

SUPREME COURT OF KENTUCKY

JUNE 16, 2011 MINUTES

RELEASED: 10:00 A.M.

105. WILLIAM HARRY MEECE V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE SCOTT –
AFFIRMING**
ALL SITTING. ALL CONCUR.
- [2006-SC-000881-MR](#) WARREN
TO BE PUBLISHED
- Questions Presented:**
Death Penalty. Three counts of murder, two counts first degree robbery, and two counts of first degree burglary. Forty-five issues, with sub-issues. Defendant's post-guilty plea statements were admissible, as they were voluntarily made and not made in the course of plea negotiations.
106. ANTHONY TRAUGOTT V.
VIRGINIA TRANSPORTATION, ET AL.
**OPINION OF THE COURT
AFFIRMING**
ALL SITTING. ALL CONCUR.
- [2010-SC-000696-WC](#) FROM COURT
TO BE PUBLISHED OF APPEALS
- Questions Presented:**
Workers' Compensation. KRS 342.670. Issues include whether Kentucky had extraterritorial jurisdiction over the claim of a Kentucky resident whose employer had no office in Kentucky; whether contract for hire was made in Kentucky or Rhode Island.
107. GIDDINGS & LEWIS, INC..
(A WISCONSIN CORPORATION),
ET AL. V.
INDUSTRIAL RISK INSURERS
(AN UNINCORPORATED
ASSOCIATION), ET AL.
**OPINION OF THE COURT BY
JUSTICE ABRAMSON –
AFFIRMING IN PART AND
REVERSING IN PART**
ALL SITTING. ALL CONCUR.
- [2009-SC-000485-DG](#) GRAVES
[2009-SC-000825-DG](#)
TO BE PUBLISHED
- Questions Presented:**
Products Liability. Negligence. Property Damages. Issues include whether Kentucky should adopt the Economic Loss Rule.

SUPREME COURT OF KENTUCKY

JUNE 16, 2011 MINUTES

RELEASED: 10:00 A.M.

108. BRIAN KEITH MOORE V.
COMMONWEALTH OF KENTUCKY

[2008-SC-000860-MR](#)
[2008-SC-000925-MR](#)
[2008-SC-000957-MR](#)
TO BE PUBLISHED

JEFFERSON

**OPINION OF THE COURT BY
JUSTICE NOBLE –
AFFIRMING IN PART, REVERSING
IN PART, AND REMANDING.**

MINTON, C.J.; ABRAMSON AND
VENTERS, JJ., CONCUR.
CUNNINGHAM, J., CONCURS IN
PART AND DISSENTS IN PART BY
SEPARATE OPINION IN WHICH
SCHRODER AND SCOTT, JJ., JOIN.

Questions Presented:

Death Penalty. Post-conviction petition for DNA testing. KRS 422.285. Loss of evidence does not by itself require automatic reversal or an evidentiary hearing. Case remanded to the circuit court to consider defendant's request for independent testing.

109. JASON LEE MULLIKAN V.
COMMONWEALTH OF KENTUCKY

[2009-SC-000519-MR](#)
TO BE PUBLISHED

MASON

**OPINION OF THE COURT BY
JUSTICE CUNNINGHAM –
AFFIRMING IN PART,
REVERSING IN PART
AND REMANDING.**

ABRAMSON, NOBLE, SCHRODER
AND VENTERS, JJ., CONCUR.
MINTON, C.J., CONCURS BY
SEPARATE OPINION; AND SCOTT,
J., CONCURS IN PART AND
DISSENTS IN PART BY
SEPARATE OPINION.

Questions Presented:

Two counts of wanton endangerment, third degree assault, second degree burglary, and two counts of terroristic threatening-20 years. There was no double jeopardy violation in the convictions for first degree wanton endangerment and third degree terroristic threatening of the same victims.

SUPREME COURT OF KENTUCKY

JUNE 16, 2011 MINUTES

RELEASED: 10:00 A.M.

