Supreme Court Case Law Update

Justice Pamela R. Goodwine
5th Appellate District

Criminal Law

In June 2016, defendant was sentenced to five years probation. On January 23, 2017, the circuit court issued an arrest warrant for a probation violation. The warrant was served on October 28, 2021. On November 15, 2021, defendant appeared for a revocation hearing but the circuit court granted a continuance without entering an order extending defendant's probation.

On November 22, 2021, the parties reappeared for a revocation hearing. Defendant argued the circuit court could not revoke his probation because it lost jurisdiction. The Commonwealth agreed but the circuit court disagreed and revoked his probation.

Did the circuit court err in revoking defendant's probation?

Yes. *Commonwealth of Kentucky v. Darryl Ellery*, -- S.W.3d -- 2025WL1197837

In a 4-3 opinion, the Supreme Court held the circuit court erred in revoking defendant's probation because it lost jurisdiction to do so.

The Court refused to adopt the fugitive tolling doctrine because doing so would contravene the express language of KRS 533.020(4) and violate the separation of powers doctrine.

At defendant's trial for wanton murder, the Commonwealth sought to allow two witnesses to testify remotely: a lab employee from Pennsylvania who quantified the amount of meth in defendant's system and a toxicologist from the University of Kentucky.

The Commonwealth provided as justification the financial savings to be derived from not needing to pay the travel expenses of the lab employee and a desire to not impede the toxicologist's teaching duties. The trial court acquiesced and the witnesses each testified remotely.

Was it error to allow these witness to testify remotely?

Yes. *Faughn v. Commonwealth*, 694 S.W.3d 339 (Ky. 2024)

The Confrontation Clause's right to cross examine is not absolute and requires a balancing of legitimate competing interests. Remote testimony may be allowed if the Commonwealth presents important public policy considerations, and the reliability of the testimony is otherwise assured. Cost savings for traveling expert witnesses and the expert's conflicting class schedule were insufficient reasons to overcome the defendant's right to cross-examine.

During his interrogation as a suspect in a rape investigation, defendant stated “I think I need a lawyer,” at which point the detectives ended the interview.

Five minutes later, a detective brought the defendant’s girlfriend, who is also the rape victim’s sister, into the interview room and, in defendant’s presence, told the girlfriend they had multiple pieces of incriminating evidence against defendant, none of which were true. The officer then left the room, leaving defendant and his girlfriend in the room together. Defendant then made several admissions that effectively conceded guilt while also asserting that he could not remember what happened.

The trial court refused to suppress the statements made between defendant and his girlfriend and defendant was eventually convicted of rape.

Was it error to admit statements made by defendant to his girlfriend?

Yes. *Ellis v. Commonwealth*, 694 S.W.3d 294 (Ky. 2024)

Actions of police officer to bring victim's sister into the interrogation room and subjecting the defendant to presentation of false evidence and suggestion that he was a serial rapist amounted to an interrogation designed to elicit an incriminating response. Defendant's subsequent statements were the product of the police's words or actions they should have known were reasonably likely to lead to an incriminating response. Under *Edwards v. Arizona*, 451 U.S. 477 (1981), "once the right to an attorney has been invoked, interrogation must cease, and law enforcement cannot re-initiate contact."

Quotable: "Artful deception is an invaluable and legitimate tool in the police officer's bag of clever investigative devices, but deception about the rights protected by *Miranda* and the legal effects of giving up those rights is not one of those tools." *Leger v. Commonwealth*, 400 S.W.3d 745, 750 (Ky. 2013).

Defendant was arrested on suspicion of DUI alcohol. The officer conducted a breathalyzer test with defendant's consent. Defendant then invoked his statutory right to an independent blood test under KRS 189A.103. Law enforcement transported defendant to a local hospital, where his blood was drawn. However, the hospital did not test the blood but rather handed it over to police officer, who then stored it in a law enforcement evidence room but did not test it.

Defendant later filed a motion to independently test his blood sample. The trial court denied his motion, but the Commonwealth obtained a warrant to test it, and the trial court admitted that evidence.

Should the blood sample test have been suppressed?

