

SUPREME COURT OF KENTUCKY

MAY 24, 2012 MINUTES

RELEASED: 10:00 A.M.

62. MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. V. JOSEPH ROBERTS  
**OPINION OF THE COURT BY JUSTICE NOBLE - AFFIRMING**  
ALL SITTING. ALL CONCUR.

[2010-SC-000069-DG](#) HENDERSON  
**TO BE PUBLISHED**

**Questions Presented:**  
Mortgages. Judgment Liens. Equitable Subrogation. Issues include the prioritization of liens in a foreclosure action.

63. WILLIAM LOUIS ROGERS V. COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT BY JUSTICE ABRAMSON – AFFIRMING**  
ALL SITTING. ALL CONCUR.

[2010-SC-000754-MR](#) NELSON  
**TO BE PUBLISHED**

**Questions Presented:**  
Two counts of trafficking in a controlled substance, second offense and PFO I - 20 years. Trial court's misdating of a search warrant was a correctable clerical mistake. Trial court did not err in refusing to sever the trafficking charge based on the garage evidence from those based on the alleged sales to a confidential informant.

64. THOMAS C. BOWLING V. COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT BY JUSTICE VENTERS – AFFIRMING**  
MINTON, C.J., ABRAMSON, CUNNINGHAM, SCHRODER, AND SCOTT, JJ., CONCUR.  
NOBLE, J., NOT SITTING.  
ABRAMSON, J., CONCURS BY SEPARATE OPINION.

[2011-SC-000056-MR](#) FAYETTE  
**TO BE PUBLISHED**

**Questions Presented:**  
Declaratory judgment challenging the implementation of two death sentences upon the grounds that the appellant is mentally retarded. Identical argument previously denied because appellant had procedurally defaulted on his mental retardation claim and had failed to demonstrate adequate cause for his default. Upon a *de novo* reexamination of the issue, the Court again concludes appellant cannot make a prima facie showing he is seriously mentally retarded.

**SUPREME COURT OF KENTUCKY**

**MAY 24, 2012 MINUTES**

**RELEASED: 10:00 A.M.**

65. GAINES GENTRY THOROUGHBREDS/ [2011-SC-000298-WC](#) FROM COURT  
FAYETTE FARMS V. **TO BE PUBLISHED** OF APPEALS
- ADAN MANDUJANO; HONORABLE  
EDWARD HAYS, ADMINISTRATIVE  
LAW JUDGE; AND WORKERS'  
COMPENSATION BOARD  
**OPINION OF THE COURT**  
**AFFIRMING**  
ALL SITTING. ALL CONCUR.
- Questions Presented:**  
Workers' Compensation. Issues involve the work-relatedness of an injury to a groom who was instructed to look after his employer's horses during the van ride to sales held in another state; who with his employer's permission worked for others while at the sales; and who was injured while returning to Kentucky to resume his duties for the employer.
66. UPS AIRLINES V. [2011-SC-000295-WC](#) FROM COURT  
EDWIN COREY WEST; HONORABLE **TO BE PUBLISHED** OF APPEALS  
JAMES L. KERR, ADMINISTRATIVE  
LAW JUDGE; AND WORKERS'  
COMPENSATION BOARD  
**OPINION OF THE COURT**  
**AFFIRMING IN PART AND**  
**REVERSING IN PART**  
MINTON, C.J., ABRAMSON,  
CUNNINGHAM, SCHRODER,  
AND VENTERS, JJ., CONCUR.  
SCOTT, J., DISSENTS BY  
SEPARATE OPINION IN WHICH  
NOBLE, J., JOINS.
- Questions Presented:**  
Workers' Compensation. KRS 342.730(6). Issues involve an employer's entitlement, if any, to credit its liability for income benefits based on payments made under a collectively-bargained employee benefit plan.
67. ARNOLD W. CARTER V. [2010-SC-000295-DG](#) BOURBON  
JAMIE D. SMITH AND BOURBON **TO BE PUBLISHED**  
COUNTY BOARD OF EDUCATION  
**OPINION OF THE COURT BY**  
**JUSTICE ABRAMSON -**  
**AFFIRMING IN PART, REVERSING**  
**IN PART AND REMANDING**  
ALL SITTING. ALL CONCUR.
- Questions Presented:**  
Open Meetings. Exceptions. Personnel and Litigation. Issues involve the applicability of the personnel and litigation open meetings exceptions to a closed school board meeting considering potential resignation of a school superintendent as well as his potential subsequent retention on a 12-month consulting contract.