110. ADAM ANTHONY BARKER V. COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY JUSTICE CUNNINGHAM – AFFIRMING IN PART AND REVERSING IN PART
ALL SITTING. ALL CONCUR. [2009-SC-000794-MR](#) JEFFERSON
TO BE PUBLISHED
- Questions Presented:**
Second degree manslaughter and two counts of tampering with physical evidence. Manslaughter conviction reversed because the language of the provocation qualifier of the self defense instruction was clearly erroneous and constituted palpable error.
111. DIANNE TURNER V. BROOKE NELSON, ETC., ET AL.
OPINION OF THE COURT BY JUSTICE SCOTT – REVERSING
ALL SITTING. ALL CONCUR. [2010-SC-000356-DG](#) FAYETTE
TO BE PUBLISHED
- Questions Presented:**
Torts. Negligent Supervision. Issues include whether a civil cause of action can be grounded upon a teacher’s failure to report (pursuant to KRS 620.030) the alleged inappropriate touching of a five-year-old girl by another five-year-old girl at school.
112. NATHAN MCDANIEL, JR. V. COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY JUSTICE SCOTT – REVERSING AND REMANDING
MINTON, C.J.; ABRAMSON, NOBLE, SCHRODER, AND VENTERS, JJ., CONCUR. CUNNINGHAM, J., DISSENTS BY SEPARATE OPINION. [2009-SC-000443-MR](#) CLAY
TO BE PUBLISHED
- Questions Presented:**
Murder-30 years. Conviction reversed for trial court’s failure to strike two jurors for cause, necessitating the loss of two of defendant’s peremptory strikes.
113. DEIRDRE STREET V. GOODY’S FAMILY CLOTHING, ET AL.
MEMORANDUM OPINION OF THE COURT – AFFIRMING
ALL SITTING. ALL CONCUR. [2010-SC-000578-WC](#) FROM COURT
NOT TO BE PUBLISHED OF APPEALS

SUPREME COURT OF KENTUCKY

JUNE 16, 2011 MINUTES

RELEASED: 10:00 A.M.

114. MAGOFFIN COUNTY BOARD OF EDUCATION V. DELORES OWENS, ET AL. [2010-SC-000582-WC](#) FROM COURT OF APPEALS
MEMORANDUM OPINION OF THE COURT – AFFIRMING **NOT TO BE PUBLISHED**
ALL SITTING. ALL CONCUR.
115. JAMES BAILEY V. NORTHPOINT SENIOR SERVICES, ET AL. [2010-SC-000745-WC](#) FROM COURT OF APPEALS
MEMORANDUM OPINION OF THE COURT – AFFIRMING **NOT TO BE PUBLISHED**
ALL SITTING. ALL CONCUR.
116. WILLIAM BRADLEY STIGALL V. COMMON OF KENTUCKY [2010-SC-000393-MR](#) LAUREL
MEMORANDUM OPINION OF THE COURT AFFIRMING IN PART AND REVERSING AND VACATING IN PART **NOT TO BE PUBLISHED**
ALL SITTING.
MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT, AND VENTERS, JJ., CONCUR. SCHRODER, J., CONCURS IN RESULT ONLY.
117. GARRY R. SWAN V. COMMONWEALTH OF KENTUCKY [2010-SC-000424-MR](#) HENDERSON
MEMORANDUM OPINION OF THE COURT - REVERSING AND REMANDING **NOT TO BE PUBLISHED**
ALL SITTING. ALL CONCUR.

SUPREME COURT OF KENTUCKY

JUNE 16, 2011 MINUTES

RELEASED: 10:00 A.M.

OPINIONS AND ORDERS – JUNE 8, 2011

JASPER POLLINI V. 2010-SC-000504-DG JEFFERSON
COMMONWEALTH OF KENTUCKY
**ORDER GRANTED DISCRETIONARY
REVIEW, VACATED THE COURT OF
APPEALS' OPINION AND REMANDED
TO THE COURT OF APPEALS FOR
FURTHER PROCEEDINGS.**

PHILLIP LEWIS V. 2010-SC-000714-DG JEFFERSON
FAULKNER REAL ESTATE
CORPORATION, ET AL.
**ORDER GRANTED DISCRETIONARY
REVIEW, VACATED THE COURT OF
APPEALS' OPINION AND REMANDED
TO THE COURT OF APPEALS FOR
FURTHER PROCEEDINGS.**

OPINIONS AND ORDERS – JUNE 16, 2011

KENTUCKY BAR ASSOCIATION V. 2010-SC-000758-KB IN SUPREME
BERNARD GENE WATTS **NOT TO BE PUBLISHED** COURT
**ORDER ADOPTED THE BOARD'S
RECOMMENDATION –NOT GUILTY
ON ALL COUNTS.**
ALL SITTING. ALL CONCUR.

