrued.

The Supreme Court affirmed the Court of Appeals. It first held that the motion to reopen his knee claim was properly denied, as it did not satisfy any of the statutory requirements to reopen fraud, newly discovered evidence, mistake, or change of disability. The Court also held that Rodarte's shoulder claim

accrued on the date he was injured, and that the payment of TTD benefits tolled the statute of limitations, but did not change the date of accrual. KRS 342.270(1) provides that when “the application [for resolution of a claim] is filed by the employee . . . he or she shall join all causes of action against the named employer which have accrued and which are known,” and that failure to join an accrued cause of action “will result in such claims being barred under this chapter as waived by the employee.” Consequently, because Rodarte’s cause of action for his shoulder injury had accrued when the settlement agreement for his knee injury was reached, the ALJ was correct in dismissing his shoulder claim as barred.

TENNCO ENERGY, INC. V. RICHARD LANE, ET AL.

[**2023-SC-0028-WC**](#)

September 28, 2023

Opinion of the Court by Justice Keller. VanMeter, C.J.; Bisig, Conley, Lambert, and Nickell, JJ., sitting. All concur. Thompson, J., not sitting.

An ALJ dismissed Richard Lane’s coal workers’ pneumoconiosis (CWP) claim against Tennco Energy, Inc. after determining Lane failed to provide Tennco with timely notice of his claim pursuant to KRS 342.316(2). The Workers’ Compensation Board reversed and remanded, after concluding that a prior CWP claim settled in 2005 against a former employer had no bearing on Lane’s statutory duty to give notice to Tennco. The Court of Appeals affirmed the Board. The Supreme Court interpreted KRS 342.316(2) to have triggered Lane’s obligation to provide Tennco with notice of his subsequent CWP claim when he was reasonably apprised that he had sustained a harmful change in his CWP condition attributable to his employment with Tennco. The Supreme Court affirmed the Court of Appeals’ reversal of the ALJ’s conclusions as to notice and remanded to the ALJ for additional findings of fact.

WRIT:

S.I.A. LIMITED, INCORPORATED IN GIBRALTAR UNDER THE CORPORATE ACT OF THE LAWSON MAY 2, 2000, HAVING VOLUNTARILY DISSOLVED AS A COMPANY ON MARCH 16, 2022 V. HONORABLE THOMAS D. WINGATE, ET AL.

[**2022-SC-0561-MR**](#)

September 28, 2023

Opinion of the Court by Justice Thompson. All sitting. All concur.

SIA is a Gibraltar corporation that operated an internet gambling site. The Commonwealth of Kentucky filed a civil action against SIA pursuant to the Loss Recovery Act seeking damages from SIA’s gambling winnings which were illegally obtained from Commonwealth residents. SIA asked for and was

granted extended time to respond to discovery and then voluntarily dissolved without prior notice.

Gibraltar law does not allow lawsuits to continue against dissolved corporations. SIA argued that based on its dissolution, it was no longer subject to the jurisdiction of our courts. When the trial court did not agree, SIA sought a writ of prohibition before the Court of Appeals; when this was not granted, SIA appealed.

The Court affirmed on the basis that: (1) the Court of Appeals did not abuse its discretion in denying a first-class writ because the circuit court has subject matter jurisdiction over this type of case and the parties and, therefore, was not proceeding outside of its jurisdiction; (2) the Court of Appeals did not abuse its discretion in denying a second-class writ because: (a) the circuit court is not acting erroneously within its jurisdiction (it did not need to respect SIA's corporate structure where crimes were being committed, damages might be available from a successor in interest or others, and discovery was appropriate for the Commonwealth to explore who was potentially liable); (b) there is an adequate remedy by appeal (because the only objection to discovery was based on the dissolution of the company, not that discovery would violate a privilege); and (c) no great injustice or irreparable injury will result if the petition is not granted (it is not a great injustice for a corporation which attempts to avoid liability by dissolving to have to continue with an established lawsuit); and (3) under the unclean hands doctrine our courts are not required to provide SIA with equitable relief (because it appears SIA fraudulently dissolved without notice for the purpose of avoiding liability).

ATTORNEY DISCIPLINE:

RODERICK ANIBAL TEJEDA V. KENTUCKY BAR ASSOCIATION

2022-SC-0470-KB

September 28, 2023

All sitting. Conley, Keller, Lambert, and Thompson, JJ., concur. Nickell, J., dissents by separate opinion in which VanMeter, C.J., and Bisig, J., join.

The Supreme Court of Kentucky suspended Roderick Anibal Tejada from the practice of law for four years after he pleaded guilty to reckless homicide stemming from an automobile accident. He was automatically suspended from the practice of law the day after pleading guilty pursuant to SCR 3.166. For the offense, Tejada was charged with violating SCR 3.130-8.4(b). The Kentucky Bar Association negotiated a sanction with Tejada. The Court granted his motion to impose the negotiated sanction pursuant to SCR 3.480(2). In 2018, Tejada applied for reinstatement. The KBA Board of Governors voted unanimously to reinstate Tejada to the practice of law. The Supreme Court ordered further review pursuant to SCR 3.370(9). After review, the Court

determined to accept the Board's recommendation to reinstate Tejeda with conditions.

