

SUPREME COURT OF KENTUCKY

JUNE 21, 2012 MINUTES

RELEASED: 10:00 A.M.

78. BRANDON BENNINGFIELD (BY AND THROUGH HIS MOTHER AND NEXT FRIEND, LAURIE BENNINGFIELD) V. HELEN ZINSMEISTER, DECEASED; AND WADE ZINSMEISTER
OPINION OF THE COURT BY JUSTICE NOBLE – AFFIRMING
ABRAMSON AND CUNNINGHAM, JJ., CONCUR. SCHRODER, J., DISSENTS BUT CONCURS IN RESULT BY SEPARATE OPINION IN WHICH SCOTT, J., JOINS. MINTON, C.J., CONCURS IN PART AS TO THE OPINION OF THE COURT BUT DISSENTS AS TO THE RESULT BY SEPARATE OPINION IN WHICH VENTERS, J., JOINS. VENTERS, J., CONCURS IN PART AS TO THE OPINION OF THE COURT BUT DISSENTS AS TO THE RESULT BY SEPARATE OPINION IN WHICH MINTON, C.J., JOINS.

[2009-SC-000660-DG](#)
TO BE PUBLISHED

JEFFERSON

Questions Presented:
Animal control. KRS 258.235(4). Issues include whether a landlord is strictly liable as a KRS 258.095(5) “owner” for injuries inflicted by a tenant’s dog and, if so, whether the liability extends to injuries inflicted off the leased premises.

79. TANYA A. CHILDERS; JEFFREY J. CHILDERS V. SANDRA F. GEILE, M.D.; MARSHALL EMERGENCY SERVICES ASSOCIATES, P.S.C.
OPINION OF THE COURT BY JUSTICE NOBLE – AFFIRMING
ALL SITTING. ALL CONCUR.

[2009-SC-000790-DG](#)
TO BE PUBLISHED

MONTGOMERY

Questions Presented:
Where doctor’s conduct was properly the subject of a traditional tort claim, it did not meet the elements of the tort of intentional infliction of emotional distress.

SUPREME COURT OF KENTUCKY

JUNE 21, 2012 MINUTES

RELEASED: 10:00 A.M.

80. GARY HALL, ET AL. V.
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.,
ET AL.
**OPINION OF THE COURT BY
JUSTICE SCOTT –
AFFIRMING**
MINTON, C.J.; ABRAMSON AND
CUNNINGHAM, JJ., CONCUR.
SCHRODER, J., DISSENTS BY
SEPARATE OPINION IN WHICH
NOBLE AND VENTERS, JJ., JOIN.

[2010-SC-000559-DG](#)
TO BE PUBLISHED

LAUREL

Questions Presented:

Although the mortgage company filed a release referencing the wrong mortgage, the property owners were not entitled to statutory damages because they provided insufficient notice of the release's deficiency. The mortgage company had "good cause" not to file a new release once it checked and found it had already filed one.

81. MICHAEL ELERY V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE NOBLE –
AFFIRMING**
ALL SITTING. ALL CONCUR.

[2010-SC-000669-MR](#)
TO BE PUBLISHED

JEFFERSON

Questions Presented:

Murder, Tampering with physical evidence and Violating a protective order-Life without possibility of probation or parole. Evidence of other crimes. Jury instructions about extreme emotional disturbance and reasonable doubt. Exclusion of portable breath analysis results. Juror issue. Admission of character evidence of the victim.

82. RODGER W. LOFTON V.
FAIRMONT SPECIALTY INSURANCE
MANAGERS, INC., D/B/A FAIRMONT
SPECIALTY GROUP AND D/B/A
FAIRMONT SPECIALTY P & C;
DENISE MAXEY AND DELBERT K.
PRUITT
**OPINION OF THE COURT BY -
JUSTICE CUNNINGHAM
AFFIRMING**
ALL SITTING. ALL CONCUR.

[2010-SC-000749-DG](#)
TO BE PUBLISHED

MCCRACKEN

Questions Presented:

Attorney's Fees. At issue is attorney's entitlement to a fee under quantum meruit after withdrawing from a representation that involved a contingent fee contract.

SUPREME COURT OF KENTUCKY

JUNE 21, 2012 MINUTES

RELEASED: 10:00 A.M.

83. BRIAN ALLEN MCGUIRE V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE VENTERS –
AFFIRMING**
ALL SITTING. ALL CONCUR.
CUNNINGHAM, J. ALSO CONCURS BY
SEPARATE OPINION IN WHICH
ABRAMSON, J., JOINS.

