

**KENTUCKY SUPREME COURT
FEBRUARY 2021**

CRIMINAL LAW:

Commonwealth of Kentucky v. Samuel Daughtery

[2019-SC-0201-DG](#)

February 18, 2021

Opinion of the Court by Chief Justice Minton. All sitting; all concur. Samuel W. Daughtery pleaded guilty to three felony counts of distributing child pornography in violation of Kentucky Revised Statute (KRS) 351.340 and he received a five-year concurrent sentence on each count, probated for five years. The Commonwealth appealed the trial court’s amended judgment, arguing the trial court erred by issuing a ruling attempting to block Daughtery’s lifetime registration under the Sex Offender Registration Act (SORA).

The Court of Appeals found Daughtery was not a sex offender for purposes of SORA, but was still required to register as he committed a crime defined as “against a minor.” However, the appellate court affirmed the judgment, holding that Daughtery’s three felony convictions exempted Daughtery from SORA registration because they were his first such offenses and arose from a single course of conduct.

The Commonwealth sought discretionary review in the Supreme Court arguing that the Court of Appeals created a new exception to SORA lifetime registration for first-offender, single-source offenders. The Court agreed and reversed the Court of Appeals, holding that Daughtery qualifies for lifetime SORA registration for his crimes because (1) he was thrice convicted of crimes involving “a minor or depictions of a minor, as set forth in KRS Chapter 531” per the plain text of KRS 17.500(3)(a)(11) and KRS 17.520(4); and (2) the Court of Appeals erred by creating a new single-course-of-conduct exception to avoid application of KRS 17.520(4).

David Wayne Dooley v. Commonwealth of Kentucky

[2019-SC-0262-MR](#)

February 18, 2021

Opinion of the Court by Chief Justice Minton. All sitting; all concur. Appellant David Dooley was arrested and charged with murder and tampering with physical evidence. Appellant was convicted by a jury and sentenced to forty-three years’ imprisonment.

Appellant appealed as a matter of right, claiming (1) that the trial court improperly admitted unduly prejudicial evidence that Appellant had committed time fraud; (2) that the trial court improperly admitted various pieces of allegedly irrelevant tangible evidence; (3) that the trial court erred in allowing a witness to testify in violation of KRE 615; (4) that the trial court improperly denied Appellant’s request for a missing-evidence instruction; and (5) cumulative error requiring reversal.

First, the Supreme Court held the trial court did not err in admitting evidence of Appellant’s time fraud, because under the facts of the case the Commonwealth offered it to prove a sufficiently coherent motive to murder and as evidence of identity under KRE 404(b), and the presentation of evidence was of a length and detail proportionate to its probative value. Second, the trial court improperly admitted a utility knife and latex gloves found four months after the crime in Appellant’s vehicle, having no

specific connection to the crime under KRE 104 and KRE 901, but this error was harmless. The Court found not error in the trial court admitting a bottle of bleach when it was found near in time and location to the crime scene and under circumstances that bleach was possibly connected to the crime. Third, the trial court did not err under KRE 615 when, after a witness was allegedly influenced by the Commonwealth before testifying, the trial court held a conference to assess the alleged error and proceeded to allow the witness to testify subject to cross-examination regarding the alleged violation. Fourth, the trial court did not err in refusing to tender a missing-evidence instruction where Appellant had not shown the Commonwealth disposed of evidence in bad faith and where there was no indication such evidence would have had exculpatory value. Finally, the Supreme Court held that the only errors of admitting the knife and latex gloves, even taken together, did not amount to reversible cumulative error. Accordingly, the Supreme Court affirmed the trial court's judgment.

Christopher Alexander Pope v. Commonwealth of Kentucky
[2019-SC-0522-MR](#)

February 18, 2021

Opinion of the Court by Justice Hughes. All sitting; all concur. Christopher Pope was found guilty by a Lincoln County jury of trafficking in a controlled substance (heroin) in the first degree. The charge stemmed from Pope selling heroin to a confidential informant during a controlled buy. The controlled buy was arranged by deputies from the Boyle County Sheriff's Department who apparently anticipated the buy would occur in Boyle County. However, Pope instructed the informant that he would not make the sale in Boyle County and to meet him at a fast-food restaurant in adjoining Lincoln County. The Boyle County deputies received prior verbal approval from the Lincoln County Sheriff's Department for their investigative activities in Lincoln County, surveilled the entire transaction, and testified before a Lincoln County grand jury. Following Pope's indictment by that grand jury, a Boyle County officer arrested Pope in Boyle County. Pope's primary argument on appeal is that the circuit court erred by denying his pretrial motion to either suppress the evidence from the undercover drug buy or dismiss the indictment because the Boyle County deputies lacked jurisdiction to conduct an investigation in Lincoln County. *Held:* Although Pope's jurisdiction argument is premised on KRS 431.007(1), that statute does not apply in Pope's case. Instead, KRS 218A.240(1) applies; KRS 218A.240 pertinently directs law enforcement agencies charged with enforcing the state's controlled substance laws to cooperate with one another in the effort. To the extent the Boyle County officers needed permission for their out-of-county surveillance activities, it was granted by the Lincoln County Sheriff's Department. Furthermore, without an explanation of how the Boyle County deputies violated his constitutional rights or reliance on a statute which mandates exclusion of evidence upon its violation, suppression of evidence is not a remedy available to Pope.