Yes. *Story v. Commonwealth*, 706 S.W.3d 263 (Ky. 2024)

When the officer accepted defendant's blood sample from hospital employee and placed it into evidence untested, defendant was improperly denied the statutory right under KRS 189A.103 to have his blood sample independently tested. The trial court also improperly denied his motion to have the sample tested.

Asking to have his blood sample tested independently did not constitute consent for the Commonwealth to test. To hold otherwise would be impermissibly coercive and contrary to the purpose of the statute.

The Commonwealth's search warrant to later test blood sample was invalid because KRS 189A.105(2)(b) allows blood tests only in DUI cases involving death or physical injury, and the good faith exception could not apply because the deficiency was statutory, not technical.

Defendant was sentenced to a five-year period of post incarceration supervision. Defendant absconded during his supervision period and, during his re-incarceration, was denied sentence credits pursuant to KRS 197.045 to reduce the length of his re-incarceration. The Kentucky Department of Corrections and the trial court denied his petition and the Court of Appeals affirmed.

Should the defendant receive credits during his re-incarceration?

Yes. *Rushin v. Commonwealth, 701 S.W.3d 293 (Ky. 2024)*

In a case of first impression, the Supreme Court held that a period of time that inmate was re-incarcerated for violating terms of post incarceration supervision was part of original sentence; and sentence credits apply to reduce the period of re-incarceration that an inmate serves due to violation of post incarceration supervision.

A defendant, previously convicted of a felony, appealed the denial of his motion to suppress a firearm found in plain view in his apartment after the police entered to ensure it was safe for his landlord and her agent, an electrician, to enter and make emergency electrical repairs. The Court of Appeals affirmed.

Should the evidence of a firearm be suppressed?

No. *Crite v. Commonwealth*, 706 S.W.3d 74 (Ky. 2024)

The Supreme Court affirmed. It explained, no suppression was required because the police legally entered at the landlord's request, and her entry was lawful and justified under the emergency entry clause in the lease as the extensive electrical damage needed to be immediately addressed for the safety of tenants. It was reasonable for the landlord to request police assistance where the landlord had information that defendant was schizophrenic, was not taking his medication, had not been admitted to the hospital for psychiatric care, did not know where he was located but believed he had a firearm in the apartment, and he had recently acted in a very irrational manner in tearing apart the electrical wiring in the apartment.

Considering the totality of the circumstances, a limited search by the police for the sole purpose of making sure no one was inside the apartment was objectively reasonable and did not violate Crite's rights because the search was minimally invasive, stayed within the confines of what was necessary to protect the landlord and her agent, and was not undertaken to search for evidence of a crime.

Employment Law

Following his arrest for domestic violence assault and after an internal criminal investigation, a police officer was terminated from his employment after the Chief of Police determined that the officer had committed multiple violations of police department policies. The officer appealed his termination to the Merit Board.

At the hearing, the Merit Board considered transcripts of witnesses' sworn statements as well as records of prior criminal conduct in the officer's personnel file. The officer objected to the inclusion of this evidence, arguing that the criminal matters had been expunged and that admission of the transcripts was improper because he was unable to cross-examine the witnesses. At trial, the officer further argued it was improper for his employer to consider the charge of assault when he had not yet been convicted.

Was it improper for the officer's employer to consider this evidence?

No. *Louisville/Jefferson Cnty. Metro. Gov't v. Moore*, 701 S.W.3d 335 (Ky. 2024)

KRS 67C.326(1)(h) sets forth the minimum administrative due process rights provided to police officers in proceedings in front of the Louisville Metro Merit Board. The Court declined to read the statute to permit the Merit Board to consider sworn statements and affidavits *only* if the Board called the witness to testify, particularly considering the officer's right to compel testimony of the witness through subpoena.

The Due Process Clause does not require Confrontation Clause protections in a post-termination administrative hearing. Applying the weighing factors established in *Mathews v. Eldridge*, 424 U.S. 319 (1976), the Court found the significant due process safeguards afforded by the Merit Board statutes to outweigh the relatively low risk of error in allowing sworn transcribed testimony without the need for live testimony.

Expungement laws do not apply to LMPD's internal employment files.

Prohibiting the Chief from terminating an employee for criminal behavior until after conviction amounts to an unreasonable standard of proof.