[2011-SC-000040-MR](#)
TO BE PUBLISHED

FAYETTE

Questions Presented:

First degree manslaughter, killing while acting under extreme emotional distress, and Unlawful possession of a weapon on school property-20 years. Fundamental principles that control in a case of workplace violence. Witnesses in a criminal trial belong neither to the state nor to the defense and may decline to speak to either side. While the employer controls access to the witness/employee during working hours and the logistics of a work-site interview, they do not control the witness or trial counsel's access to them during non-working hours.

84. KENNETH D. HUDSON V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE VENTERS –
AFFIRMING**
ALL SITTING. ALL CONCUR.

[2011-SC-000103-MR](#)
TO BE PUBLISHED

CHRISTIAN

Questions Presented:

Murder-25 years. Trial court properly declined to instruct the jury on defense theories of accomplice liability for first degree manslaughter, second degree manslaughter and reckless homicide. Evidence of gang activity and of a Tennessee shooting was properly admitted as it was relevant and not highly prejudicial under the facts of this case.

SUPREME COURT OF KENTUCKY

JUNE 21, 2012 MINUTES

RELEASED: 10:00 A.M.

85. JOHN DAVID LEE V. HONORABLE STEPHEN M. GEORGE, JUDGE, JEFFERSON FAMILY COURT, AND JILL LEANNE LEE (NOW STANLEY); AND CHRISTOPHER HARRELL, GUARDIAN AD LITEM
OPINION OF THE COURT
AFFIRMING
MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCHRODER AND VENTERS, JJ., CONCUR. SCOTT, J., CONCURS IN RESULT ONLY. NOBLE, J., ALSO CONCURS BY SEPARATE OPINION WHICH SCOTT, J., JOINS.
- [2011-SC-000265-MR](#) JEFFERSON
TO BE PUBLISHED
- Questions Presented:**
Family Law. Denial of a Writ of Prohibition. Petition to disqualify judge, opposing counsel and the guardian ad litem. Discussion of trial court's requirement of the posting of a bond before further motions could be filed by a pro-se party.
86. AUDI OF LEXINGTON V. COLIN ELAM; HONORABLE MARC CHRISTOPHER DAVIS, ADMINISTRATIVE LAW JUDGE; AND WORKERS' COMPENSATION BOARD
OPINION OF THE COURT
AFFIRMING
ALL SITTING. ALL CONCUR.
- [2011-SC-000449-WC](#) FROM COURT
TO BE PUBLISHED OF APPEALS
- Questions Presented:**
Workers' Compensation. Issues include whether an ALJ may infer reasonably that the progression of a pre-existing degenerative condition contributed in the same proportion to the permanent impairment rating present after surgery as a physician testified that it did to the impairment rating assigned a year before the surgery.

SUPREME COURT OF KENTUCKY

JUNE 21, 2012 MINUTES

RELEASED: 10:00 A.M.

87. TRAVIS SMITH V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE VENTERS –
AFFIRMING IN PART AND
REVERSING AND REMANDING IN
PART**
ALL SITTING. ALL CONCUR.

[2011-SC-000154-MR](#)
TO BE PUBLISHED

HICKMAN

Questions Presented:

First degree burglary by complicity, First degree robbery by complicity and Second degree assault by complicity-20 years. Each of the complicity instructions captured the necessary elements to properly instruct the jury. Trial court erred in imposing court costs under KRS 23A.205(2) without determining if the defendant was a “poor person” as defined in KRS 453.190(2). Conviction affirmed but case remanded for further proceedings on the question of the imposition of court costs.

88. KENTON SMITH, ET AL. V.
RICHARD WILLIAMS, ET AL.
**OPINION OF THE COURT BY
JUSTICE SCHRODER –
REVERSING AND REMANDING**
ALL SITTING. ALL CONCUR.

[2010-SC-000332-DG](#)
TO BE PUBLISHED

MEADE

Questions Presented:

Partition action for the sale of jointly owned real estate. Statute of Frauds prevented the enforcement of an alleged oral “buy/sell” agreement between the parties.

89. HON. ANNETTE KAREM,
JUDGE V.
JUSTIN BRYANT
**OPINION OF THE COURT BY
JUSTICE SCHRODER –
REVERSING AND REMANDING**
ALL SITTING. ALL CONCUR.

[2010-SC-000375-DG](#)
TO BE PUBLISHED

JEFFERSON

Questions Presented:

District Court Jurisdiction. Settlements. KRS 387.520(1). KRS 24A.120. Writ of Prohibition. Issues include interpretation of KRS 387.520(1) and KRS 24A.120 and the extent of the District Court's jurisdiction and authority regarding settlements in guardianship cases.

