

SUPREME COURT OF KENTUCKY

DECEMBER 22, 2011 MINUTES

RELEASED: 10:00 A.M.

196. STACIE L. COOK V.  
LISHA POPPLEWELL, IN HER  
CAPACITY AS COUNTY CLERK  
OF RUSSELL COUNTY, KENTUCKY  
AND  
RUSSELL COUNTY, KENTUCKY  
**OPINION OF THE COURT BY  
JUSTICE VENTERS -  
AFFIRMING**  
CUNNINGHAM, SCHRODER, AND  
SCOTT, JJ., CONCUR. ABRAMSON,  
J., CONCURS IN RESULT ONLY BY  
SEPARATE OPINION IN WHICH  
MINTON, C.J., AND NOBLE, J., JOIN.

[2009-SC-000341-DG](#)  
**TO BE PUBLISHED**

RUSSELL

**Questions Presented:**  
Constitutional Law. Elections. Employment  
discrimination. Issues include whether a 1st  
or 14th Amendment liberty interest protects  
public employees from being fired for  
candidacy for public office and whether  
county officials sued officially are immune  
from § 1983 actions.

197. REUBIN BAILEY V.  
PRESERVE RURAL ROADS OF  
MADISON COUNTY, INC., AND  
CURTIS TATE  
**OPINION OF THE COURT BY  
JUSTICE VENTERS -  
AFFIRMING**  
MINTON, C.J., ABRAMSON,  
AND SCHRODER, JJ., CONCUR.  
NOBLE, J., DISSENTS BY SEPARATE  
OPINION IN WHICH CUNNINGHAM  
AND SCOTT, JJ., JOIN.

[2009-SC-000417-DG](#)  
**TO BE PUBLISHED**

MADISON

**Questions Presented:**  
County Roads. KRS 178.116. Issues include  
respondents' standing to seek the resumption  
of county maintenance and removal of gates  
installed by movant where landowners who  
access their property via road discontinued as  
a county road have not petitioned jointly to  
close the road to public use.

198. LARRELL JARVOR PORTER V.  
COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT BY  
JUSTICE ABRAMSON -  
AFFIRMING**  
MINTON, C.J.; CUNNINGHAM,  
SCHRODER, SCOTT, AND  
VENTERS, JJ., CONCUR. NOBLE,  
J., CONCURS IN RESULT ONLY.

[2010-SC-000189-MR](#)  
**TO BE PUBLISHED**

MARION

**Questions Presented:**  
Guilty Plea. Trafficking in a controlled  
substance in the first degree, possession of  
drug paraphernalia and second degree PFO.  
Trial court properly denied defendant's motion  
to withdraw his guilty plea, finding it was  
within the Commonwealth's discretion to offer  
a plea deal conditioned on the defendant  
waiving his right to view a video of a drug buy,  
in order to protect the identity of a confidential  
informant.

SUPREME COURT OF KENTUCKY

DECEMBER 22, 2011 MINUTES

RELEASED: 10:00 A.M.

199. VISION MINING INC. V. [2010-SC-000311-WC](#) FROM COURT  
JESSEE GARDNER, ET AL. **TO BE PUBLISHED** OF APPEALS  
**AND**  
PEABODY COAL COMPANY V. [2010-SC-000438-WC](#) FROM COURT  
JOE MARTINEZ, ET AL. **TO BE PUBLISHED** OF APPEALS  
**OPINION OF THE COURT BY**  
**JUSTICE SCOTT**  
**AFFIRMING**  
CUNNINGHAM, NOBLE, AND VENTERS  
JJ., CONCUR. SCHRODER, J.,  
CONCURS IN PART AND DISSENTS IN  
PART BY SEPARATE OPINION.  
MINTON, C.J., DISSENTS BY SEPARATE  
OPINION IN WHICH ABRAMSON, J.,  
JOINS.
- Questions Presented:**  
Workers' Compensation. Whether KRS 342.316's consensus procedure and "clear and convincing" evidentiary standard for overcoming an unfavorable consensus deny workers claiming benefits for coal workers' pneumoconiosis equal protection by treating them differently than workers who claim benefits for other occupational pneumoconioses or diseases.
200. JAMES L. "HOPSING" MILLER V. [2010-SC-000562-MR](#) ADAIR  
COMMONWEALTH OF KENTUCKY **TO BE PUBLISHED**  
**OPINION OF THE COURT BY**  
**JUSTICE ABRAMSON –**  
**AFFIRMING**  
ALL SITTING. ALL CONCUR.
- Questions Presented:**  
20 year sentence upon remand for resentencing. Introduction of defendant's prior bad acts during the penalty stage did not constitute palpable error. It was not palpable error for one armed guard to closely accompany the defendant during the resentencing.
201. THOMAS E. JONES, JR. V. [2010-SC-000328-MR](#) HICKMAN  
COMMONWEALTH OF KENTUCKY **TO BE PUBLISHED**  
**OPINION OF THE COURT BY**  
**JUSTICE VENTERS –**  
**AFFIRMING IN PART AND**  
**REVERSING AND REMANDING**  
**IN PART**  
ALL SITTING. ALL CONCUR.
- Questions Presented:**  
Challenge to restitution, court costs, and jail fee assessed by the trial court after accepting a guilty plea. Imposition of restitution violated defendant's right to due process. KRS 532.032. Imposition of court costs reversed and imposition of jail fee affirmed.

