

Supreme Court of Kentucky

MAY 28, 2020 MINUTES

RELEASED: 10:00 A.M.

55. NORTON HEALTHCARE, INC. V. DONNA DISSELKAMP AND DONNA DISSELKAMP V. NORTON HEALTHCARE, INC. [2018-SC-000274-DG](#) [2019-SC-000102-DG](#) JEFFERSON
TO BE PUBLISHED
OPINION OF THE COURT BY CHIEF JUSTICE MINTON— AFFIRMING
MINTON, C.J.; HUGHES, KELLER, LAMBERT, VANMETER, AND WRIGHT, JJ., SITTING. ALL CONCUR.
NICKELL, J., NOT SITTING.

Questions Presented:

Age Discrimination. Plaintiff brought age-discrimination claim against former employer based on circumstantial evidence. The issue is whether the trial court, and not the jury, must make the factual determination that the plaintiff satisfied her burden of proving each element of the *McDonnell Douglas* paradigm, including whether the plaintiff was replaced by a substantially younger employee.

56. RODNEY CARLISLE, JR. V. COMMONWEALTH OF KENTUCKY [2018-SC-000680-MR](#) KENTON
TO BE PUBLISHED
OPINION OF THE COURT BY JUSTICE KELLER – AFFIRMING
ALL SITTING. MINTON, C.J.; HUGHES, LAMBERT, VANMETER, AND WRIGHT, JJ., CONCUR. NICKELL, J., CONCURS IN RESULT ONLY BY SEPARATE OPINION.

Questions Presented:

Trafficking in a Controlled Substance. Fourth Amendment. Search and Seizure. Trial court did not err in denying the defendant's motion to suppress evidence discovered on his person following a search of the vehicle and the defendant-passenger during a routine traffic stop. At issue were a series of questions asked to the driver about his travel plans and a criminal records search. These inquiries were related to the underlying purpose of the traffic stop, and that purpose had not yet concluded. It was also reasonable to detain the defendant-passenger during the search of the vehicle. The items uncovered during the search of the vehicle provided the necessary probable cause to search the defendant-passenger's person.

57. JUSTIN CURRY V. COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY JUSTICE LAMBERT – AFFIRMING
ALL SITTING. MINTON, C.J.; HUGHES, LAMBERT AND VANMETER, JJ., CONCUR. KELLER, J., CONCURS IN PART AND CONCURS IN RESULT ONLY IN PART BY SEPARATE OPINION IN WHICH NICKELL AND WRIGHT, JJ., JOIN.

[2019-SC-000306-MR](#)
TO BE PUBLISHED

JEFFERSON

Questions Presented:

Murder, Possession of a Handgun by a Convicted Felon, and First-Degree Persistent Felony Offender. Trial court did not abuse its discretion by declining to instruct the jury on no duty to retreat where the defendant was a felon in possession of a handgun and was therefore engaged in an unlawful activity for the purposes of KRS 503.055(3). Trial court did not abuse its discretion by failing to strike two jurors for cause.

58. COREY COMMODORE V. COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE COURT – AFFIRMING IN PART, REVERSING IN PART, AND REMANDING
ALL SITTING. MINTON, C.J.; HUGHES, LAMBERT, AND VANMETER, JJ., CONCUR. KELLER, J., FILES A SEPARATE OPINION CONCURRING IN PART AND DISSENTING IN PART IN WHICH NICKELL AND WRIGHT, JJ., JOIN.

[2018-SC-000617-MR](#)
NOT TO BE PUBLISHED

JEFFERSON

59. BEN JESSIE WYATT V. COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE COURT - AFFIRMING
ALL SITTING. ALL CONCUR.