While on probation, Tejeda, an admitted recovering alcoholic, completed a six-month inpatient treatment program and became a peer mentor, helping other patients who entered the program. Tejeda was continuously employed during his suspension, either as a certified alcohol and drug counselor or as a commercial truck driver. He maintained sobriety throughout his probation in the criminal case and was released. However, in 2019, Tejeda experienced a relapse during which he was drinking around a twelve-pack of beer daily. In December 2019, Tejeda attended the Kentucky Law Update, where he saw Kentucky Lawyers Assistance Program Director, Yvette Hourigan. Hourigan smelled alcohol on Tejeda and requested a meeting with him and his sponsor. Tejeda denied consuming alcohol but did recommit himself to participate in AA and has remained sober since. In 2021, Tejeda apologized to Hourigan and disclosed the circumstances of his relapse to the Character and Fitness Committee. Character and Fitness conducted a formal hearing. At the end of the hearing, Bar Counsel agreed to recommend Tejeda's reinstatement conditioned on him submitting to immediate enhanced monitoring with KYLAP. Bar Counsel withdrew its agreement to conditional reinstatement after Tejeda advised he could not comply with the immediate enhanced monitoring because he was living out-of-state as a commercial truck driver. Character and Fitness approved Tejeda's reinstatement but conditioned such approval on Tejeda immediately submitting to enhanced monitoring as previously negotiated by Bar Counsel.

Tejeda appealed to the Board of Governors and sought to remove the requirement of immediate enhanced monitoring. Bar Counsel opposed his reinstatement. The Board unanimously recommended his reinstatement and concluded the imposition of enhanced monitoring on a pre-reinstatement basis was unduly burdensome due to the nature of Tejeda's employment. Instead, the Board recommended the imposition of enhanced monitoring within ninety days of reinstatement in addition to any conditions arising from Tejeda's prior KYLAP agreement which would continue under a new agreement for a period of five years.

After carefully reviewing the record, the Court "acknowledge[d] the substantial and praiseworthy efforts Tejeda has made toward positive change." The Court disagreed with the Board's holding that Tejeda could wait to start the enhanced monitoring after his reinstatement. Instead, the Court held that Tejeda must acquire and maintain a Kentucky residence so as to allow direct and unhindered KYLAP monitoring.

KENTUCKY BAR ASSOCIATION V. MICHAEL TODD HOGAN

2023-SC-0202-KB

September 28, 2023

All sitting. All concur.

Michael Todd Hogan, the County Attorney of Lawrence County, was suspended from the practice of law pursuant to SCR 3.166. The current case is a default case pursuant to SCR 3.210 in which the Board of Governors recommended the Court find Hogan guilty of violating SCR 3.130(8.4)(b) and permanently disbar Hogan from the practice of law. The Court agreed and adopted the Board's recommendation.

Hogan was indicted on fifteen federal counts related to wire fraud, theft, and bribery. As part of his conditions of release, Hogan was prohibited from prosecuting cases on behalf of the Lawrence County Attorney's Office. Hogan entered into a plea agreement on the federal charges, in which he agreed to resign as the Lawrence County Attorney and was sentenced to a total of forty-two months in prison. Hogan also agreed to pay over half a million dollars in restitution.

Hogan was charged with violating SCR 3.130(8.4)(b) and failed to respond to the charge. The Board of Governors moved the Supreme Court to impose discipline pursuant to SCR 3.210. The Board of Governors and Office of Bar Counsel posited the appropriate sanction for Hogan is permanent disbarment. The Court agreed and permanently disbarred Hogan.

PHILIP R. PRICE V. KENTUCKY BAR ASSOCIATION

2023-SC-0327-KB

September 28, 2023

All sitting. All concur.

Philip R. Price moved the Supreme Court to impose a sanction of a 30-day suspension, probated for one year with conditions. The KBA did not object to the sanction. The Court granted the motion.

One of Price's clients was a veteran Price represented in a personal injury claim for injuries arising out of a car accident. The client was a veteran and received care at the VA hospital for his injuries. The VA determined the client did not meet eligibility requirements for payment for service-connected care. The client provided Price with the letter from the VA making that statement. The VA later asserted a lien against any future medical payments and noticed both

attorneys in the case. Price's client executed a settlement and Price sent the client "a letter regarding the settlement, the contents of which can only be described as unclear."

The letter stated Price had reduced his fee by \$63,500.00 but would "collect this back before disbursing the balance of the escrow account" to the client. The letter also stated no money was being withheld to pay any outstanding medical bills and/or obligations that may exist in related to the accident. Then, in the next sentence, the letter stated Price would be withholding \$100,000 to negotiate the payment of the outstanding VA lien. Price did not pay the VA lien and told his client he was negotiated a reduction of the lien and led her to believe she was entitled to any funds remaining in the escrow account. Price eventually sent the lien payment to the VA but did not inform his client. Price ultimately took no fee in the case.

The Kentucky Bar Association Inquiry Commission charged Price with violating SCR 3.130(1.3), SCR 3.130(1.4)(a)(3), SCR 3.130(1.4)(b), and SCR 3.1308.4(c). Price admitted to all four charges. He and the KBA agreed to a negotiated sanction of a 30-day suspension, probated for one year. The Court accepted the terms of the negotiated sanction.