Joshua A. Towe v. Commonwealth of Kentucky
[2019-SC-0694-MR](#)

February 18, 2021

Opinion of the Court by Chief Justice Minton. All sitting; all concur. A circuit court jury convicted Joshua Towe of two counts of first-degree sexual abuse and two counts of first-degree sodomy and fixed his punishment at imprisonment for life. He appealed to the Supreme Court as a matter of right arguing several trial errors, including that

the jury instructions violated the Double Jeopardy Clause of the Kentucky and United States' Constitutions, that the Commonwealth presented insufficient evidence to sustain a conviction of first-degree sodomy, and that the Commonwealth's Attorney's improperly vouched in closing argument for the reliability of the victim's testimony denied him a fair trial. The Supreme Court reviewed found that no error occurred and affirmed Towe's judgment.

EMPLOYMENT LAW:

Michael Lee Barnett v. Central Kentucky Hauling, LLC

2019-SC-0064-DG

February 18, 2021

Opinion of the Court by Chief Justice Minton. Minton, C.J.; Conley, Hughes, Keller, Nickell, and VanMeter, JJ., sitting. Minton, C.J.; Conley, Hughes, Keller, Nickell, and VanMeter, concur. Lambert, J., not sitting. The Supreme Court was asked to consider whether the Kentucky Civil Rights Act (KCRA) bars an employer from discharging an employee because of the disability of an individual with whom the employee associates. Both the trial court and the Court of Appeals found the KCRA does not provide such protection because it associational discrimination is not mentioned or implied in the statute.

The Supreme Court agreed, holding that although the KCRA bars an employer from discharging an employee because of disability, it does not protect against discrimination for association with a disabled person.

INSURANCE:

Brent Foreman, et al. v. Auto Club Property-Casualty Insurance Company

2018-SC-0618-DG

February 18, 2021

Opinion of the Court by Chief Justice Minton. All sitting. Minton, C.J.; Conley, Hughes, Keller, Nickell, and VanMeter, JJ., concur. Lambert, J., concurs in result only. Keller, J., concurs by separate opinion in which Conley and Nickell, JJ., join. Brent and Kathleen Foreman brought a declaratory judgment action in the circuit court against Auto Club Property-Casualty Insurance Company for payment under their homeowner's insurance policy for property damage caused by a house fire started by their teenage son, in a suicide attempt. Auto Club denied liability based on the intentional-loss exclusion in the policy.

The circuit court granted summary judgment in the Foremans' favor, finding the policy exclusion inapplicable because their son was unable to form the intent to cause a loss required for the exclusion to apply. The Court of Appeals reversed, holding that the trial court erred in ignoring unambiguous policy language that contained an objective component for judging the son's expectation of property damage when he started the fire. The appellate court explained that when the son's acts were viewed objectively, undisputed evidence triggered the exclusion.

The case was remanded and the Foremans had the burden of proof to overcome the exclusion with evidence that their son lacked mental capacity to understand the physical consequences of his act, regardless of whether he could discern right from wrong, and noting substantial evidence already of record that precluded summary judgment in favor of the Foremans under that objective standard.

The Supreme Court granted discretionary review and agreed with the Court of Appeals' analysis that the trial court's grant of summary judgment in favor of the Foremans was erroneous but held that, on remand, the Foremans may litigate a potential lack of capacity defense.

JUDICIAL RECUSALS; REAL PROPERTY:

Abbott, Inc. v. Samuel Guirguis, et al.

2018-SC-0577-DG

February 18, 2021

Opinion of the Court by Justice VanMeter. Minton, C.J.; Conley, Hughes, Keller, Nickell and VanMeter, JJ., sitting. Minton, C.J.; Hughes, Keller, Nickell and VanMeter, JJ., concur. Conley, J., concurs in result only. Lambert, J., not sitting. Abbott petitioned for discretionary review of the Court of Appeals' decision affirming the Hopkins Circuit Court's ruling that a certain plot of land belonged to Guirguis because the railway from which Abbott purchased a quitclaim deed only possessed an easement, which expired when the railway filed a notice of abandonment. The Kentucky Supreme Court vacated the Court of Appeals' opinion, finding that the trial judge was required to recuse pursuant to KRS 26A.015 and SCR 4.300, Canon 3E. The Court held that parties moving for recusal must present an affidavit setting forth factual allegations to support their motion. Additionally, the Court held that the test for recusal is an objective one, "made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances." The Court clarified the appellate standard of review, holding that judicial recusal must be reviewed de novo. Finally, the Court stated that as a matter of law, and without contrary evidence, a presumption exists that a railroad acquires a right-of-way easement, and not fee ownership, to construct its roadbed. The Court remanded the case to the Hopkins Circuit Court to determine the location of the tracts conveyed, whether the disputed property bisected or adjoined the railroad right-of-way, and which parties, if any, retained any interest in the land formerly subject to the right-of-way claimed by Abbott.