ROGER P. ELLIOTT V. [2011-SC-000205-KB](#) IN SUPREME
KENTUCKY BAR ASSOCIATION **TO BE PUBLISHED** COURT
**OPINION AND ORDER SUSPENDED
MOVANT FROM THE PRACTICE OF LAW
FOR A PERIOD OF 2 YEARS, PROBATED
FOR 1 YEAR AND 1 YEAR TO SERVE
WITH CONDITIONS.**
MINTON, C.J., ABRAMSON, CUNNINGHAM,
NOBLE, SCHRODER, AND SCOTT, JJ.,
CONCUR. VENTERS, J., NOT SITTING.

SUPREME COURT OF KENTUCKY

JUNE 16, 2011 MINUTES

RELEASED: 10:00 A.M.

OPINIONS AND ORDERS – JUNE 16, 2011

KENTUCKY BAR ASSOCIATION V.
THEODORE H. LAVIT
**ORDER PUBLICLY REPRIMANDED
RESPONDENT.**

[2011-SC-000230-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

ALL SITTING. MINTON, CJ., ABRAMSON,
CUNNINGHAM, NOBLE, AND VENTERS, JJ.,
CONCUR. SCHRODER AND SCOTT, JJ.,
CONCUR BUT WOULD APPORTION COSTS.

HERSHEL WENDELL “WYNN” SIMPSON,
JR. V.
KENTUCKY BAR ASSOCIATION
**ORDER DENIED PETITIONER’S MOTION
TO PROCEED IN FORMA PAUPERIS.**
ALL SITTING. ALL CONCUR.

2011-SC-000192-OA

IN SUPREME
COURT

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
JUNE 8, 2011**

CRYSTAL LYNN GUZMAN V.
COMMONWEALTH OF KENTUCKY

2010-SC-000415-DG

FAYETTE

SOPHIA SAVAGE, ET AL. V.
THREE RIVERS MEDICAL CENTER

2010-SC-000478-DG

LAWRENCE

DONNA PING, EXECUTRIX OF THE ESTATE
OF ALMA CALHOUN DUNCAN, DECEASED V.
BEVERLY ENTERPRISES, INC., ET AL.

2010-SC-000558-DG

FRANKLIN

KATHLEEN WOODWARD MITCHELL, ET AL. V.
RICHARD M. MITCHELL, JR.

2010-SC-000722-DG

FAYETTE

JANICE HASCH V.
COMMONWEALTH OF KENTUCKY

2011-SC-000232-DG

BULLITT

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
JUNE 9, 2011**

GARY HALL, ET AL. V.
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., ET AL.

2010-SC-000559-DG

LAUREL

SUPREME COURT OF KENTUCKY

JUNE 16, 2011 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
JUNE 8, 2011**

KENTUCKY RETIREMENT SYSTEMS V. LINDA ROBB THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2009-SC-000838-D	FRANKLIN
ROSIETTA BECKNER V. KENTUCKY RETIREMENT SYSTEMS	2010-SC-000239-D	FRANKLIN
GREGORY VALENTINE V. COMMONWEALTH OF KENTUCKY	2010-SC-000300-D	JEFFERSON
ANNETTE MOORE V. MIKE MCGUIRE	2010-SC-000301-D	HART
JAMES MANGRUM, ET AL. V. SEDALIA BAPTIST CHURCH, ET AL.	2010-SC-000323-D	GRAVES
STEVEN BRYANT V. COMMONWEALTH OF KENTUCKY	2010-SC-000342-D	CALDWELL
DANNY GOOSEY V. COMMONWEALTH OF KENTUCKY	2010-SC-000369-D	LEE
RUTH COMBS V. ADMINISTRATIVE OFFICE OF THE COURTS, ET AL.	2010-SC-000392-D	PERRY
DAVID QUIST V. COMMONWEALTH OF KENTUCKY	2010-SC-000417-D	CAMPBELL
JOHN BACKER V. WOODFORD COUNTY, ET AL.	2010-SC-000423-D	WOODFORD
ESAU M. MILLINER V. COMMONWEALTH OF KENTUCKY	2010-SC-000427-D	JEFFERSON
STEVEN HINTON V. COMMONWEALTH OF KENTUCKY	2010-SC-000440-D	JEFFERSON

SUPREME COURT OF KENTUCKY

JUNE 16, 2011 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
JUNE 8, 2011**