Insurance Law

Insured was involved in an automobile accident with an uninsured motorist (UIM) who was subsequently charged with DUI. Insured filed suit for recovery against the UIM under the Kentucky Motor Vehicle Reparations Act and against her insurer for an underinsured motorist claim. While her filing was timely, the UIM was deceased at the time of filing. After the expiration of the statue of limitations, insured moved to appoint an administrator of the UIM's estate and to substitute the estate as defendant. The estate argued the case was now barred by the statute of limitations. Her insurer agreed and argued that, because her claim against the UIM was time-barred, so too was her insurance claim.

Can insured recover from the uninsured motorist's estate or her own insurer?

No. *Powers v. Kentucky Farm Bureau Mut. Ins. Co.*, 694 S.W.3d 361 (Ky. 2024)

The filing of a complaint against an already deceased person is a nullity. The statute of limitations was not tolled by insured's belief, unsupported by a written agreement, that negotiations with tortfeasor's insurer tolled statute.

The equitable doctrine of virtual representation was inapplicable where insured had knowledge of tortfeasor's death and opportunity to amend her pleading. Uninsured motorist's estate was not equitably estopped from arguing tolling of statute of limitations where there was no material misrepresentation or reliance.

Failure of insured's claim against the estate served to prohibit her Underinsured Motorists claim against her own insurer because claim was limited to damages insured was "legally entitled to recover" from the estate.

The roof of a church sanctuary began to rapidly drop over the course of several days. The church hired an engineer who found that the roof was in danger of catastrophic and imminent collapse. Through quick action, the church was able to temporarily shore the roof structure. The church then filed a claim with its insurer under the provision insuring against collapse due to hidden damage. Insurer denied the claim, finding that a collapse had not occurred.

Can the insured recover for a “collapse” in the church?

Yes. *State Auto Prop. & Cas. Co. v. Greenville Cumberland Presbyterian Church*, 706 S.W.3d 35 (Ky. 2024)

Insurance policy covering the "collapse" of a roof does not require the entire structure to fall to "rubble on the ground," in the ordinary sense of the word. The rotting ends of the roof trusses had decayed so significantly as to cause the entire structure to slide between the supporting walls and remain in place only through friction and the support of the ceiling. Thus, the roof completely lost its "distinctive character" as a "substantial part" of the building, as it could no longer serve its sole purpose as a supportive structure.

The Court declined to adopt the position of the majority of states that include in the definition of collapse "a state of imminent collapse, substantial impairment to structural integrity, or both."

Contract Law

Plaintiffs entered into sales agreements with an agent for a horse dealer to have horses sold at auction. Agent deposited the sale proceeds, payable by check to the dealer, into the dealer's account but then subsequently transferred the funds into his own account. Plaintiffs were either not paid or partially paid for the horse sales. Plaintiffs brought suit for breach of contract, theft by failure to make disposition, conversion, fraud, and breach of fiduciary duty. At trial, dealer argued that agent was not authorized to transact business on behalf of the dealer and that any contract for sale was between plaintiffs and the auction house.

Did plaintiffs have valid contracts for horse sales with dealer?

Yes. *Ramsey v. Dapple Stud, LLC*, 701 S.W.3d 529 (Ky. 2024)

While the third-party consignment agent improperly used dealer's name to sell plaintiff's horses, KRS 275.135(2) provides a manager of a managed LLC has agency to bind the LLC. Although agent was no longer a member of the LCC, dealer publicly held him out as its manager, and plaintiffs had reason to believe agent was "carrying on in the usual way of business" and was acting with authority.

Open Records Law

A newspaper filed an Open Records Act request for records relating to a high-speed police chase resulting in deaths of passengers who were in vehicle that was struck during the chase. The City, without elaboration, denied the request, claiming a provision of the Act provides an exemption for records pertaining to an active criminal case. The Newspaper sought an injunction, and the City further argued that KRS 17.150(2) allows City to withhold the records until "prosecution is completed or a determination not to prosecute has been made."

Is there a generally applicable “law enforcement exception” to disclosure under the Open Records Act?

