

SUPREME COURT OF KENTUCKY

APRIL 26, 2018 MINUTES

RELEASED: 10:00 A.M.

52. MARTIN/ELIAS PROPERTIES, LLC V. ACUITY, A MUTUAL INSURANCE COMPANY
OPINION OF THE COURT BY CHIEF JUSTICE MINTON – AFFIRMING
ALL SITTING. MINTON, C.J.; CUNNINGHAM, HUGHES, KELLER, AND VANMETER, JJ., CONCUR. WRIGHT, J., CONCURS IN RESULT ONLY BY SEPARATE OPINION IN WHICH VENTERS, J., JOINS.
- [2016-SC-000195-DG](#) KENTON
TO BE PUBLISHED
- Questions Presented:**
Insurance Law. Commercial General Liability Coverage. “Occurrence” or “Accident.” Whether concrete contractor’s commercial general liability (CGL) insurer was required to cover damage caused when the contractor, who was hired to dig a deeper basement under an existing building, failed to properly support the foundation and caused the entire structure to become unstable.
53. MELINDA TURNER V. COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY JUSTICE HUGHES – AFFIRMING
ALL SITTING. ALL CONCUR.
- [2016-SC-000367-MR](#) SCOTT
TO BE PUBLISHED
- Questions Presented:**
Murder and PFO I– 30 years. Admission of coroner’s testimony as to the estimated time of death was not error. KRE 702. Denial of motion to continue the trial was proper. Trial court properly granted the Commonwealth’s motion to disqualify one of the defendant’s attorneys, who had previously represented the deceased victim. Admission of evidence of the victim’s state of mind prior to his murder was harmless error. Insufficient evidence presented to instruct the jury as to self-defense and extreme emotional disturbance.
54. FORD MOTOR COMPANY V. DONALD JOBE, ET AL.
OPINION OF THE COURT BY JUSTICE WRIGHT – AFFIRMING
MINTON, C.J.; CUNNINGHAM, HUGHES, KELLER, VENTERS, WRIGHT; JJ., CONCUR. VANMETER, J., NOT SITTING.
- [2017-SC-000010-WC](#) FROM COURT OF APPEALS
TO BE PUBLISHED
- Questions Presented:**
Workers’ Compensation. Substantial evidence of a causal connection between work injury and employee’s back condition.

SUPREME COURT OF KENTUCKY

APRIL 26, 2018 MINUTES

RELEASED: 10:00 A.M.

55. MICHAEL R. PLUMLEY V. KROGER, INC., ET AL. [2017-SC-000083-WC](#) FROM COURT OF APPEALS
TO BE PUBLISHED
- OPINION OF THE COURT BY CHIEF JUSTICE MINTON – AFFIRMING**
- ALL SITTING. ALL CONCUR.
- Questions Presented:**
Workers' Compensation. Permanent Partial Disability. Failure to raise an objection that a doctor's impairment rating was not compliant with the AMA Guides, waives the objection. To be grounded in the Guides is not to require strict adherence to them but rather a general conformity with them. ALJ did not err in awarding three separate awards for three injuries he suffered.
56. MIKI THOMPSON, ADMINSTRATRIX OF THE ESTATE OF KARA VANCE AND DARBY JANE VANCE, ETC. V. HON. EDDY COLEMAN, JUDGE, PIKE CIRCUIT COURT, ET AL. [2017-SC-000580-MR](#) FROM COURT OF APPEALS
TO BE PUBLISHED
- OPINION OF THE COURT BY CHIEF JUSTICE MINTON – AFFIRMING**
- ALL SITTING. ALL CONCUR.
- Questions Presented:**
Denial of a Writ of Prohibition. Wrongful Death and Negligence. Discovery. Requests for pretrial inspection of plaintiff's cellphone, computer, and social media account. Discovery period of one year prior to plaintiff's suicide was not improper.
57. MIKI THOMPSON ADMINSTRATRIX OF THE ESTATE OF KARA VANCE AND DARBY JANE VANCE, ETC. V. HON. EDDY COLEMAN, JUDGE, PIKE CIRCUIT COURT, ET AL. [2017-SC-000640-MR](#) FROM COURT OF APPEALS
TO BE PUBLISHED
- OPINION OF THE COURT BY CHIEF JUSTICE MINTON – AFFIRMING**
- ALL SITTING. ALL CONCUR.
- Questions Presented:**
Denial of Writ of Prohibition. Wrongful Death and Negligence. Discovery. Conflict of laws. Records created prior to the plaintiff's suicide by her treating family therapist in West Virginia were discoverable as being relevant and were not privileged under Kentucky law.