THOMAS CLYDE MAJOR V. COMMONWEALTH OF KENTUCKY	2010-SC-000443-D	MASON
DAVID PORTER, ET AL. V. JOHNSON COUNTY JUDGE EXECUTIVE, ET AL.	2010-SC-000460-D	JOHNSON
JAMES D. CARREER V. CABINET FOR HEALTH AND FAMILY SERVICES, APPOINTING AUTHORITY JOHN P. HAMM, ET AL.	2010-SC-000471-D	FRANKLIN
LASTAR ROCHELLE BALL V. COMMONWEALTH OF KENTUCKY	2010-SC-000485-D	MCCRACKEN
JAMES D. LARKEY, IV, INDIVIDUALLY, AND AS TRUSTEE OF THE TRUST OF JAMES D. LARKEY III, DECEASED V. MARK LARKEY	2010-SC-000525-D	LETCHER
KENTUCKY RETIREMENT SYSTEMS V. BARBARA FOSTER	2010-SC-000554-D	FRANKLIN
LEE ROY HARRELL V. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY AND ANNA HARRELL, ET AL. V. LEE ROY HARREL, ET AL.	2010-SC-000585-D	KNOX
TIMOTHY FANCHER V. COMMONWEALTH OF KENTUCKY	2010-SC-000632-D	METCALFE
CHRIS TUCKER V. COMMONWEALTH OF KENTUCKY	2010-SC-000642-D	JEFFERSON

SUPREME COURT OF KENTUCKY

JUNE 16, 2011 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
JUNE 8, 2011**

CAROLINE COPLEY V. DANITA COPLEY, INDIVIDUALLY, ET AL.	2010-SC-000656-D	MARTIN
WILLIAM JAMES SMITH, II V. COMMONWEALTH OF KENTUCKY	2010-SC-000677-D	HARDIN
PHILLIP RODNEY MOORMAN, III V. COMMONWEALTH OF KENTUCKY	2010-SC-000679-D	HENDERSON
ROBERT CALDWELL, JR. V. COMMONWEALTH OF KENTUCKY	2010-SC-000702-D	JEFFERSON
COMMONWEALTH OF KENTUCKY V. ROBERT COBB THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2010-SC-000703-D	FULTON
SABRINIA MURPHY, ET AL. V. TZRA HOMES OF KENTUCKY, LLC.	2010-SC-000739-D	BOYLE
RYAN FLYNN V. BRYAN BLAVATT, ET AL.	2010-SC-000759-D	BOONE
LARRY MOORE V. CITY OF NEW HAVEN, ET AL.	2010-SC-000777-D	NELSON
WILLIAM H. WETHINGTON, AS EXECUTOR OF THE ESTATE OF BETTY H. WETHINGTON V. TAYLOR REGIONAL HOSPITAL	2010-SC-000787-D	TAYLOR
KAREN OWENS, ET AL. V. WEST AMERICAN INSURANCE CO., ET AL.	2010-SC-000789-D	JEFFERSON
L. W. (NOW M.) V. M. G. T., ET AL.	2011-SC-000183-DE	JEFFERSON
E. H. V. S. C.	2011-SC-000262-DE	LESLIE

SUPREME COURT OF KENTUCKY

JUNE 16, 2011 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
JUNE 9, 2011**

WILLIAM C. OATES, ET AL. V. LINDA WILLIAMS (EXECUTRIX OF THE ESTATE OF CECIL WILLIAMS)	2010-SC-000465-D	WARREN
DEAN CVITKOVIC, ET AL. V. DANIEL FREEMAN (IN HIS INDIVIDUAL CAPACITY AND IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF MONTGOMERY COUNTY SCHOOLS), ET AL.	2010-SC-000577-D	MONTGOMERY
RONALD K. GOSSAGE V. VANDA GUFFEY (INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF ROXIE GOSSAGE)	2010-SC-000591-D	WAYNE
BETTY ATKINSON, ET AL. V. KENTUCKY EXECUTIVE BRANCH ETHICS COMMISSION	2010-SC-000649-D	FRANKLIN

COURT ORDERS DENYING MOTION TO TRANSFER – JUNE 16, 2011

JAMES ROSE, ET AL. V. WINTERS, YONKER, & ROUSSELLE, P.S.C., ETC., ET AL.	2011-SC-000193-T	COURT OF APPEALS
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COURT ORDERS DENYING PETITION FOR REHEARING – JUNE 16, 2011

HOSPITAL OF LOUISA (D/B/A THREE RIVERS MEDICAL CENTER) V. JOHNSON COUNTY FISCAL COURT	2009-SC-000280-DG	JOHNSON
JOHNATHAN HARRIS V. COMMONWEALTH OF KENTUCKY	2009-SC-000621-MR	JEFFERSON

SUPREME COURT OF KENTUCKY

JUNE 16, 2011 MINUTES

RELEASED: 10:00 A.M.