SUPREME COURT OF KENTUCKY

JUNE 21, 2012 MINUTES

RELEASED: 10:00 A.M.

90. CRYSTAL LYNN GUZMAN V. COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT
REVERSING AND REMANDING
CUNNINGHAM, NOBLE, SCHRODER, SCOTT, AND VENTERS, JJ., CONCUR. MINTON, C.J., AND ABRAMSON, J., CONCUR IN RESULT ONLY. CUNNINGHAM, J., ALSO CONCURS BY SEPARATE OPINION IN WHICH SCHRODER AND VENTERS, JJ., JOIN.
- [2010-SC-000415-DG](#) FAYETTE
TO BE PUBLISHED
- Questions Presented:**
Search and Seizure. Issue is the breadth of the "protective sweep" exception to the search warrant requirement.
91. DANIELLE N. BIDWELL V. SHELTER MUTUAL INUSRANCE COMPANY
OPINION OF THE COURT BY - JUSTICE SCOTT
REVERSING AND REMANDING
ALL SITTING. ALL CONCUR.
- [2010-SC-000560-DG](#) KENTON
TO BE PUBLISHED
- Questions Presented:**
Insurance. Motor Vehicle. Permissive User Coverage. Issues involve the enforceability of a 90% "step-down" policy provision purportedly limiting recovery to the statutory minimum despite a \$250,000 per person policy liability limit.
92. ROBERT ALLEN EDMONDS V. COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE COURT – AFFIRMING
ALL SITTING. ALL CONCUR.
- [2011-SC-000059-MR](#) JEFFERSON
NOT TO BE PUBLISHED
93. JAMES BRADY V. KENTUCKY AMERICAN WATER CO.; HONORABLE ROBERT L. SWISHER, ADMINISTRATIVE LAW JUDGE; AND WORKERS' COMPENSATION BOARD
MEMORANDUM OPINION OF THE COURT – AFFIRMING
ALL SITTING. ALL CONCUR.
- [2011-SC-000088-WC](#) FROM COURT OF APPEALS
NOT TO BE PUBLISHED

SUPREME COURT OF KENTUCKY

JUNE 21, 2012 MINUTES

RELEASED: 10:00 A.M.

94. CECIL GENE LINVILLE V. [2011-SC-000109-MR](#) MASON
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
MEMORANDUM OPINION OF
THE COURT – AFFIRMING
ALL SITTING. ALL CONCUR.
95. EMERSON POWER TRANSMISSION V. [2011-SC-000443-WC](#) FROM COURT
CARL E. OVERLY; HONORABLE CHRIS **NOT TO BE PUBLISHED** OF APPEALS
DAVIS, ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION
BOARD
MEMORANDUM OPINION OF
THE COURT – AFFIRMING
ALL SITTING. ALL CONCUR.
96. JOHN MIKE BREEN, INCORRECTLY [2011-SC-000705-MR](#) WARREN
NAMED; CORRECT NAME-MICHAEL A. **NOT TO BE PUBLISHED**
BREEN A/K/A MIKE BREEN V.
HON. THOMAS CASTLEN, SPECIAL
JUDGE, WARREN CIRCUIT
COURT, DIVISION I AND
HON. LANNA MARTIN KILGORE, ET AL.
MEMORANDUM OPINION OF
THE COURT – AFFIRMING IN PART,
REVERSING IN PART, AND
REMANDING
ABRAMSON, CUNNINGHAM, NOBLE,
SCHRODER, SCOTT, AND VENTERS,
JJ., CONCUR. MINTON, C.J., NOT
SITTING.
97. LOGAN'S ROADHOUSE, INC. AND [2011-SC-000465-WC](#) FROM COURT
GALLAGHER GASSETT SERVICES, **NOT TO BE PUBLISHED** OF APPEALS
INC. V.
MICHAEL SCOTT COOVERT;
HONORABLE JOSEPH W. JUSTICE,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD
MEMORANDUM OPINION OF
THE COURT – REVERSING
ALL SITTING. ALL CONCUR.

SUPREME COURT OF KENTUCKY

JUNE 21, 2012 MINUTES

RELEASED: 10:00 A.M.

OPINIONS AND ORDERS – JUNE 15, 2012

ERIC C. DETERS V.
KENTUCKY BAR ASSOCIATION
**ORDER REINSTATED MOVANT TO
THE PRACTICE OF LAW WITH
CONDITIONS.**
ALL SITTING. ALL CONCUR.