SUPREME COURT OF KENTUCKY

MAY 24, 2012 MINUTES

RELEASED: 10:00 A.M.

68. GREGORY WILSON V. [2010-SC-000573-MR](#) KENTON  
COMMONWEALTH OF KENTUCKY  
**TO BE PUBLISHED**

**OPINION OF THE COURT BY  
CHIEF JUSTICE MINTON –  
AFFIRMING IN PART AND VACATING  
AND REMANDING, IN PART**

MINTON, C.J., ABRAMSON,  
NOBLE, SCOTT, AND VENTERS, JJ.,  
CONCUR. CUNNINGHAM, J.,  
DISSENTS BY SEPARATE OPINION  
IN WHICH SCHRODER, J., JOINS.

**Questions Presented:**

Death sentence. Trial court's ruling on mental retardation motion is vacated and the issue is remanded to the trial court to conduct an evidentiary hearing to determine if appellant is exempt from execution because of mental retardation. Issue of DNA testing of semen is remanded to the trial court for a ruling.

69. DANIEL KEITH NEWMAN V. [2010-SC-000695-MR](#) GRANT  
COMMONWEALTH OF KENTUCKY  
**TO BE PUBLISHED**

**OPINION OF THE COURT  
AFFIRMING IN PART AND VACATING  
AND REMANDING IN PART**

ALL SITTING. ALL CONCUR.

**Questions Presented:**

Two counts of first degree sodomy and attempted first-degree sexual abuse-Life sentence. Because the jury was improperly instructed as to the sentencing range for first degree sodomy, the sentence is vacated and the case is remanded for a new penalty phase. Where age is an element of the crime, the jury shall be so advised through the reading of the relevant statute. Statement regarding other crimes was not error where it was used as proof of an element of the offense (i.e., to show forcible compulsion). Prosecutor's verbalization of the defense theory, although improper, did not rise to the level of palpable error.

SUPREME COURT OF KENTUCKY

MAY 24, 2012 MINUTES

RELEASED: 10:00 A.M.

70. LLOYD W. HAMMOND V. COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT BY JUSTICE VENTERS – REVERSING AND REMANDING**  
ALL SITTING. ALL CONCUR.
- [2010-SC-000639-MR](#) JEFFERSON  
**TO BE PUBLISHED**

**Questions Presented:**  
Three counts of murder, first-degree burglary, first-degree unlawful imprisonment and retaliating against a participant in the legal process. Convictions reversed and case remanded for a new trial because murder charge was improperly joined for trial with the other charges and the admission of hearsay statements of a material witness under the doctrine of forfeiture by wrongdoing was not based upon substantial evidence.

71. SAMANTHA DAUGHERTY, (NOW BUCHER) V. JOHN STEPHEN TELEK  
**OPINION OF THE COURT BY JUSTICE VENTERS - REVERSING AND REMANDING**  
MINTON, C.J., ABRAMSON, NOBLE, AND SCHRODER, JJ., CONCUR. SCOTT, J., CONCURS IN PART AND DISSENTS IN PART BY SEPARATE OPINION, IN WHICH CUNNINGHAM, J., JOINS.
- [2011-SC-000043-DGE](#) KENTON  
**TO BE PUBLISHED**

**Questions Presented:**  
Emergency Protective Orders. Domestic Violence Orders. Time for Hearing. The issue is whether statutory time frames involve general subject matter jurisdiction, which cannot be waived, or are jurisdictional aspects of the particular case, which can be waived by a party.