COURT ORDERS DENYING PETITION FOR REHEARING – JUNE 16, 2011

TREVOR ANDREW SMITH AND BETHANY SMITH V.
ELEANORE GARBER, JUDGE, JEFFERSON FAMILY COURT
AND
ANDREW CAHILL (REAL PARTY IN INTEREST)
ORDER DENIED PETITION FOR REHEARING AND GRANTED IN PART AND DENIED IN PART A PETITION FOR MODIFICATION.

[2009-SC-000738-MR](#)

JEFFERSON

COURT ORDERS

SARAH E. DUDLEY V.
HON. OLU A. STEVENS, JUDGE, JEFFERSON CIRCUIT COURT, ET AL.
ORDER GRANTED MOTION TO PUBLISH THIS COURT'S OPINION RENDERED APRIL 21, 2011. CORRECTED PAGE 1 IS HEREBY SUBSTITUTED IN LIEU OF PAGE 1 OF THE ORIGINAL OPINION.

[2010-SC-000458-MR](#)
TO BE PUBLISHED

JEFFERSON

MICHAEL D. LUTES V.
KENTUCKY BAR ASSOCIATION
ORDER MODIFIED OPINION AND ORDER RENDERED MAY 19, 2011, ON PAGE 2, LINES 14, 17, 19 AND 22. PAGES 1 AND 2 SHALL BE SUBSTITUTED IN LIEU OF PAGES 1 AND 2 OF THE OPINION AND ORDER AS ORIGINALLY ENTERED.
ENTERED: JUNE 1, 2011

[2011-SC-000148-KB](#)

IN SUPREME COURT

SUPREME COURT OF KENTUCKY

JUNE 16, 2011 MINUTES

RELEASED: 10:00 A.M.

COURT ORDERS

LESA GAIL BRIDGES V. [2011-SC-000214-KB](#) IN SUPREME COURT
KENTUCKY BAR ASSOCIATION
**ORDER CORRECTED THE OPINION
AND ORDER OF THE COURT ENTERED MAY 19,
2011, BY SUBSTITUTION OF THIS OPINION
AND ORDER IN LIEU OF THE ORIGINAL.**
ENTERED: JUNE 2, 2011

KENTUCKY BAR ASSOCIATION V. [2010-SC-000715-KB](#) IN SUPREME COURT
CHRISTOPHER S. HARWOOD
**ORDER CORRECTED THE OPINION AND
ORDER OF THE COURT ENTERED
MARCH 24, 2011 BY SUBSTITUTION
OF THE ENTIRE OPINION.**
ENTERED: JUNE 16, 2011

**COURT ORDERS PERMITTING MOVANT TO WITHDRAW AS A MEMBER OF THE
KENTUCKY BAR ASSOCIATION – MAY 24, 2011**

RANDY DONALD SHAW V. 2011-SC-000286-KB IN SUPREME COURT
KENTUCKY BAR ASSOCIATION
ENTERED: MAY 24, 2011

MARA WOODWORTH ELLIOTT V. 2011-SC-000287-KB IN SUPREME COURT
KENTUCKY BAR ASSOCIATION
ENTERED: MAY 24, 2011

BRIDGET A MURRAY V. 2011-SC-000288-KB IN SUPREME COURT
KENTUCKY BAR ASSOCIATION
ENTERED: MAY 24, 2011

LAUREL PETERS FENN V. 2011-SC-000289-KB IN SUPREME COURT
KENTUCKY BAR ASSOCIATION
ENTERED: MAY 24, 2011

SUPREME COURT OF KENTUCKY

JUNE 16, 2011 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS PERMITTING MOVANT TO WITHDRAW AS A MEMBER OF THE
KENTUCKY BAR ASSOCIATION – MAY 24, 2011**

**ERNEST EUGENE ALLEN V.
KENTUCKY BAR ASSOCIATION
ENTERED: MAY 24, 2011**

2011-SC-000290-KB

**IN SUPREME
COURT**