

PUBLISHED OPINIONS
KENTUCKY SUPREME COURT
November 2011

I. CRIMINAL LAW

**A. Kenneth Williams v. Commonwealth of Kentucky
2010-SC-000138-DG November 23, 2011**

Opinion of the Court by Chief Justice Minton. All sitting; all concur. When police detained Williams he was among a group of nine people, some of whom the police observed openly engaging in illegal drug activity and some of whom the police found in possession of handguns. Williams argued that the group's activities did not create reasonable suspicion of criminal activity particularized to him to justify a *Terry* detention. Denying Williams's motion to suppress the handgun seized during the patdown that followed the detention, the trial court found that Williams was part of a distinct group whose conduct aroused sufficient reasonable suspicion for the officers to detain Williams. The Court of Appeals affirmed the trial court's order on appeal. We granted discretionary review and affirmed, finding that the seizure of Williams was a constitutional *Terry* stop. The police had reasonable, articulable suspicion of drug use and the potentially dangerous presence of concealed deadly weapons justifying an investigatory stop of all the persons in this group. Once the officer made the constitutional investigatory stop, he had reason to believe that Williams was armed and dangerous because the officer saw the bulge created by the handgun concealed in Williams's clothing in the center of Williams's back.

**B. Lawrence Robert Stinnett v. Commonwealth of Kentucky
2010-SC-000347-MR November 23, 2011**

Opinion of the Court by Justice Noble. All sitting; all concur. Stinnett was convicted of murder and kidnapping. He argued that the trial court erred by failing to dismiss the kidnapping charge pursuant to the kidnapping exemption statute, KRS 509.050. The Court affirmed, on different grounds, the trial court's decision that the kidnapping exemption did not apply. The trial court's analysis focused on Stinnett's intent during the criminal act, while the Court held that the determinative factor was that Stinnett's restraint of the victim exceeded that ordinarily incident to the commission of murder.

The Court considered Stinnett's several other claims regarding the intentional murder instruction, the trial court's refusal to replace appointed counsel when a disagreement developed between Stinnett and his attorneys, the trial court's decision to allow Stinnett to represent himself, the trial court's denial of Stinnett's request for an out-of-state subpoena for an expert witness, an alleged violation of attorney-client privilege, and the admission of hearsay evidence. The Court held

that there were no reversible errors and affirmed the conviction.

II. ETHICS

- A. **In Re: Jefferson District Court and Trial Commissioners v. Ethics Committee of the Kentucky Judiciary**
[2011-SC-000384-OA](#) **November 23, 2011**

Opinion of the Court by Justice Cunningham. All sitting. Abramson, Schroder, Scott and Venters, JJ., concur. Minton, C.J., and Noble, J., concur in result only. Staff attorneys employed by the Family Court may serve as District Court Trial Commissioners without violating the Judicial Code of Conduct, so long as certain safeguards are put in place. The staff attorney may not conduct District Court business during the Family Court's normal business hours, and careful attention must be paid to the specific types of duties assigned to the trial commissioner. The trial commissioner should not be assigned duties that would potentially be the subject of, or pertinent to, a family court matter, such as the issuance of an emergency custody order.

III. WORKERS' COMPENSATION

- A. **Doctors' Associates, Inc. v. Uninsured Employers' Fund; Tonda Michelle Brown; UBC, D/B/A Subway; Honorable John B. Coleman, Administrative Law Judge; and Workers' Compensation Board**
[2010-SC-000658-WC](#) **November 23, 2011**

Opinion of the Court by Chief Justice Minton. All sitting; all concur. Doctors' Associates, Inc., (DAI) owns the "Subway" trademark and franchises the right to operate Subway sandwich shops worldwide. In workers' compensation proceedings in Kentucky, the Administrative Law Judge (ALJ) dismissed the Uninsured Employers' Fund's (UEF) claim against DAI for benefits to an employee of an uninsured DAI franchisee located in Kentucky. The sole issue submitted for a decision by the ALJ was whether DAI was a contractor and, thus, liable to the employee of its uninsured subcontractor. The ALJ ruled that Kentucky Revised Statutes (KRS) 342.610(2), which creates up-the-ladder liability for contractors, does not encompass a franchisor-franchisee relationship. The Workers' Compensation Board affirmed. The Supreme Court reversed the opinion of the Court of Appeals and affirmed the Workers' Compensation Board opinion. The Court found that nothing in Chapter 342 precludes a franchisor who meets the definition found in KRS 342.610(2) from also being considered a contractor. And the ALJ's legal conclusion to the contrary was erroneous. But the ALJ properly found, under the particular facts of this case, that DAI was not a contractor.

IV. ATTORNEY DISCIPLINE

A. **Jimmie Green Orr, Jr. v. Kentucky Bar Association**
[2011-SC-00607-KB](#) **November 23, 2011**

Opinion and Order. All sitting; all concur. Supreme Court entered an order accepting Orr's Motion to Resign Under Terms of Permanent Disbarment. The KBA made no objection to the motion. Orr was permanently disbarred from the practice from the practice of law in the Commonwealth of Kentucky.