SUPREME COURT OF KENTUCKY

DECEMBER 22, 2011 MINUTES

RELEASED: 10:00 A.M.

202. RACHEL BLACKBURN V. COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT BY JUSTICE SCOTT – AFFIRMING IN PART AND VACATING AND REMANDING IN PART**  
ALL SITTING. ALL CONCUR.
- [2010-SC-000537-MR](#) LAWRENCE  
**TO BE PUBLISHED**
- Questions Presented:**  
First degree trafficking in a controlled substance and second degree PFO-40 years. Subsequent offenses run consecutively may not exceed the maximum aggregate duration allowed by KRS 532.110(1)(c). Such subsequent convictions may not run concurrent with a paroled offense.
203. KENTUCKY UNEMPLOYMENT INSURANCE COMMISSION V. DAVID G. HAMILTON  
**OPINION OF THE COURT BY JUSTICE VENTERS - REVERSING**  
MINTON, C.J.; ABRAMSON, AND SCHRODER, JJ., CONCUR. CUNNINGHAM, J., DISSENTS BY SEPARATE OPINION IN WHICH NOBLE AND SCOTT, JJ., JOIN.
- [2010-SC-000252-DG](#) FAYETTE  
**TO BE PUBLISHED**
- Questions Presented:**  
KRS 341.090(2). Definition of “extended base period.” Time period for determining the wages to be used to calculate the unemployment benefits for a claimant who has suffered a job-related injury.
204. BEVERLY L. MILLER V. ADMINISTRATIVE OFFICE OF THE COURTS  
**OPINION OF THE COURT BY SPECIAL JUSTICE JOHN T. MCGARVEY - REVERSING AND REMANDING**  
CUNNINGHAM, NOBLE, SCHRODER, SCOTT, JJ., AND SPECIAL JUSTICE WILLIAM T. CAIN, CONCUR. MINTON, C.J.; ABRAMSON AND VENTERS, JJ., NOT SITTING.
- [2007-SC-000609-TG](#) JEFFERSON  
**TO BE PUBLISHED**
- Questions Presented:**  
Decisions of federal court dismissing actions before it did not preclude state court action.

SUPREME COURT OF KENTUCKY

DECEMBER 22, 2011 MINUTES

RELEASED: 10:00 A.M.

