

SUPREME COURT OF KENTUCKY

JANUARY 20, 2011 MINUTES

RELEASED: 10:00 A.M.

1. BERNARD MASON V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
CHIEF JUSTICE MINTON –
AFFIRMING**

[2009-SC-000070-MR](#)
TO BE PUBLISHED

GARRARD

Questions Presented:

First degree criminal abuse and second degree PFO-20 years. Criminal abuse charge was properly submitted to the jury; however, error occurred because there was insufficient evidence to support one of the three alternate methods of committing first degree criminal abuse contained in the jury instructions on that charge. The erroneous instruction did not constitute palpable error where there was no real possibility that a juror followed the theory presented by the surplus language and no real possibility that a unanimous verdict was denied. Penalty phase instructions were not preserved for appellate review and did not rise to the level of being palpable error.

2. RACHEL JONES V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE CUNNINGHAM –
AFFIRMING**
NOBLE, J., DISSENTS BY SEPARATE
OPINION IN WHICH SCHRODER, J.,
JOINS.

[2009-SC-000375-DG](#)
TO BE PUBLISHED

LAUREL

Questions Presented:

Criminal Law. Drug Offenses. Physical Appearance Test. Issues include whether drug convictions may be sustained where a physical appearance test is the only proof offered to identify the substance as a certain illegal drug.

3. JAMES RICKY OWENS V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE VENTERS – AFFIRMING**

[2009-SC-000511-MR](#)
TO BE PUBLISHED

SIMPSON

Questions Presented:

First degree assault, tampering with physical evidence, and first degree PFO-30 years. Amendment of indictment, changing the mental state for the first degree assault charge from “intentionally” to “wantonly,” instruction and verdict thereon, upheld. In this case, the erroneous instruction on tampering with physical evidence, the introduction of defendant’s prior PFO status during the penalty stage, and the failure to follow the Reneer procedure did not constitute reversible error.

SUPREME COURT OF KENTUCKY

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4. COMMONWEALTH OF KENTUCKY V. [2009-SC-000782-DG](#) OHIO
JAMES DAVID ADKINS
TO BE PUBLISHED
OPINION OF THE COURT BY
JUSTICE ABRAMSON – AFFIRMING
CUNNINGHAM, J., CONCURS BY
SEPARATE OPINION.

Questions Presented:
Criminal Law. Jury Instructions. The issue is what jury instructions are appropriate in a trafficking in controlled substance case where the defendant claims he possessed the drugs for the purpose of turning them over to police officers.

5. MATTHEW HUDSON V. [2010-SC-000223-WC](#) FROM COURT
CAVE HILL CEMETERY, ET AL. **TO BE PUBLISHED** OF APPEALS
OPINION OF THE COURT –
AFFIRMING

Questions Presented:
Workers' Compensation. Whether parties' correspondence constituted an adequate memorandum of agreement under KRS 342.265(1); more specifically, whether the amount of lump sum proceeds to be allocated to a Medicare Set-Aside Account is an essential element of a settlement that includes such an account.

6. MARY JANE CALHOUN, ET AL. V. [2009-SC-000100-DG](#) BULLITT
CSX TRANSPORTATION, INC., ET AL. **TO BE PUBLISHED**
OPINION OF THE COURT BY
JUSTICE SCOTT –
AFFIRMING IN PART AND
REVERSING IN PART
VENTERS, J., DISSENTS BY
SEPARATE OPINION, IN WHICH
CUNNINGHAM, J., JOINS.

Questions Presented:
Personal Injury. Negligence. Railroad Duty of Care. Extra Hazardous Private Crossing. Issues include the proper standard for evaluating whether a crossing is extra hazardous and the general duties owed by railroads at private crossings.

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7. GLEN AVERY BRYANT V. PULASKI COUNTY DETENTION CENTER; AND BRIAN BISHOP
OPINION OF THE COURT BY JUSTICE NOBLE – AFFIRMING IN PART, REVERSING IN PART, VACATING IN PART AND REMANDING [2009-SC-000036-DG](#) PULASKI
TO BE PUBLISHED
- Questions Presented:**
Qualified Official Immunity. Issues include whether a governmental employee may assert qualified immunity in a lawsuit brought by a prisoner, where the prisoner was physically injured by the governmental employee's acts of "horseplay" or teasing of the prisoner while supervising him on work release detail.
8. PROGRESSIVE MAX INSURANCE COMPANY V. NATIONAL CAR RENTAL SYSTEMS, INC.
OPINION OF THE COURT BY JUSTICE SCOTT – REVERSING [2009-SC-000577-DG](#) JEFFERSON
TO BE PUBLISHED
- Questions Presented:**
Insurance. Basic Reparations Obligors. Subrogation. The issue is whether a rental car insurer that pays basic reparations benefits to the injured is entitled to subrogation from the driver's liability insurer. If so, which insurer has priority.
9. C.C. V. CABINET FOR HEALTH AND FAMILY SERVICES, COMMONWEALTH OF KENTUCKY, ET AL.
OPINION OF THE COURT BY JUSTICE NOBLE – REVERSING, VACATING AND REMANDING [2010-SC-000395-DGE](#) LEWIS
TO BE PUBLISHED
- Questions Presented:**
Dependency, Neglect and Abuse. Discovery. KRS 620.100(3). In a dependency, neglect and abuse proceeding, must formal discovery be provided to a parent prior to an adjudication hearing?
10. CHARLES COX V. COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE COURT – AFFIRMING [2009-SC-000042-MR](#) SCOTT
NOT TO BE PUBLISHED
NOBLE, J., CONCURS IN RESULT ONLY.