[2012-SC-000344-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

OPINIONS AND ORDERS – JUNE 21, 2012

TRAVIS O. MYLES V.
KENTUCKY BAR ASSOCIATION
**ORDER SUSPENDED MOVANT FROM
THE PRACTICE OF LAW FOR 151 DAYS.**
ALL SITTING. ALL CONCUR.

[2009-SC-000139-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

KENTUCKY BAR ASSOCIATION, CLE
COMMISSION V.
BRIAN PATRICK CURTIS
**ORDER SUSPENDED RESPONDENT
FROM THE PRACTICE OF LAW.**
ALL SITTING. ALL CONCUR.

2012-SC-000057-KB

IN SUPREME
COURT

KENTUCKY BAR ASSOCIATION V.
JULIETTE ALANE HOUSE
**ORDER PERMANENTLY DISBARRED
RESPONDENT FROM THE PRACTICE OF
LAW.**
ALL SITTING. ALL CONCUR.

[2012-SC-000183-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

KENTUCKY BAR ASSOCIATION V.
MICHAEL R. MCDONNER
**ORDER SUSPENDED RESPONDENT FROM
THE PRACTICE OF LAW FOR 181 DAYS.**
ALL SITTING. ALL CONCUR.

[2012-SC-000196-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

SUPREME COURT OF KENTUCKY

JUNE 21, 2012 MINUTES

RELEASED: 10:00 A.M.

OPINIONS AND ORDERS – JUNE 21, 2012

KENTUCKY BAR ASSOCIATION V.
MARK PATRICK NIEMI
**ORDER SUSPENDED RESPONDENT FROM
THE PRACTICE OF LAW FOR 30 DAYS.**
ALL SITTING. ALL CONCUR.

[2012-SC-000226-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

KENTUCKY BAR ASSOCIATION V.
JAMES M. CAWOOD, III
**ORDER SUSPENDED RESPONDENT FROM
THE PRACTICE OF LAW FOR 181 DAYS.**
ALL SITTING. ALL CONCUR.

[2012-SC-000237-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

GLENN L. GREENE, JR. V.
KENTUCKY BAR ASSOCIATION
**ORDER PERMANENTLY DISBARRED
MOVANT FROM THE PRACTICE OF
LAW.**
ALL SITTING. ALL CONCUR.

[2012-SC-000283-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

LOUIS MILTON SMITH, JR. V.
KENTUCKY BAR ASSOCIATION
**ORDER PERMANENTLY DISBARRED
MOVANT FROM THE PRACTICE OF
LAW.**
ALL SITTING. ALL CONCUR.

[2012-SC-000301-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
JUNE 13, 2012**

R. DEAN LINDEN, PH.D. V.
WILLIAM TID GRIFFIN, ET AL.

2011-SC-000422-DG

JEFFERSON

CENTRAL BANK V.
SUTEJ GILL, ET AL.
NOBLE, J., NOT SITTING.

2011-SC-000442-DG

JEFFERSON

KENTUCKY RETIREMENT SYSTEMS V.
ROGER WEST

2011-SC-000471-DG

FRANKLIN

SUPREME COURT OF KENTUCKY

JUNE 21, 2012 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
JUNE 13, 2012**

COY TURNER, JR. AND M & W MILLING COMPANY, INC. V. BILLY ANDREW, JR.	2011-SC-000614-DG	ADAIR
CITY OF FORT THOMAS V. CINCINNATI ENQUIRER, A DIVISION OF GANNETT SATELLITE INFORMATION NETWORK, INC., D/B/A KENTUCKY ENQUIRER	2011-SC-000725-DG	CAMPBELL
VITTORIO ORLANDO MARTIN V. COMMONWEALTH OF KENTUCKY	2012-SC-000190-DG	FAYETTE

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
JUNE 13, 2012**

PATRIK ANDREAS VIENS V. JOAN SPALDING VIENS	2011-SC-000447-D	NELSON
COMMONWEALTH OF KENTUCKY V. CARL BREWER	2011-SC-000448-D	CHRISTIAN
BILL RAINS V. KENTUCKY RETIREMENT SYSTEMS AND BOARD OF TRUSTEES OF THE KENTUCKY RETIREMENT SYSTEMS	2011-SC-000450-D	FRANKLIN
TINA NOBLE, GUARDIAN OF MAKAYLA J. NOBLE, A MINOR. V. VALESA DECK	2011-SC-000489-D	KNOTT
THE ESTATE OF KENNETH R. STULL V. HOLLY G. STULL	2011-SC-000633-D	JEFFERSON
JANET R. FLEMING V. MARGARET RENEE TONEY, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF LEON B. FLEMING; WILLIAM C. ABBOTT; AND SHARON A. ABBOTT	2011-SC-000636-D	TRIGG