- |      |   |   |           |
|------|---|---|-----------|
| 205. | DAVID HOFF V.<br>COMMONWEALTH OF KENTUCKY<br><b>OPINION OF THE COURT BY<br/>JUSTICE NOBLE –<br/><u>REVERSING AND REMANDING</u></b><br>ALL SITTING. MINTON, C.J.;<br>CUNNINGHAM, SCHRODER, SCOTT,<br>AND VENTERS, JJ., CONCUR.<br>ABRAMSON, J., CONCURS IN RESULT<br>ONLY. | <a href="#">2010-SC-000167-MR</a><br><b>TO BE PUBLISHED</b>   | CHRISTIAN |
|      |   | <p style="text-align: center;"><b>Questions Presented:</b></p> <p>First degree rape and incest-Life sentence.<br/>Convictions reversed and case remanded<br/>for retrial because of the extensive use of<br/>inadmissible hearsay and the impermissible<br/>bolstering of the victim’s testimony.</p> |           |
| 206. | DAVID HOFF V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF<br/>THE COURT – <u>AFFIRMING</u></b><br>ALL SITTING. MINTON, C.J.;<br>ABRAMSON, CUNNINGHAM, NOBLE,<br>SCOTT, AND VENTERS, JJ., CONCUR.<br>SCHRODER, J., CONCURS IN RESULT<br>ONLY.                  | <a href="#">2009-SC-000480-MR</a><br><b>NOT TO BE PUBLISHED</b>   | CHRISTIAN |
| 207. | BROCK RILEY RAMEY V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF<br/>THE COURT – <u>AFFIRMING</u></b><br>MINTON, C.J.; ABRAMSON, NOBLE,<br>SCHRODER, AND VENTERS, JJ., CONCUR.<br>CUNNINGHAM AND SCOTT, JJ.,<br>CONCUR IN RESULT ONLY.                        | <a href="#">2010-SC-000452-MR</a><br><b>NOT TO BE PUBLISHED</b>   | CALLOWAY  |
| 208. | JOSEPH LONG V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF<br/>THE COURT – <u>AFFIRMING</u></b><br>ALL SITTING. ALL CONCUR.   | <a href="#">2010-SC-000801-MR</a><br><b>NOT TO BE PUBLISHED</b>   | KENTON    |
| 209. | LATARRA NICOLE MARTIN V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF<br/>THE COURT – <u>AFFIRMING</u></b><br>ALL SITTING. ALL CONCUR.   | <a href="#">2010-SC-000830-MR</a><br><b>NOT TO BE PUBLISHED</b>   | FAYETTE   |

SUPREME COURT OF KENTUCKY

DECEMBER 22, 2011 MINUTES

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210. DOMINIQUE NATHANIEL SANFORD V. [2011-SC-000143-MR](#) FAYETTE  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**MEMORANDUM OPINION OF**  
**THE COURT – AFFIRMING**  
ALL SITTING. ALL CONCUR.
211. HOPE RENEE WHITE V. [2010-SC-000626-MR](#) WAYNE  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**MEMORANDUM OPINION OF**  
**THE COURT – REVERSING AND**  
**REMANDING**  
MINTON, C.J.; ABRAMSON,  
CUNNINGHAM, NOBLE, SCOTT, AND  
VENTERS, JJ., CONCUR. SCHRODER,  
J., CONCURS IN PART AND DISSENTS  
IN PART.

**OPINIONS AND ORDERS – DECEMBER 22, 2011**

- HOLLIS DESHAUN KING V. 2008-SC-000274-DG FAYETTE  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**AND**
- HOLLIS DESHAUN KING V. 2011-SC-000524-TG FAYETTE  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**THE APPEAL IN CASE NO. 2011-SC-000524-**  
**TG IS DISMISSED AS BEING MOOT.**  
**ADDITIONAL BRIEFING IN CASE NO.**  
**2008-SC-000274- DG IS GRANTED IN PART.**  
ALL SITTING. ALL CONCUR.
- KENTUCKY BAR ASSOCIATION V. [2011-SC-000609-KB](#) IN SUPREME  
GAIL S. SLONE **TO BE PUBLISHED** COURT  
**ORDER SUSPENDED RESPONDENT FROM**  
**THE PRACTICE OF LAW FOR 30 DAYS.**  
ALL SITTING. ALL CONCUR.

**SUPREME COURT OF KENTUCKY**

**DECEMBER 22, 2011 MINUTES**

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

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

|  |                   |           |
|--|-------------------|-----------|
| DEPARTMENT OF REVENUE, FINANCE<br>AND ADMINISTRATION CABINET, JONATHAN<br>MILLER, APPOINTING AUTHORITY V.<br>WANDA FAYE WADE, ET AL. | 2011-SC-000095-DG | FRANKLIN  |
| TERRY W. ROACH V.<br>COMMONWEALTH OF KENTUCKY  | 2011-SC-000141-DG | MCCRACKEN |
| MILDRED ABBOTT, ET AL. V.<br>STANLEY M. CHESLEY, ET AL.  | 2011-SC-000291-DG | BOONE     |
| JACOB GINGERICH, ET AL. V.<br>COMMONWEALTH OF KENTUCKY<br><b>AND</b><br>MENNO ZOOK, ET AL. V.<br>COMMONWEALTH OF KENTUCKY            | 2011-SC-000379-DG | GRAVES    |
|  | 2011-SC-000380-DG | GRAVES    |
| COMMONWEALTH OF KENTUCKY V.<br>JOSHUA ABNEE  | 2011-SC-000507-DG | NICHOLAS  |
| DICK'S SPORTING GOODS, INC. V.<br>BETTY C. WEBB  | 2011-SC-000518-DG | FAYETTE   |
| WILMA JEAN SHELTON V.<br>KENTUCKY EASTER SEALS SOCIETY, INC.   | 2011-SC-000554-DG | FAYETTE   |
| COMMONWEALTH OF KENTUCKY V.<br>ERIC RAE BELL   | 2011-SC-000630-DG | JEFFERSON |