SUPREME COURT OF KENTUCKY

JANUARY 20, 2011 MINUTES

RELEASED: 10:00 A.M.

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| 11. | ROBERT LACY STAMPER V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF
THE COURT – <u>AFFIRMING</u> | 2009-SC-000400-MR
NOT TO BE PUBLISHED | DAVISS |
| 12. | CHARLES H. WHALEY, III V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF
THE COURT – <u>AFFIRMING</u> | 2009-SC-000681-MR
NOT TO BE PUBLISHED | JEFFERSON |
| 13. | TIMOTHY W. HACK V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF
THE COURT – <u>AFFIRMING</u> | 2010-SC-000066-MR
NOT TO BE PUBLISHED | HARDIN |
| 14. | MOTORCYCLE SAFETY FOUNDATION,
INC., ET AL. V.
HON. IRV MAZE, JUDGE, JEFFERSON
CIRCUIT COURT AND
CATHERINE LACKS, ET AL.
MEMORANDUM OPINION OF
THE COURT – <u>AFFIRMING</u> | 2010-SC-000204-MR
NOT TO BE PUBLISHED | JEFFERSON |
| 15. | WASTE MANAGEMENT, INC. V.
KEITH COLLINS, ET AL.
MEMORANDUM OPINION OF
THE COURT – <u>AFFIRMING</u> | 2010-SC-000217-WC
NOT TO BE PUBLISHED | FROM COURT
OF APPEALS |
| 16. | SENAD MEHIC V.
R.C. TWAY COMPANY, ET AL.
MEMORANDUM OPINION OF
THE COURT – <u>AFFIRMING</u> | 2010-SC-000224-WC
NOT TO BE PUBLISHED | FROM COURT
OF APPEALS |
| 17. | BRENDA ROBINS V.
CLAIRE'S STORES, INC., ET AL.
MEMORANDUM OPINION OF
THE COURT – <u>AFFIRMING</u> | 2010-SC-000286-WC
NOT TO BE PUBLISHED | FROM COURT
OF APPEALS |
| 18. | DONALD GREG WELLS V.
WAL-MART STORES, INC.
MEMORANDUM OPINION OF
THE COURT – <u>AFFIRMING</u> | 2010-SC-000306-WC
NOT TO BE PUBLISHED | FROM COURT
OF APPEALS |

SUPREME COURT OF KENTUCKY

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OPINIONS AND ORDERS – JANUARY 20, 2011

KENTUCKY BAR ASSOCIATION V. CHARLES C. LEADINGHAM ORDER PERMANENTLY DISBARRED RESPONDENT FROM THE PRACTICE OF LAW. ALL SITTING. ALL CONCUR.	2010-SC-000673-KB TO BE PUBLISHED	IN SUPREME COURT
KENTUCKY BAR ASSOCIATION V. JAMES E. ISENBERG ORDER SUSPENDED RESPONDENT FROM THE PRACTICE OF LAW FOR FIVE YEARS. ALL SITTING. ALL CONCUR.	2010-SC-000691-KB TO BE PUBLISHED	IN SUPREME COURT
JAMES GREGORY TROUTMAN V. KENTUCKY BAR ASSOCIATION ORDER SUSPENDED MOVANT FROM THE PRACTICE OF LAW FOR THIRTY (30) DAYS. ALL SITTING. ALL CONCUR.	2010-SC-000698-KB TO BE PUBLISHED	IN SUPREME COURT

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
JANUARY 14, 2011**

B. DAHLENBURG BONAR, PSC, ET AL. V. WAITE, SCHNEIDER, BAYLESS & CHESLEY CO., L.P.A., ET AL.	2010-SC-000087-DG	BOONE
JEREMY D. LAWTON V. COMMONWEALTH OF KENTUCKY	2010-SC-000206-DG	FAYETTE
TOMMY DOTSON V. COMMONWEALTH OF KENTUCKY	2010-SC-000222-DG	PIKE
PETER BARD V. COMMONWEALTH OF KENTUCKY	2010-SC-000283-DG	JEFFERSON