[2018-SC-000580-MR](#)
NOT TO BE PUBLISHED

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| 60. | ANTONIO SALLEE V. COMMONWEALTH OF KENTUCKY MEMORANDUM OPINION OF THE COURT – <u>REVERSING AND REMANDING</u>
ALL SITTING. MINTON, C.J.; HUGHES, LAMBERT, NICKELL, VANMETER, AND WRIGHT, JJ., CONCUR. KELLER, J., CONCURS IN RESULT ONLY. | 2019-SC-000030-MR
NOT TO BE PUBLISHED | CHRISTIAN |
| 61. | METROPOLITAN HOUSING COALITION, ET AL. V. HON. PHILLIP J. SHEPHERD, ET AL AND SIERRA CLUB, ET AL V. HON. PHILLIP J. SHEPHERD, ET AL. MEMORANDUM OPINION OF THE COURT - <u>REVERSING</u>
ALL SITTING. ALL CONCUR. | 2019-SC-000195-MR
2019-SC-000196-MR
NOT TO BE PUBLISHED | COURT OF APPEALS |
| 62. | MIRANDA MORRIS V. NAEGLER OUTDOOR ADVERTISING, ET AL. MEMORANDUM OPINION OF THE COURT – <u>AFFIRMING</u>
ALL SITTING. ALL CONCUR. | 2019-SC-000224-WC
NOT TO BE PUBLISHED | COURT OF APPEALS |
| 63. | ANTWOIN WILLIAMS V. COMMONWEALTH OF KENTUCKY MEMORANDUM OPINION OF THE COURT – <u>AFFIRMING</u>
ALL SITTING. ALL CONCUR. | 2019-SC-000288-MR
NOT TO BE PUBLISHED | JEFFERSON |
| 64. | BARBARA SMITH V. BLEDSOE COAL CO., ET AL. MEMORANDUM OPINION OF THE COURT – <u>AFFIRMING</u>
MINTON, C.J.; HUGHES, KELLER, LAMBERT, VANMETER, AND WRIGHT, JJ., SITTING. ALL CONCUR.
NICKELL, J., NOT SITTING. | 2019-SC-000319-WC
NOT TO BE PUBLISHED | COURT OF APPEALS |
| 65. | SOUTHWIRE CO/KY ROD & CABLE V. SHONDESE FRAZIER, ET AL. MEMORANDUM OPINION OF THE COURT - <u>AFFIRMING</u>
ALL SITTING. ALL CONCUR. | 2019-SC-000429-WC
NOT TO BE PUBLISHED | COURT OF APPEALS |

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| 66. | CHARLES LAMAR RICHARDSON
V. COMMONWEALTH OF
KENTUCKY
MEMORANDUM OPINION OF THE
COURT – <u>AFFIRMING</u>
ALL SITTING. ALL CONCUR. | 2019-SC-000438-MR
NOT TO BE PUBLISHED | JEFFERSON |
| 67. | CHRISTOPHER LUTIN V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE
COURT – <u>AFFIRMING</u>
ALL SITTING. ALL CONCUR. | 2019-SC-000442-MR
NOT TO BE PUBLISHED | JEFFERSON |

OPINIONS AND ORDERS – MAY 28, 2020

KUNGU NJUGUNA V. KENTUCKY BAR ASSOCIATION OPINION AND ORDER GRANTING REINSTATEMENT ALL SITTING. ALL CONCUR.	2020-SC-000183-KB TO BE PUBLISHED	IN SUPREME COURT
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COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW – MAY 21, 2020:

ROYAL CONSUMER PRODUCTS, LLC V. BUCKEYE BOXES, INC.	2019-SC-000416-D	JEFFERSON
UNIVERSITY MEDICAL CENTER, INC. D/B/A JAMES GRAHAM BROWN CANCER CENTER, ET AL. V. REAGAN BROOKE SHWAB, ET AL.	2019-SC-000641-D	JEFFERSON
JOSE ELADIO ORTIZ V. COMMONWEALTH OF KENTUCKY NICKELL, J., NOT SITTING.	2019-SC-000704-D	LOGAN

DON BOOTH OF THE BRELAND GROUP V. DEBBIE LAWSON OF COLDWELL BANKER/MCMAHAN, ET AL. AND K.D. BUILDERS V. NICOLE RIBEIRO, ET AL. AND DEBBIE LAWSON OF COLDWELL BANKER/MCMAHAN V. NICOLE RIBEIRO, ET AL.	2020-SC-000023-D 2020-SC-000026-D 2020-SC-000028-D	JEFFERSON
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COMMONWEALTH OF KENTUCKY V. ERIC L. GIBSON	2020-SC-000041-D	JEFFERSON
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COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW – MAY 20, 2020

KIMBERLY STEWART V. CARDIOVASCULAR SPECIALISTS, P.S.C., ET AL.	2019-SC-000366-D	JEFFERSON
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MAC'S CONVENIENCE STORES, LLC D/B/A CIRCLE K V. DANNY EMBRY THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2019-SC-000374-D	JEFFERSON
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MICHAEL GLENN KYLE V. COMMONWEALTH OF KENTUCKY THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2019-SC-000385-D	FAYETTE
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LARRY WILLIAMSON V. COMMONWEALTH OF KENTUCKY	2019-SC-000389-D	GALLATIN
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RYAN KRISTOFF V. COMMONWEALTH OF KENTUCKY	2019-SC-000404-D	CHRISTIAN
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AMY MARSHALL, ET AL. V. HOLLY DUKES	2019-SC-000414-D	JEFFERSON
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COMMONWEALTH OF KENTUCKY V. JOHNNIE JACKSON VANMETER, J., WOULD GRANT DISCRETIONARY REVIEW.	2019-SC-000417-D	CAMPBELL
DYLAN SCHIMP V. COMMONWEALTH OF KENTUCKY LAMBERT, J., NOT SITTING.	2019-SC-000456-D	TRIGG
JAMES CHAPPELL V. COMMONWEALTH OF KENTUCKY NICKELL, J., NOT SITTING.	2019-SC-000627-D	CAMPBELL
MARSHA JETT V. KENTUCKY RETIREMENT SYSTEMS, ET AL.	2019-SC-000703-D	FRANKLIN
STEPHEN B. PENCE, ET AL. V. VNB NEW YORK LLC, AS SUCCESSOR BY MERGER TO VNB NEW YORK CORPORATION, AS SUCCESSOR IN INTEREST TO THE PARK AVENUE BANK NICKELL, J., NOT SITTING.	2019-SC-000705-D	JEFFERSON
STEVEN HARSTON V. COMMONWEALTH OF KENTUCKY NICKELL, J., NOT SITTING.	2019-SC-000739-D	SIMPSON
ZAPPOS FULFILLMENT CENTERS, INC., ET AL. V. JOHN A. HOSKINS, ET AL. VANMETER, J., WOULD GRANT DISCRETIONARY REVIEW.	2020-SC-00003-D	BULLITT
MADISON FRANK, ET AL. V. D.P. PREISS COMPANY, INC. D/B/A THE PREISS COMPANY, ET AL.	2020-SC-000009-D	FAYETTE