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –  
DECEMBER 15, 2011**

|   |                   |            |
|---|-------------------|------------|
| STATE FARM MUTUAL AUTOMOBILE<br>INSURANCE COMPANY V.<br>KAREN HODGKISS-WARRICK                      | 2011-SC-000266-DG | ROCKCASTLE |
| TAX EASE LIEN INVESTMENTS 1, LLC V.<br>COMMONWEALTH BANK & TRUST COMPANY,<br>AND TEREETHA M. MURPHY | 2011-SC-000277-DG | SHELBY     |

SUPREME COURT OF KENTUCKY

DECEMBER 22, 2011 MINUTES

RELEASED: 10:00 A.M.

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

|   |                  |            |
|---|------------------|------------|
| AMELIA FRANKLIN ADAMS AND J.J.,<br>A MINOR <b>V.</b><br>HON. ANNETTE KAREM  | 2010-SC-000780-D | JEFFERSON  |
| AMELIA FRANKLIN ADAMS AND J. J.,<br>PROCEEDING ANONYMOUSLY <b>V.</b><br>HON. ANNETTE KAREM                                | 2010-SC-000786-D | JEFFERSON  |
| PETZL AMERICA, INC. <b>V.</b><br>MATTHEW YORK<br><b>SCHRODER, J., NOT SITTING.</b>  | 2010-SC-000828-D | CUMBERLAND |
| JOHN MCKEEHAN AND SHANNON<br>MCKEEHAN <b>V.</b><br>DEUTSCHE BANK NATIONAL TRUST<br>COMPANY                                | 2011-SC-000084-D | JEFFERSON  |
| WILLIAM SHEEHAN <b>V.</b><br>COMMONWEALTH OF KENTUCKY   | 2011-SC-000099-D | JEFFERSON  |
| SHANE RAGLAND <b>V.</b><br>ESTATE OF TRENT DIGIURO  | 2011-SC-000112-D | FAYETTE    |
| JOHN ARTRIP <b>V.</b><br>CITY OF HOPKINSVILLE   | 2011-SC-000134-D | CHRISTIAN  |
| JOSEPH LEE MONTGOMERY <b>V.</b><br>COMMONWEALTH OF KENTUCKY   | 2011-SC-000170-D | HARDIN     |
| YVON B. UTSEY <b>V.</b><br>COMMONWEALTH OF KENTUCKY   | 2011-SC-000228-D | JEFFERSON  |
| SEMINARY WOODS, LLC. <b>V.</b><br>JEFFREY B. BROWN.   | 2011-SC-000253-D | JEFFERSON  |
| RHODA FALLER <b>V.</b><br>ENDICOTT-MAYFLOWER, LLC,<br>PROFESSIONAL PROPERTY MANAGERS, LLC,<br>AND RADAR ENTERPRISES, INC. | 2011-SC-000438-D | JEFFERSON  |

**SUPREME COURT OF KENTUCKY**

**DECEMBER 22, 2011 MINUTES**

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

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

|   |                   |           |
|---|-------------------|-----------|
| RONALD LYNN HORN V.<br>RANDALL STOVALL, WARDEN, ETC., ET AL.  | 2011-SC-000474-DE | FLOYD     |
| JOHN C. MURRAY V.<br>LISSA MURRAY   | 2011-SC-000490-D  | OLDHAM    |
| JEFFREY LAMONT GREENE V.<br>COMMONWEALTH OF KENTUCKY<br><b>VENTERS, J., WOULD GRANT.</b>                | 2011-SC-000492-D  | CLARK     |
| SAMUEL LEE EDWARDS GREYWOLF V.<br>ROMAN CATHOLIC DIOCESE OF COVINGTON<br><b>NOBLE, J., NOT SITTING.</b> | 2011-SC-000519-D  | FAYETTE   |
| COMMONWEALTH OF KENTUCKY V.<br>TRAMPIS RAY BARNES   | 2011-SC-0000535-D | MCCRACKEN |
| KEVIN LAMONT SIMMS V.<br>COMMONWEALTH OF KENTUCKY   | 2011-SC-000631-D  | JEFFERSON |