72. JAMES TRAINER V. COMMONWEALTH OF KENTUCKY  
**MEMORANDUM OPINION OF THE COURT – AFFIRMING**  
ALL SITTING. ALL CONCUR.
- [2010-SC-000822-MR](#) MUHLENBERG  
**NOT TO BE PUBLISHED**

73. FRANKIE COVINGTON V. COMMONWEALTH OF KENTUCKY  
**MEMORANDUM OPINION OF THE COURT – AFFIRMING**  
ALL SITTING. ALL CONCUR.
- [2011-SC-000172-MR](#) BOURBON  
**NOT TO BE PUBLISHED**

SUPREME COURT OF KENTUCKY

MAY 24, 2012 MINUTES

RELEASED: 10:00 A.M.

74. ALSTOM POWER V. [2011-SC-000356-WC](#) FROM COURT  
DUSTIN ALLEN; HONORABLE **NOT TO BE PUBLISHED** OF APPEALS  
J. LANDON OVERFIELD,  
ADMINISTRATIVE LAW JUDGE;  
AND WORKERS' COMPENSATION  
BOARD  
**MEMORANDUM OPINION OF  
THE COURT – AFFIRMING**  
ALL SITTING. ALL CONCUR.
75. WILLIAM PETE SLACK, ET AL. V. [2011-SC-000511-MR](#) FROM COURT  
HONORABLE MIKE MCKOWN, **NOT TO BE PUBLISHED** OF APPEALS  
JUDGE, OHIO CIRCUIT COURT,  
ET AL.  
**MEMORANDUM OPINION OF  
THE COURT – AFFIRMING**  
CUNNINGHAM, SCHRODER, SCOTT,  
AND VENTERS, JJ., CONCUR. NOBLE,  
J., DISSENTS BY SEPARATE OPINION  
IN WHICH MINTON, C.J., AND  
ABRAMSON, J., JOIN.
76. KEVIN REECE V. [2011-SC-000532-WC](#) FROM COURT  
INTEGRAL STRUCTURES, INC.; **NOT TO BE PUBLISHED** OF APPEALS  
HONORABLE CHRIS DAVIS,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD  
**MEMORANDUM OPINION OF  
THE COURT – AFFIRMING**  
ALL SITTING. ALL CONCUR.
77. KENYON M. POLLOCK V. [2010-SC-000502-MR](#) JEFFERSON  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**MEMORANDUM OPINION OF  
THE COURT – AFFIRMING IN PART  
AND REVERSING AND  
REMANDING IN PART**  
ALL SITTING. ALL CONCUR.

**SUPREME COURT OF KENTUCKY**

**MAY 24, 2012 MINUTES**

**RELEASED: 10:00 A.M.**

**OPINIONS AND ORDERS – MAY 24, 2012**

KENTUCKY BAR ASSOCIATION V.  
WILLIAM ERIC MINAMYER  
**ORDER RETROACTIVELY SUSPENDED  
RESPONDENT FROM THE PRACTICE  
OF LAW FOR ONE YEAR WITH CONDITIONS.**  
ALL SITTING. ALL CONCUR.

[2011-SC-000744-KB](#)  
**TO BE PUBLISHED**

IN SUPREME  
COURT

KENTUCKY BAR ASSOCIATION V.  
DARREN BURTON ELLIS  
**ORDER SUSPENDED RESPONDENT FROM  
THE PRACTICE OF LAW FOR 37 MONTHS  
WITH CONDITIONS.**  
ALL SITTING. ALL CONCUR.

[2012-SC-000053-KB](#)  
**TO BE PUBLISHED**

IN SUPREME  
COURT

KENTUCKY BAR ASSOCIATION V.  
DONALD H. MOREHEAD  
**ORDER SUSPENDED RESPONDENT FROM  
THE PRACTICE OF LAW FOR 5 YEARS WITH  
CONDITIONS.**  
ALL SITTING. ALL CONCUR.