SUPREME COURT OF KENTUCKY

JANUARY 20, 2011 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
JANUARY 14, 2011**

SUZANNE ANDERSON V. JOSEPH JOHNSON	2010-SC-000646-DGE	FRANKLIN
RONDA REYNOLDS V. SAFECO INSURANCE COMPANY OF ILLINOIS	2010-SC-000665-DG	BATH
CORY KEIFER V. JAYLYNNE KEIFER	2010-SC-000694-DGE	HARDIN

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
JANUARY 14, 2011**

DEMARCUS CLAY V. COMMONWEALTH OF KENTUCKY	2009-SC-000694-D	FAYETTE
APPALACHIAN REGIONAL HEALTHCARE, INC. D/B/A/ MIDDLESBORO ARH V. RAY TYLER VANHUSS, ET AL.	2010-SC-000817-D	BELL
PHYLLIS MURRAY V. EASTERN KENTUCKY UNIVERSITY	2010-SC-000028-D	MADISON
KENDRA KELLEY V. JOHN S. POORE	2010-SC-000037-D	FAYETTE
JANE FERRIELL, D/B/A J. KEITH UPHOLSTERY & DESIGN V. SALOMAN PODGURSKY	2010-SC-000056-D	JEFFERSON
RANDY STONE V. COMMONWEALTH OF KENTUCKY THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED	2010-SC-000080-D	CAMPBELL

SUPREME COURT OF KENTUCKY

JANUARY 20, 2011 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
JANUARY 14, 2011**

SECILY BAXTER, INDIVIDUALLY, ET AL. V. DR. JOSEPH G. FINE	2010-SC-000099-D	FAYETTE
MARK PEEL, ET AL. V. ROSALENE BOBBITT, ADMINISTRATRIX OF THE ESTATE OF ROBERT BOYD THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2010-SC-000107-D	FAYETTE
ANNA MARIE NEWBOLD V. CENTRAL BANK OF JEFFERSON COUNTY, INC. F/K/A FIRST BANK, INC., ET AL.	2010-SC-000130-D	JEFFERSON
BIG SANDY REGIONAL JAIL AUTHORITY, D/B/A BIG SANDY REGIONAL DETENTION CENTER V. KENAR ARCHITECTURAL & ENGINEERING, INC. THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2010-SC-000157-D	FRANKLIN
DARRELL MILLS, ET AL. V. DON MILLS, ET AL.	2010-SC-000181-D	LAUREL
MARTINGALE, LLC V. THE CITY OF LOUISVILLE, N/K/A LOUISVILLE-JEFFERSON COUNTY METRO GOVERNMENT AND BRIDGE THE GAP, INC.	2010-SC-000279-D	JEFFERSON
CHARLES R. BUSSELL V. COMMONWEALTH OF KENTUCKY	2010-SC-000363-D	BELL

SUPREME COURT OF KENTUCKY

JANUARY 20, 2011 MINUTES

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**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
JANUARY 14, 2011**

COMMONWEALTH OF KENTUCKY V. FRANCIS M. HOUGHTON, A/K/A SCOTTY HOUGHTON	2010-SC-000498-D	FRANKLIN
DARRYL R. REED V. AMY ROBERTS, ET AL.	2010-SC-000499-D	FRANKLIN
AARON JASON JUSTICE V. COOKIE CREWS, WARDEN, STATE REFORMATORY	2010-SC-000505-D	OLDHAM
BARRY W. RAYNER V. RICKY PARNELL, JAILER, FULTON COUNTY DETENTION CENTER	2010-SC-000507-D	FULTON
MARTY B. HARRIS V. COMMONWEALTH OF KENTUCKY	2010-SC-000508-D	CRITTENDEN
MICHAEL P. BRIZENDINE V. THOMAS L. SIMPSON, WARDEN, KENTUCKY STATE PENITENTIARY, COMMONWEALTH OF KENTUCKY	2010-SC-000509-D	LYON
ADNAN HASAN V. COMMONWEALTH OF KENTUCKY	2010-SC-000592-D	FAYETTE
RAYMOND ANDERSON V. J. DAVID DONAHUE	2010-SC-000620-D	OLDHAM
EMMETT LEE OGDEN, JR., ET AL. V. BOULDER LLC, ET AL.	2010-SC-000659-D	HENRY
COURTNEY TROWELL V. COMMONWEALTH OF KENTUCKY	2010-SC-000660-D	JEFFERSON
VAUGHN W. HALLIS V. CATHLEEN W. HALLIS	2010-SC-000717-DE	FAYETTE

SUPREME COURT OF KENTUCKY

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RELEASED: 10:00 A.M.