DESTIL EUGENE TROXELL V. DEEDRA HART, WARDEN, KENTUCKY STATE PENITENTIARY	2020-SC-000032-D	LYON
WILLIAM D. SLONE V. COMMONWEALTH OF KENTUCKY LAMBERT, J., NOT SITTING.	2020-SC-000037-D	CAMPBELL
ROBERT SMITH V. COMMONWEALTH OF KENTUCKY	2020-SC-000051-D	JEFFERSON
GARY WRIGHT V. COMMONWEALTH OF KENTUCKY, ET AL.	2020-SC-000056-D	JEFFERSON
COMMONWEALTH OF KENTUCKY V. MARLON D. RUDOLPH	2020-SC-000062-D	CAMPBELL
MARKELL BEDFORD V. COMMONWEALTH OF KENTUCKY NICKELL, J., NOT SITTING.	2020-SC-000064-D	FAYETTE
A.B. V. CABINET FOR HEALTH AND FAMILY SERVICES, COMMONWEALTH OF KENTUCKY, ET AL.	2020-SC-000104-DE	JEFFERSON
MICHAEL TODD HILTON V. COMMONWEALTH OF KENTUCKY	2020-SC-0000113-D	HARDIN
BERNARD MARSHALL, ET AL. V. THE HOFFMAN REVOCABLE TRUST	2020-SC-000127-D	MARSHALL
MARY JANE DIEBOLD, INDIVIDUALLY, ET AL. V. LOUISVILLE GAS & ELECTRIC COMPANY	2020-SC-000131-D	JEFFERSON

COURT ORDERS DENYING PETITION FOR REHEARING – MAY 28, 2020

GENARO HERRERA
HERNANDEZ V.
COMMONWEALTH OF
KENTUCKY

[2018-SC-000492-DG](#)
NOT TO BE PUBLISHED

JEFFERSON

**ORDER DENYING
RECONSIDERATION AND
MODIFYING OPINION.**

MINTON, C.J.; HUGHES,
KELLER, LAMBERT,
VANMETER, AND WRIGHT, JJ.,
SITTING. ALL CONCUR.
NICKELL, J., NOT SITTING.

COURT ORDERS ENTERED

EVERETT JAMIE TURNER, ET
AL. V. PERRY COUNTY
SHERIFF'S DEPARTMENT, ET
AL.

2019-SC-000355-WC

COURT OF
APPEALS

ORDER AFFIRMING

MINTON, C.J.; HUGHES, KELLER,
NICKELL, VANMETER, AND
WRIGHT, JJ., SITTING. MINTON,
C.J.; HUGHES, AND VANMETER,
JJ., WOULD AFFIRM. KELLER,
NICKELL, AND WRIGHT, JJ.,
WOULD REVERSE.

LAMBERT, J., NOT SITTING.

ENTERED: MAY 28, 2020

MARK METCALF, IN HIS
OFFICIAL CAPACITY AS
SPECIAL PROSECUTOR V.
HON. PHILLIP SHEPHERD,
FRANKLIN CIRCUIT COURT, ET
AL.

2019-SC-000721-MR

COURT OF
APPEALS

ORDER TO DISMISS

LAMBERT, NICKELL,
VANMETER, AND WRIGHT,
SITTING. ALL CONCUR.

ENTERED: MAY 22, 2020

IN RE: CLARA RUPLINGER V.
LOUISVILLE/JEFFERSON
COUNTY METRO
GOVERNMENT; LOUISVILLE
METRO DEPARTMENT OF
CORRECTIONS; GREG
FISCHER, IN HIS OFFICIAL
CAPACITY AND MARK BOLTON
**ORDER GRANTING REQUEST
FOR CERTIFICATION OF THE
LAW**

2020-SC-000140-CL

IN SUPREME
COURT

ALL SITTING. ALL CONCUR.

ENTERED: MAY 28, 2020