[2012-SC-000140-KB](#)  
**TO BE PUBLISHED**

IN SUPREME  
COURT

KENTUCKY BAR ASSOCIATION V.  
LOUIS ZIMMERMAN  
**ORDER SUSPENDED RESPONDENT  
FROM THE PRACTICE OF LAW FOR 30 DAYS.**  
MINTON, C.J.; ABRAMSON, NOBLE,  
SCHRODER, SCOTT AND VENTERS, JJ.,  
CONCUR. CUNNINGHAM, J., NOT SITTING.

[2012-SC-000178-KB](#)  
**TO BE PUBLISHED**

IN SUPREME  
COURT

KENTUCKY BAR ASSOCIATION V.  
RONALD A. THORNSBERRY  
**ORDER SUSPENDED RESPONDENT  
FROM THE PRACTICE OF LAW FOR  
A PERIOD OF 61 DAYS TO RUN  
CONSECUTIVELY TO ALL  
SUSPENSIONS CURRENTLY IMPOSED.**  
ALL SITTING. ALL CONCUR.

[2012-SC-000192-KB](#)  
**TO BE PUBLISHED**

IN SUPREME  
COURT

**SUPREME COURT OF KENTUCKY**

**MAY 24, 2012 MINUTES**

**RELEASED: 10:00 A.M.**

**OPINIONS AND ORDERS – MAY 24, 2012**

GEORGE GUY GARDNER V.  
KENTUCKY BAR ASSOCIATION  
**ORDER SUSPENDED MOVANT  
FROM THE PRACTICE OF LAW FOR  
30 DAYS WITH CONDITIONS.**  
ALL SITTING. ALL CONCUR.

[2012-SC-000215-KB](#)  
**TO BE PUBLISHED**

IN SUPREME  
COURT

WILLIAM L. HUFFMAN V.  
KENTUCKY BAR ASSOCIATION  
**ORDER PUBLICLY REPRIMANDED MOVANT.**  
MINTON, C.J.; ABRAMSON, CUNNINGHAM,  
NOBLE, SCOTT AND VENTERS, JJ.,  
CONCUR. SCHRODER, J., NOT SITTING.

[2012-SC-000227-KB](#)  
**TO BE PUBLISHED**

IN SUPREME  
COURT

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –  
MAY 16, 2012**

RAMESH PATEL V.  
TUTTLE PROPERTIES, LLC, ET AL.

2011-SC-000415-DG

MONTGOMERY

BOBBY GARCIA, D/B/A AUTOBAHN  
AUTOMOTIVE V.  
LARRY WHITAKER

2011-SC-000550-DG

PULASKI

COMMONWEALTH OF KENTUCKY V.  
BRYCE R. BONNER

2011-SC-000555-DG

JEFFERSON

BOARD OF EDUCATION OF FAYETTE  
COUNTY, KENTUCKY, ET AL. V.  
ROSALIND HURLEY-RICHARDS

2011-SC-000599-DG

FAYETTE

SUPREME COURT OF KENTUCKY

MAY 24, 2012 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –  
MAY 16, 2012**

HAROLD WHITLEY, ET AL. V. ROBERTSON COUNTY; ROBERTSON COUNTY FISCAL COURT; AND MARY ANNA ROBINSON	2011-SC-000612-DG	ROBERTSON
MARK STINSON V. COMMONWEALTH OF KENTUCKY	2011-SC-000615-DG	MADISON
JIMMIE HAWKINS, SR. V. COMMONWEALTH OF KENTUCKY	2012-SC-000187-DG	ANDERSON