SUPREME COURT OF KENTUCKY

APRIL 26, 2018 MINUTES

RELEASED: 10:00 A.M.

58. SOPHAL PHON V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE KELLER –
AFFIRMING IN PART, REVERSING
IN PART, AND REMANDING**
CUNNINGHAM, HUGHES, KELLER,
VENTERS AND WRIGHT; JJ., AND
KLINE AND THACKER, S.JJ.,
CONCUR. THACKER, S.J.
CONCURS BY SEPARATE OPINION,
WHICH KLINE, S.J. JOINS. MINTON,
C.J. AND VANMETER, J., NOT
SITTING.
- [2016-SC-000468-DG](#) WARREN
TO BE PUBLISHED
- Questions Presented:**
Criminal Law. RCr 11.42 and CR 60.02.
Application of Montgomery v. Louisiana, 136
S. Ct. 718 (2016) to a 1998 sentence of life
without parole for crimes including multiple
murders committed before the offender's 18th
birthday.
59. EUGENE BAKER V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE WRIGHT –
AFFIRMING IN PART AND
REVERSING AND VACATING
IN PART**
ALL SITTING. ALL CONCUR.
- [2016-SC-000234-MR](#) JEFFERSON
TO BE PUBLISHED
- Questions Presented:**
Murder, First-degree robbery, Tampering with
physical evidence, and Possession of a
handgun by a convicted felon - 40 years.
Evidence of motive. Commonwealth
improperly allowed to introduce
unauthenticated call logs from the victim's cell
phone carrier and to recall a witness to testify
as to a phone number appearing in the call
logs, but said errors were harmless. Trial
court erred in failing to grant a directed verdict
on the tampering with physical evidence
charge.
60. RAKIM MOBERLY V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE VENTERS –
REVERSING**
ALL SITTING. MINTON, C.J.;
CUNNINGHAM, HUGHES, KELLER,
WRIGHT; JJ., CONCUR. VANMETER,
J., DISSENTS BY SEPARATE
OPINION.
- [2016-SC-000429-DG](#) FAYETTE
TO BE PUBLISHED
- Questions Presented:**
Criminal Law. Traffic Stop. Drug Dog Sniff.
Search. Initial traffic stop was impermissibly
prolonged to allow a canine search to
proceed. Appellant's nervousness and prior
criminal charges did not establish reasonable
and articulable suspicion to justify his
prolonged detention until the drug dog could
arrive and complete the search.

SUPREME COURT OF KENTUCKY

APRIL 26, 2018 MINUTES

RELEASED: 10:00 A.M.

61. BIG SANDY COMPANY, L.P. V. [2016-SC-000561-DG](#) PIKE
EQT GATHERING, LLC AND EQT
PRODUCTION COMPANY
**OPINION OF THE COURT BY
JUSTICE KELLER –
REVERSING**
MINTON, C.J.; CUNNINGHAM,
HUGHES, KELLER, VANMETER
AND VENTERS, JJ., CONCUR.
WRIGHT, J., NOT SITTING.
- Questions Presented:**
Contract. Oil Pipeline Easement. Pipeline easement agreement between the parties applied to the portion of the pipeline that EQT constructed before the agreement was signed.
62. COMMONWEALTH OF KENTUCKY V. [2016-SC-000275-DG](#) CARROLL
DAVID J. MOORE
**MEMORANDUM OPINION OF
THE COURT
REVERSING**
ALL SITTING. ALL CONCUR.
- Questions Presented:**
DUI. Indigent Defendants. KRS 534.040. KRS 189A.010. District court properly imposed a fine on an indigent defendant convicted of a DUI.
63. PAUL COOK V. [2016-SC-000579-MR](#) CHRISTIAN
COMMONWEALTH OF KENTUCKY
**MEMORANDUM OPINION OF
THE COURT – AFFIRMING**
ALL SITTING. ALL CONCUR.
- NOT TO BE PUBLISHED**
64. ANTHONY DRURY V. [2017-SC-000202-MR](#) LINCOLN
COMMONWEALTH OF KENTUCKY
**MEMORANDUM OPINION OF
THE COURT – AFFIRMING**
ALL SITTING. ALL CONCUR.
- NOT TO BE PUBLISHED**
65. RICK ROE V. [2017-SC-000256-MR](#) FROM COURT
HON. THOMAS L. CLARK, JUDGE, OF APPEALS
FAYETTE CIRCUIT COURT, ET AL.
**MEMORANDUM OPINION OF
THE COURT – AFFIRMING**
ALL SITTING. ALL CONCUR.
- NOT TO BE PUBLISHED**

SUPREME COURT OF KENTUCKY

APRIL 26, 2018 MINUTES

RELEASED: 10:00 A.M.