**COURT ORDERS DENYING BELATED MOTION FOR ENLARGEMENT OF TIME TO FILE
MOTION FOR DISCRETIONARY REVIEW – JANUARY 5, 2011**

JAMES RICHARD TURLEY V. 2010-SC-000716-D FAYETTE
COMMONWEALTH OF KENTUCKY

COURT ORDERS DENYING MOTION TO TRANSFER – JANUARY 20, 2011

ROBERT A. DICKERSON V. 2010-SC-000453-T BOYLE
STEVE HANEY, WARDEN, ET AL.

MAX H. SCHWARTZ, ET AL. V. 2010-SC-000654-T FAYETTE
WELLS FARGO BANK, N.A.

COURT ORDERS DENYING PETITION FOR REHEARING – JANUARY 20, 2011

COMMONWEALTH OF KENTUCKY V. 2008-SC-000600-MR JOHNSON
LARRY JOE STAMBAUGH

AND
LARRY STAMBAUGH V. 2008-SC-000622-MR JOHNSON
COMMONWEALTH OF KENTUCKY

WILLIAM EUGENE THOMPSON V. [2009-SC-000557-MR](#) LYON
COMMONWEALTH OF KENTUCKY
**ORDER MODIFIED THE OPINION
OF THE COURT RENDERED
OCTOBER 21, 2010. THE OPINION
IS SUBSTITUTED ON PAGES 1, 6 AND
8 IN LIEU OF THE ORIGINAL OPINION.**

HONORABLE TAMRA GORMLEY, [2009-SC-000736-RR](#) IN SUPREME
FAMILY COURT JUDGE, [2010-SC-000010-RR](#) COURT
FOURTEENTH JUDICIAL CIRCUIT V.
JUDICIAL CONDUCT COMMISSION
**ORDER MODIFIED THE OPINION OF
THE COURT BY JUSTICE SCHRODER,
RENDERED AUGUST 26, 2010. THE
OPINION IS SUBSTITUTED IN LIEU OF
THE ORIGINAL OPINION.**

SUPREME COURT OF KENTUCKY

JANUARY 20, 2011 MINUTES

RELEASED: 10:00 A.M.

COURT ORDERS DISMISSING

AMERICAN INTERNATIONAL
SPECIALTY LINES INSURANCE
COMPANY V.

2007-SC-000239-MR

PIKE

HON. EDDY COLEMAN, JUDGE,
PIKE CIRCUIT COURT, ET AL.

ENTERED: JANUARY 18, 2011

STOCK YARDS BANK & TRUST
COMPANY V.

2010-SC-000447-MR

JEFFERSON

HON. JAMES M. SHAKE, JUDGE,
JEFFERSON CIRCUIT COURT,
DIVISION TWO, ET AL.

ENTERED: JANUARY 18, 2011

COURT ORDERS

RUSSELL WINSTEAD V.
COMMONWEALTH OF KENTUCKY
AND

[2007-SC-000829-MR](#)

HOPKINS

RUSSELL WINSTEAD V.
COMMONWEALTH OF KENTUCKY
**ORDER CORRECTED THE OPINION
OF THE COURT BY SUBSTITUTING
PAGE 1.**

[2008-SC-000446-TG](#)

HOPKINS

ENTERED: DECEMBER 17, 2010

SUPREME COURT OF KENTUCKY

JANUARY 20, 2011 MINUTES

RELEASED: 10:00 A.M.

COURT ORDERS

3M COMPANY V. [2010-SC-000125-MR](#) PERRY
HON. WILLIAM ENGLE III,
JUDGE, PERRY CIRCUIT COURT,
ET AL.

AND
KENTUCKY MINE SUPPLY, ET AL.

AND [2010-SC-000163-MR](#) PERRY
AMERICAN OPTICAL CORPORATION
AND 3M COMPANY V.
DELBERT MILLER, ET AL.

**ORDER CORRECTED OPINION OF
THE COURT BY JUSTICE SCHRODER
BY SUBSTITUTION OF PAGES 1 AND 8
IN LIEU OF ORIGINAL PAGES 1 AND 8.
ENTERED: DECEMBER 27, 2010**

INQUIRY COMMISSION V. [2010-SC-000738-KB](#) IN SUPREME
SCOTT TRUESDELL **TO BE PUBLISHED** COURT
**ORDER TEMPORARILY SUSPENDED
RESPONDENT FROM THE PRACTICE
OF LAW.**
ALL SITTING. ALL CONCUR.