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
MAY 16, 2012**

MORRIS RICHARD EDWARDS V. COMMONWEALTH OF KENTUCKY	2011-SC-000334-D	JEFFERSON
MICHAEL TILFORD V. ILLINOIS CENTRAL RAILROAD CO., D/B/A CANADIAN NATIONAL/ILLINOIS CENTRAL RAILROAD	2011-SC-000416-D	HICKMAN
VINA LUCAS, ET AL. V. GOLDEN OAK MINING COMPANY <b>THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED. SCOTT, J., NOT SITTING.</b>	2011-SC-000417-D	LETCHER
WILLIAM SMITH V. COMMONWEALTH OF KENTUCKY	2011-SC-000423-D	LAUREL
ANDREI VOROBIEV V. ALAN SAYLOR, ET AL.	2011-SC-000439-D	FAYETTE
JOHN ROYALTY V. DR. HARRY SPALDING, MAYOR OF THE CITY OF BARDSTOWN, ET AL. <b>CUNNINGHAM, J., WOULD GRANT.</b>	2011-SC-000445-D	NELSON



SUPREME COURT OF KENTUCKY

MAY 24, 2012 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
MAY 16, 2012**

LUCAS TRULL V. COMMONWEALTH OF KENTUCKY <b>SCOTT, J., WOULD GRANT.</b>	2011-SC-000446-D	CALLOWAY
JAMES CARL HIGGS V. COMMONWEALTH OF KENTUCKY	2011-SC-000455-D	OLDHAM
EUMBLE DIXON V. WISE COUNTY COAL, INC.	2011-SC-000480-D	LETCHER
JOHN L. ADKINS V. CSX TRANSPORTATION, INC.	2011-SC-000483-D	PERRY
LEONDO HARRIS V. COMMONWEALTH OF KENTUCKY <b>THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.</b>	2011-SC-000487-D	JEFFERSON
ANGEL JUAREZ V. COMMONWEALTH OF KENTUCKY <b>THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.</b>	2011-SC-000522-D	BOONE
GENEVA KING V. BUTLER REST HOME, INC., D/B/A RIVER VALLEY NURSING HOME AND COMMONWEALTH OF KENTUCKY, KENTUCKY CABINET FOR HEALTH AND FAMILY SERVICES	2011-SC-000530-D	FRANKLIN
TINA NEWTON AND CARLA FERGUSON, CO-ADMINISTRATRICES OF THE ESTATE OF CLARA SANDERS, DECEASED V. JAMES NEWTON	2011-SC-000561-D	NELSON
CARTER GAFFNEY V. COMMONWEALTH OF KENTUCKY	2011-SC-000567-D	JEFFERSON

SUPREME COURT OF KENTUCKY

MAY 24, 2012 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
MAY 16, 2012**

MOUNTAIN CITY FORD, LLC. V. OWNERS INSURANCE COMPANY, ET AL.	2011-SC-000597-D	LAWRENCE
BRETT KINCAID, ET AL. V. JOAN KINCAID, INDIVIDUALLY, ET AL. <b>THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED. NOBLE, J., NOT SITTING.</b>	2011-SC-000598-D	FAYETTE
STEVEN DODSON V. COMMONWEALTH OF KENTUCKY	2011-SC-000600-D	MONROE
MARYANNA ROBINSON V. ROBERTSON COUNTY, ET AL.	2011-SC-000613-D	ROBERTSON
COMMONWEALTH OF KENTUCKY V. DONNIE MILSAP	2011-SC-000617-D	JEFFERSON
C.W. HOSKINS, HEIRS, A PARTNERSHIP V. BEN BOGGS, JR., ET AL. <b>MINTON, C.J., NOT SITTING.</b>	2011-SC-000621-D	LESLIE
SHARON TRAVIS V. ADMINISTRATIVE OFFICE OF THE COURTS <b>THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED. MINTON, C.J., NOT SITTING.</b>	2011-SC-000649-D	FRANKLIN
NEIL BUNTON AND VERONICA BUNTON V. JAMES D. WEST	2011-SC-000653-D	WARREN
LEXINGTON REAL ESTATE COMPANY, INC. V. RICHARD O'ROURKE, JR.	2011-SC-000682-D	FAYETTE
DEBBIE ALLEN REHM, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF JAMES DAVID REHM, ET AL. V. FORD MOTOR COMPANY	2011-SC-000693-D	JEFFERSON