66. SUNZ INSURANCE COMPANY V. [2017-SC-000257-WC](#) FROM COURT
HENRY J. DECKER, ET AL. **NOT TO BE PUBLISHED** OF APPEALS
**MEMORANDUM OPINION OF
THE COURT – AFFIRMING**
ALL SITTING. ALL CONCUR.
67. JEFFEREY O. KATZ V. [2017-SC-000298-MR](#) FROM COURT
HON. PAMELA R. GOODWINE, **NOT TO BE PUBLISHED** OF APPEALS
JUDGE, FAYETTE CIRCUIT COURT,
ET AL.
**MEMORANDUM OPINION OF
THE COURT – AFFIRMING**
ALL SITTING. ALL CONCUR.
68. MIDDLETOWN HEATING AND AIR V. [2017-SC-000299-WC](#) FROM COURT
MICHAEL K. KLIMKO, HON. **NOT TO BE PUBLISHED** OF APPEALS
STEPHANIE L. KINNEY,
ADMINISTRATIVE LAW JUDGE, ET AL.
**MEMORANDUM OPINION OF
THE COURT – AFFIRMING**
ALL SITTING. ALL CONCUR.
69. COMMONWEALTH OF KENTUCKY V. [2016-SC-000544-DG](#) LETCHER
ROBERT SHELBY CAUDILL **NOT TO BE PUBLISHED**
AND
ROBERT SHELBY CAUDILL V. [2017-SC-000288-DG](#) LETCHER
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
**MEMORANDUM OPINION OF
THE COURT – REVERSING AND
REINSTATING**
MINTON, C.J., HUGHES, KELLER,
VANMETER AND VENTERS, JJ.,
CONCUR. CUNNINGHAM, J., DISSENTS
BY SEPARATE OPINION. WRIGHT, J.,
NOT SITTING.

SUPREME COURT OF KENTUCKY

APRIL 26, 2018 MINUTES

RELEASED: 10:00 A.M.

OPINION AND ORDER – APRIL 19, 2018

TOWN & COUNTRY BANK AND TRUST COMPANY V.
KHV, LLC. 2017-SC-000382-DG NELSON
**ORDER GRANTED DISCRETIONARY REVIEW,
VACATED THE COURT OF APPEALS OPINION
AND REMANDED BACK TO THE COURT OF
APPEALS.**
ALL SITTING. ALL CONCUR.

OPINION AND ORDERS – APRIL 26, 2018

MARC LAWRENCE OBERDORFF V.
KENTUCKY BAR ASSOCIATION 2018-SC-000049-KB IN SUPREME
**ORDER ADOPTS RECOMMENDATION OF THE
BOARD.** TO BE PUBLISHED COURT
ALL SITTING. ALL CONCUR.

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
APRIL 18, 2018**

RAYMOND HAYES, ET AL. V. 2017-SC-000340-DG CAMPBELL
D.C.I. PROPERTIES-DKY, LLC, ET AL.

RODERICKA BRYANT V. 2017-SC-000367-DG JEFFERSON
LOUISVILLE METRO HOUSING AUTHORITY,
ET AL.

SALLY A. MAY V. 2018-SC-000011-DGE JESSAMINE
DONNIE J. HARRISON

MICHAEL JOSPEH JAMES V. 2018-SC-000066-DG HENDERSON
COMMONWEALTH OF KENTUCKY

WILLIAM ROBERT HAGAN, ET AL. V. 2018-SC-000084-DG HARDIN
COMMONWEALTH OF KENTUCKY,
TRANSPORTATION CABINET
WRIGHT, J., NOT SITTING.