WORKERS COMPENSATION:

Charles Martin v. Warrior Coal LLC, et al.

2020-SC-0055-WC

February 18, 2021

Opinion of the Court by Justice Hughes. All sitting. Minton, C.J.; Conley, Hughes, Keller, Nickell and VanMeter, JJ., concur. Lambert, J., dissents without separate opinion. In June 2017, the Kentucky General Assembly passed House Bill 223 which amended Kentucky Revised Statute (KRS) 342.040. Prior to its amendment, KRS 342.040 provided for 12% interest on workers' compensation income benefits that were due but unpaid. After the amendment, the statute now provides for an interest rate of 6% on due but unpaid benefits unless an exception applies. As reflected in the Legislative Research Commission Note to the statute, 2017 Kentucky Acts Chapter 17, Section 5 provides that "[KRS 342.040, as amended, shall] apply to all [workers'] compensation orders entered or settlements approved on or after June 29, 2017, the effective date of that Act." Charles Martin filed a workers' compensation claim in October 2017 as a result of his employment with Warrior Coal. He was awarded workers' compensation income benefits by an Administrative Law Judge (ALJ) on April 27, 2018 for his April 1, 2016 compensable injury. The ALJ applied the 12% interest

rate to Martin's due and unpaid installments of compensation through June 28, 2017 and the 6% interest rate thereafter. Warrior Coal asked the ALJ to reconsider the decision to award interest at the 12% rate for all unpaid installments due prior to June 28, 2017. The ALJ declined reconsideration and the Workers' Compensation Board agreed with the ALJ, but the Court of Appeals found in favor of Warrior Coal on this issue. Held: By applying the interest rate amendment to orders and settlements approved on or after the Acts effective date, the General Assembly made clear that the date of an award or settlement is controlling, even though the award may encompass events which occurred before the statute was amended and made effective. Applying *Holcim v. Swinford*, 581 S.W.3d 37 (Ky. 2019), although the General Assembly's legislative statement regarding the temporal application of amended KRS 342.040 is not codified, because of the temporary nature of the language, codification was not required to give it effect. Based on the General Assembly's non-codified but express language regarding its intent with respect to the 6% interest rate set forth in the 2017 amendment, the entirety of Martin's benefit award is subject to the amended 6% interest rate.

WRIT OF MANDAMUS:

Mohammad Ali Iqtaifan v. Tara W. Hagerly, in Her Official Capacity as Jefferson Circuit Court Judge, et al.

[2020-SC-0304-MR](#)

February 18, 2021

Opinion of the Court by Justice Lambert. All sitting; all concur. Family Law. Foreign Judgments. Writ of Mandamus. Opinion of the Court affirming the Court of Appeals' denial of a writ of mandamus against family court judge for failure to dismiss a petition for dissolution of marriage on grounds that the parties were already divorced under the laws of the Kingdom of Jordan. Court held that appellant/real party in interest was not entitled to writ relief of any kind, and specifically held that the family court was not acting outside its jurisdiction by not automatically giving full faith and credit to a divorce decree from a foreign country under the Full Faith and Credit Clause of the United States Constitution. Family court had jurisdiction and discretion to grant comity to the foreign decree, if appropriate in the judgment, of the family court.

ATTORNEY DISCIPLINE:

Rachelle Nichole Howell v. Kentucky Bar Association

[2020-SC-0608-KB](#)

February 18, 2021

Opinion and Order of the Court. All sitting; all concur. In 2019, the Supreme Court suspended Howell for a period of 181 days. Following her suspension, Howell applied for reinstatement under SCR 2.300. The Character and Fitness Committee of the Office of Bar Admissions closely reviewed Howell's disciplinary history, Character and Fitness Questionnaire, application for readmissions, deposition, past and present criminal and civil records, and the responses of Howell's references, which were all positive. The Committee also considered Howell's past issues with alcohol abuse, which she admitted contributed to her professional lapses, and her ongoing financial issues. The Committee noted that Howell had complied with all terms of her sanctions, including full compliance with her KYLAP monitoring agreements. Based on this evidence, the Committee recommended that the Board of Governors of the Kentucky Bar Association approve Howell's reinstatement.

The Board accepted the Committee's findings of fact and determined that Howell had met all the requirements for reinstatement pursuant to SCR 2.300. Because of Howell's history with alcohol abuse and her financial issues, the Board recommended that she be reinstated subject to certain restrictions, including a two-year Conditional Admission Agreement, KYLAP Monitoring Agreement, and an agreement to establish a repayment plan with the Internal Revenue Service.

Upon review of the record, the Supreme Court agreed that Howell should be reinstated, and agreed she should be subject to a Conditional Admission Agreement and a KYLAP Monitoring Agreement. But the Court disagreed with the Board's condition regarding the Internal Revenue Service, noting its discomfort with the direct involvement of an unaffiliated third party to Howell's reinstatement. Accordingly, the Court ordered Howell reinstated, subject to signing a two-year Conditional Admission Agreement and a two-year KYLAP Monitoring Agreement.