SUPREME COURT OF KENTUCKY

JUNE 21, 2012 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
JUNE 13, 2012**

RANDY WILLEROY V. GERRY L. CALVERT, ET AL.	2011-SC-000643-D	FAYETTE
JAMES WESLEY JONES, III V. LINDA JONES	2011-SC-000661-D	WEBSTER
DAVID S. BUTLER V. NELDA BIGGERSTAFF, ET AL. THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2011-SC-000664-D	MONROE
ECLIPSE BANK, INC. V. ACTION CAPITAL CORPORATION	2011-SC-000667-D	BULLITT
MELVIN TERRY NETHERY V. COMMONWEALTH OF KENTUCKY	2011-SC-000671-D	SHELBY
ERIC THOMAS TAYLOR V. COMMONWEALTH OF KENTUCKY	2011-SC-000672-D	CARTER
MICHELE OWENS V. COMPLETE LEGAL, LTD., ET AL.	2011-SC-000681-D	JEFFERSON
CROFTSBORO HOMEOWNERS ASSOCIATION, INC. AND JOHN OSLICA, TRUSTEE V. OLDHAM COUNTY PLANNING AND ZONING COMMISSION AND CAMDEN CLORE, LLC	2011-SC-000688-D	OLDHAM
J.D., A CHILD UNDER EIGHTEEN V. COMMONWEALTH OF KENTUCKY	2011-SC-000689-D	LAUREL
MELISSA ARNETT V. COMMONWEALTH OF KENTUCKY	2011-SC-000690-D	BOURBON
PAUL HURT V. COMMONWEALTH OF KENTUCKY	2011-SC-000702-D	JEFFERSON

SUPREME COURT OF KENTUCKY

JUNE 21, 2012 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
JUNE 13, 2012**

STEVEN HALL V. COMMONWEALTH OF KENTUCKY THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2011-SC-000723-D	BOYLE
DONALD WORTHINGTON V. CABINET FOR HEALTH AND FAMILY SERVICES, COMMONWEALTH OF KENTUCKY; C.D.W., INFANT; AND S.D.W., INFANT	2011-SC-000773-DE	GRANT
JO ANN BONDURANT V. ST. THOMAS HOSPITAL, ET AL.	2012-SC-000041-D	MCCRACKEN
S.B.B., AND B.B. V. J.P. SCOTT, J., WOULD GRANT.	2012-SC-000188-DE	PULASKI
DAVID LEWIS HARRIS V. SUSAN ELIZABETH HARRIS	2012-SC-000208-DE	FRANKLIN
JAMES STINSON AND CAROLYN STINSON V. SHANNON BRUMFIELD THE OPINION OF THE COURT OF APPEALS IS ORDERED TO BE PUBLISHED. CUNNINGHAM, J., WOULD GRANT.	2012-SC-000220-DE	BULLITT

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
JUNE 15, 2012**

GEORGE PHILLIPS V. COMMONWEALTH OF KENTUCKY	2012-SC-000265-D	BARREN
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COURT ORDERS DENYING MOTION TO TRANSFER – JUNE 21, 2012

TAMMIE E. HORNE V. MICHAEL D. HORNE	2012-SC-000246-T	BOURBON
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SUPREME COURT OF KENTUCKY

JUNE 21, 2012 MINUTES

RELEASED: 10:00 A.M.

COURT ORDERS DENYING PETITION FOR REHEARING – JUNE 21, 2012

LEWIS A. BALLARD V. COMMONWEALTH OF KENTUCKY ALL SITTING. ALL CONCUR.	2010-SC-000094-MR	BOURBON AND WOODFORD
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ROBERT DWAYNE SMITH V. COMMONWEALTH OF KENTUCKY ALL SITTING. ALL CONCUR.	2011-SC-000285-MR	JEFFERSON
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COURT ORDERS DISMISSING

DAVON BURKE V. FRED STINE (JUDGE CAMPBELL CIRCUIT COURT, ET AL. ENTERED: MAY 24, 2012	2012-SC-000194-MR	FROM COURT OF APPEALS
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COURT ORDERS

KENTUCKY BAR ASSOCIATION V. LOUIS ZIMMERMAN ORDER CORRECTED OPINION AND ORDER RENDERED MAY 24, 2012, BY SUBSTITUTION OF NEW OPINION AND ORDER. ENTERED: MAY 29, 2012	2012-SC-000178-KB	IN SUPREME COURT
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