SUPREME COURT OF KENTUCKY

MAY 24, 2012 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
MAY 16, 2012**

GLORIA BUCHANAN V. COMMONWEALTH OF KENTUCKY	2011-SC-000732-D	MCCRACKEN
ANGELA BOSWELL V. COMMONWEALTH OF KENTUCKY	2011-SC-000750-D	CARROLL
JACK HAYS V. COMMONWEALTH OF KENTUCKY, CLARK TAYLOR, WARDEN <b>CUNNINGHAM, J., NOT SITTING.</b>	2011-SC-000762-D	OLDHAM
JOE A. BROWDER, JR. V. PHILLIP PARKER <b>SCHRODER, J., NOT SITTING.</b>	2011-SC-000769-D	LYON
S.H. V. COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES, ET AL.	2012-SC-000031-DE	JEFFERSON

**COURT ORDERS DENYING PETITION FOR REHEARING – MAY 24, 2012**

KENTUCKY UNEMPLOYMENT INSURANCE COMMISSION V. DAVID G. HAMILTON	2010-SC-000252-DG	IN SUPREME COURT
VISION MINING, INC. V. JESSE GARDNER, ET AL. <b>AND</b> PEABODY COAL COMPANY V. JOE MARTINEZ, ET AL. <b>CUNNINGHAM, NOBLE, SCOTT AND VENTERS, JJ., WOULD DENY. MINTON, C.J., ABRAMSON AND SCHRODER, JJ., WOULD GRANT.</b>	2010-SC-000311-WC  2010-SC-000438-WC	FROM COURT OF APPEALS  FROM COURT OF APPEALS
GARY D. WARICK V. COMMONWEALTH OF KENTUCKY	2010-SC-000432-MR	FLOYD

**SUPREME COURT OF KENTUCKY**

**MAY 24, 2012 MINUTES**

**RELEASED: 10:00 A.M.**

**COURT ORDERS DISMISSING**

JACK EAGLE V.  
COMMONWEALTH OF KENTUCKY  
**ORDER GRANTED APPELLANT'S MOTION  
TO DISMISS THE APPEAL.**  
ENTERED: APRIL 17, 2012

2011-SC-000593-MR

BULLITT

DAVID R. KERR, JR. V.  
HON. BRUCE T. BUTLER,  
GRAYSON CIRCUIT COURT JUDGE, ET AL.  
**ENTERED: APRIL 24, 2012**

2012-SC-000081-MR

FROM COURT  
OF APPEALS

**COURT ORDERS**

PETER BARD V.  
COMMONWEALTH OF KENTUCKY  
**ORDER CORRECTED THE OPINION OF THE  
COURT, RENDERED OCTOBER 27, 2011  
AND MODIFIED MARCH 16, 2012, BY  
SUBSTITUTION OF PAGES 1 AND 11.**  
ENTERED: MAY 15, 2012

[2010-SC-000283-DG](#)  
**TO BE PUBLISHED**

JEFFERSON

DAVID ALAN FRIEDMAN V.  
KENTUCKY BAR ASSOCIATION  
**ORDER CORRECTED THE OPINION AND  
ORDER OF THE COURT ENTERED  
APRIL 26, 2012 BY SUBSTITUTION  
OF PAGES 1 AND 6.**  
ENTERED: MAY 24, 2012

[2012-SC-000056-KB](#)  
**TO BE PUBLISHED**

IN SUPREME  
COURT

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

ROBERT KENYON RAINEY V.  
KENTUCKY BAR ASSOCIATION  
**ENTERED: MAY 17, 2012**

2012-SC-000291-KB

IN SUPREME  
COURT