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
DECEMBER 15, 2011**

|  |                  |           |
|--|------------------|-----------|
| COMMONWEALTH OF KENTUCKY, CABINET<br>FOR HEALTH AND FAMILY SERVICES V.<br>JENNIE STUART MEDICAL CENTER, INC.;<br>AND THE TROVER CLINIC FOUNDATION,<br>INC., D/B/A REGIONAL MEDICAL CENTER<br>OF HOPKINS COUNTY | 2011-SC-000226-D | FRANKLIN  |
| DR. CYRUS C. CHAPMAN V.<br>REGIONAL RADIOLOGY ASSOCIATES, PLLC   | 2011-SC-000233-D | MCCRACKEN |

**COURT ORDERS DENYING MOTION TO TRANSFER – DECEMBER 22, 2011**

|   |                  |          |
|---|------------------|----------|
| WILLIAM VIRGIL V.<br>COMMONWEALTH OF KENTUCKY | 2011-SC-000556-T | CAMPBELL |
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**SUPREME COURT OF KENTUCKY**

**DECEMBER 22, 2011 MINUTES**

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

**COURT ORDERS DENYING PETITION FOR REHEARING – DECEMBER 22, 2011**

|   |                   |                          |
|---|-------------------|--------------------------|
| KENNETH JONES V.<br>COMMONWEALTH OF KENTUCKY  | 2009-SC-000221-MR | CARLISLE                 |
| MARTIN PHILLIP JACKSON V.<br>COMMONWEALTH OF KENTUCKY<br><b>VENTERS, J., WOULD GRANT.</b>   | 2009-SC-000836-MR | JEFFERSON                |
| THE DREAMERS, LLC; WILLIE M. NEAL,<br>JR.; AND GLENDA HOFFMAN V.<br>DON'S LUMBER & HARDWARE, INC.   | 2010-SC-000227-DG | HARDIN                   |
| JOHN WAYNE SKAGGS V.<br>COMMONWEALTH OF KENTUCKY  | 2010-SC-000723-MR | JEFFERSON                |
| SAEID SHAFIZADEH. V.<br>HONORABLE JERRY BOWLES, JUDGE,<br>JEFFERSON FAMILY CIRCUIT COURT<br><b>AND</b><br>DENIS SHAFIZADEH (NOW DUGAS); A.B.S.,<br>MINOR; AND D.J.S., MINOR | 2010-SC-000747-MR | FROM COURT<br>OF APPEALS |

**COURT ORDERS DISMISSING**

|  |                   |                          |
|--|-------------------|--------------------------|
| ARTHUR F. PRESTON (AS TRUSTEE<br>OF THE ARTHUR F. PRESTON TRUST)<br>V.<br>HON. PAMELA R. GOODWIN, JUDGE,<br>FAYETTE CIRCUIT COURT, ET AL.<br><b>ENTERED: NOVEMBER 17, 2011</b> | 2011-SC-000521-MR | FROM COURT<br>OF APPEALS |
| SCOTT GREENWALD<br>V.<br>PATRICIA FAULKNER<br><b>ENTERED: DECEMBER 16, 2011</b>  | 2011-SC-000201-D  | JEFFERSON                |
| ED MARTIN<br>V.<br>PACK'S INC., ET AL.<br><b>ENTERED: DECEMBER 16, 2011</b>  | 2011-SC-000510-D  | ROWAN                    |

**SUPREME COURT OF KENTUCKY**

**DECEMBER 22, 2011 MINUTES**

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

**COURT ORDERS**

PERCY BROWN V.  
HON. A.C. MCKAY CHAUVIN, JUDGE,  
JEFFERSON COURT, ET AL.  
**ORDER DENIED APPELLANT'S MOTION  
FOR BELATED APPEAL.**  
ENTERED: NOVEMBER 30, 2011

2011-SC-000595-MR

JEFFERSON