JOSHUA MCALPIN V. 2018-SC-000087-DG JEFFERSON
COMMONWEALTH OF KENTUCKY

SUPREME COURT OF KENTUCKY

APRIL 26, 2018 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
APRIL 18, 2018**

CABINET FOR HEALTH AND FAMILY SERVICES, ETC. V. C.B.	2018-SC-000092-DGE	CLARK
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**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
APRIL 18, 2018**

TIMMY LEE JACKSON V. COMMONWEALTH OF KENTUCKY	2017-SC-000319-D	BELL
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JAMES L. HAMILTON V. KENT D. THACKER INSURANCE COMPANY, ET AL.	2017-SC-000351-D	PIKE
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KENNETH WOLFE V. MARGARET HARRISON, F/K/A WOLFE	2017-SC-000363-D	KENTON
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BLUESTONE COAL CORPORATION, ET AL. V. MICHAEL BRANHAM	2017-SC-000366-D	HARLAN
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MID-SOUTH DRYWALL, INC. V. 2001 BRYANT ROAD, LLC, ET AL. THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2017-SC-000378-D	FAYETTE
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GRIFFIN BRACKMAN DAVIS V. HEATH GALLENTINE, D.C., ET AL.	2017-SC-000397-D	FAYETTE
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COMMONWEALTH OF KENTUCKY V. HILLARY ADAMS	2017-SC-000402-D	BRACKEN
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BOBBY FOREE, JR. V. COMMONWEALTH OF KENTUCKY	2017-SC-000405-D	TRIMBLE
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STEVE CHANDLER V. WILLIAM ROBINSON, EXECUTOR OF THE ESTATE OF HAROLD KEITH CHANDLER, ET AL.	2017-SC-000630-D	CRITTENDEN
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SUPREME COURT OF KENTUCKY

APRIL 26, 2018 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
APRIL 18, 2018**

STACY PARTIN V. COMMONWEALTH OF KENTUCKY	2017-SC-000638-D	MCCRACKEN
KAREN DIXON V. LEWIS DIXON THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2017-SC-000643-DE	JESSAMINE
LEO ROGERS, M.D. V. FAMILY PRACTICE ASSOCIATES OF LEXINGTON, P.S.C., ET AL. THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2017-SC-000649-D	FAYETTE
AB'DAL-AZEEZ JALAL HAKIM V. COMMONWEALTH OF KENTUCKY KELLER AND VENTERS, JJ., WOULD GRANT.	2017-SC-000668-D	MONTGOMERY
MICHAEL A. O'HARA V. NICHOLAS MARSH, ET AL.	2017-SC-000671-D	CARROLL
MIDDLETOWN FIRE PROTECTION DISTRICT V. NATALIE TAYLOR THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2018-SC-000001-D	JEFFERSON
CHRISTOPHER SIZEMORE. V. REBECCA JON PARROTT	2018-SC-000002-D	KNOX
JOSEPH KEITH BICKETT, ET AL. V. DANIEL O. CECIL, ET AL. THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2018-SC-000003-D	MARION
DAVID GOLDMAN V. KENTUCKY UNEMPLOYMENT INSURANCE COMMISSION, ET AL.	2018-SC-000006-D	JEFFERSON

SUPREME COURT OF KENTUCKY

APRIL 26, 2018 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
APRIL 18, 2018**

PAR GOLF, LLC, ET AL. V. GLENMARY HOMEOWNERS ASSOCIATION, INC.	2018-SC-000009-D	JEFFERSON
BENNIE STANLEY V. DEAN KNUCKLES	2018-SC-000018-D	BELL
COMMONWEALTH OF KENTUCKY V. ROBERT DUDLEY VANMETER AND WRIGHT, JJ., WOULD GRANT.	2018-SC-000023-D	KENTON
PLANNED PARENTHOOD OF INDIANA AND KENTUCKY, INC. V. COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES	2018-SC-000024-D	JEFFERSON
LINDA THOMAS V. DIXIE BOTTOMS, ET AL.	2018-SC-000031-D	JESSAMINE
ANTRIGUIS O. WEST V. COMMONWEALTH OF KENTUCKY	2018-SC-000035-D	CAMPBELL
AARON CAMPBELL V. COMMONWEALTH OF KENTUCKY	2018-SC-000043-D	FAYETTE
ALLAN WIDDIFIELD, ET AL. V. COMMONWEALTH OF KENTUCKY	2018-SC-000072-D	HANCOCK
WHITLEY COUNTY, KENTUCKY, ET AL. V. KRYSTAL THOMAS, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF WILLIAM OAKS	2018-SC-000080-D	WHITLEY
KRISTY WITAK, ET AL. V. BRIDAL WAREHOUSE, INC.	2018-SC-000090-DE	JEFFERSON

SUPREME COURT OF KENTUCKY

APRIL 26, 2018 MINUTES

RELEASED: 10:00 A.M.

COURT ORDERS GRANTING MOTION TO TRANSFER

FRED ZUCKERMAN, AS REPRESENTATIVE OF THE GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO.89, ET AL V. MATTHEW G. BEVIN, IN HIS CAPACITY AS GOVERNOR OF KENTUCKY, ET AL.
2018-SC-000097-TG
2018-SC-000098-TG
FRANKLIN
ALL SITTING. ALL CONCUR.
ENTERED: APRIL 18, 2018

COMMONWEALTH OF KENTUCKY V. EFRAIN DIAZ, JR.
2017-SC-000536-TG
FAYETTE
ALL SITTING. ALL CONCUR.
ENTERED: APRIL 26, 2018

COMMONWEALTH OF KENTUCKY V. JUSTIN SMITH
2017-SC-000537-TG
FAYETTE
ALL SITTING. ALL CONCUR.
ENTERED: APRIL 26, 2018

COURT ORDER DENYING PETITION FOR REHEARING – APRIL 26, 2018

QUINTON R. HUDDLESTON V. COMMONWEALTH OF KENTUCKY
2016-SC-000673-MR
JEFFERSON
ALL SITTING. ALL CONCUR.

COURT ORDERS DISMISSING

DONALD PHILLIPS V. COMMONWEALTH OF KENTUCKY
2017-SC-000588-MR
LESLIE
WRIGHT, HUGHES, KELLER AND VENTERS, JJ., SITTING. ALL CONCUR.
ENTERED: APRIL 3, 2018

CDR MINERALS V. RANDY RICHIE, ET AL.
2017-SC-000608-WC
FROM COURT OF APPEALS
WRIGHT, HUGHES, KELLER AND VENTERS, JJ., SITTING. ALL CONCUR.
ENTERED: APRIL 20, 2018

SUPREME COURT OF KENTUCKY

APRIL 26, 2018 MINUTES

RELEASED: 10:00 A.M.

COURT ORDERS DISMISSING

BUSTER CHANDLER V. COMMONWEALTH OF KENTUCKY VENTERS, WRIGHT, HUGHES, AND KELLER, JJ., SITTING. ALL CONCUR. ENTERED: APRIL 3, 2018	2018-SC-000027-OA	FAYETTE
QUANTUM ENTERPRISES, INC., ET AL. V. HON. ANN BAILEY SMITH, JUDGE, JEFFERSON CIRCUIT COURT, ET AL. WRIGHT, HUGHES, KELLER AND VENTERS, JJ., SITTING. ALL CONCUR. ENTERED: APRIL 20, 2018	2018-SC-000046-MR	FROM COURT OF APPEALS
KRISTOPHER M. NEVELS V. KENTUCKY BAR ASSOCIATION ENTERED: APRIL 18, 2018	2018-SC-000063-KB	IN SUPREME COURT
GARY WARICK V. COMMONWEALTH OF KENTUCKY ENTERED: APRIL 5, 2018	2018-SC-000132-D	FLOYD

COURT ORDERS

KENTUCKY BAR ASSOCIATION V. PATRICK C. HICKEY, ATTORNEY AT LAW, DECEASED ORDER TO CLOSE. ALL SITTING. ALL CONCUR.	2016-SC-000619-KB	IN SUPREME COURT
KENTUCKY BAR ASSOCIATION V. DAVID THOMAS SPARKS ORDER DENIED MOTION FOR RECONSIDERATION. ALL SITTING. ALL CONCUR. ENTERED: APRIL 26, 2018	2017-SC-000591-KB	IN SUPREME COURT

SUPREME COURT OF KENTUCKY

APRIL 26, 2018 MINUTES

RELEASED: 10:00 A.M.

COURT ORDERS

**INQUIRY COMMISSION V.
DAVID B. GRAY**

ORDER GRANTED RECONSIDERATION.

ALL SITTING. ALL CONCUR.

ENTERED: APRIL 26, 2018

**2018-SC-000047-KB
TO BE PUBLISHED**

**IN SUPREME
COURT**