No. *Shively Police Dep't v. Courier J., Inc.*, 701 S.W.3d 430 (Ky. 2024)

The General Assembly has declared that the "free and open examination of public records is in the public interest[.]" KRS 61.871. Despite a three-decades long history of misinterpretation, there is no blanket exception to disclosure for "active criminal cases" under the Open Records Act.

Applying *City of Fort Thomas*, 406 S.W.3d (Ky. 2013), the Court held that a law enforcement agency relying on KRS 61.878(1)(h) to withhold "[r]ecords of law enforcement agencies…to be used in a prospective law enforcement action or administrative adjudication," must articulate some factual basis "that premature release of the records would harm the agency in some articulable way." A mere recitation of the legal standard is not enough to properly invoke the law enforcement exemption.

KRS 17.150(2) only serves to mandate disclosure of law enforcement records after completion of prosecution and does not prohibit or exempt disclosure before completion.

Workers' Compensation

Employee was attending an out of state conference paid for by her employer. During the brief period between the end of the conference and her departure for the airport, employee decided to shop offsite for souvenirs. Before she could leave the hotel, she tripped and injured her ankle, requiring multiple surgeries. Employee filed a claim for workers' compensation benefits, and the ALJ denied her claim, finding that the injury was not work-related. The Workers' Compensation Board reversed.

Did the employee's injury arise out of the course of employment, entitling her to recovery under workers' compensation?

Yes. *Thompson Catering & Special Events v. Costello*, 701 S.W.3d 541 (Ky. 2024)

An injury occurring on the way to or from work is not covered by workers' compensation. The traveling employee exception to this coming and going rule, however, "considers an injury that occurs while the employee is in travel status to be work-related unless the worker was engaged in a significant departure from the purpose of the trip." *Black v. Tichenor*, 396 S.W.2d 794 (Ky. 1965)

Although the employee was en route to a personal errand, she was injured before she left the hotel, on her way to an excursion meant to last "for a few minutes," during a brief travel hiatus that was not within the employee's control.

Courts must not look solely to the employee's reason for deviating from the trip's purpose but also to the nature, length, and justification for the departure.

Election Law

KRS 118.124(2) requires a candidate applying for an office to file a notification and declaration containing the signatures of not less than two persons of the same Party. A candidate submitted her application with the required declaration. At the time of filing, however, one of the signatories was registered to a different Party. Several days after the filing deadline had expired, the signatory changed her Party registration. The candidate's opponent moved to disqualify her. The trial court declined to disqualify her, finding that she has substantially complied with the requirements of the statute.

Can a candidate for office comply with the signature requirements of KRS 118.125(2) by substantial compliance?

No. *Kulkarni v. Horlander*, 701 S.W.3d 181 (Ky. 2024)

The plain and unambiguous language of the statute requires those persons to be members of the party at the time they sign the notification. Statutory language "shall be signed…by voters of the same party" was "sufficiently explicit and unambiguous to require its literal application," and required strict compliance. *Barnard v. Stone*, 933 S.W.2d 394, 395 (Ky. 1996)

The Court's prior ruling in *Morris v. Jefferson Cnty. Clerk*, 729 S.W.2d 444 (Ky. 1987), reaching the same conclusion under similar facts, was not overruled by a subsequent change to KRS 188.124(2) removing the phrases "are" and "at the time of filing" in reference to the signature requirement. Looking to "legislative changes in the context of the amended statute as a whole," the Court concluded that the legislature intended to "retain the essential, substantive requirements of the prior law while simplifying the administrative procedure."

Family Law

When an offeree obtains a judgment that is less favorable than an offer of judgment made pursuant to CR 68, subsection (3) of the rule allows the offeror to recover costs incurred after making the offer.

Respondent in a child custody case filed for recovery for attorney's fees pursuant to CR 68(3). The family court denied the motion, finding that KRS 403.220 governs cost recovery in all family law matters.

Can a party seek attorneys fees under CR68 in a child support case?

No. *Picard v. Knight*, 701 S.W.3d 467 (Ky. 2024)

CR 68 as applied to custody and timesharing disputes is inconsistent with Kentucky's non-adversarial system of divorce because it encourages settlement by providing a financial incentive.

The fee-shifting statute, KRS 403.220, provides a framework based on the financial resources of both parties, and is consistent with the principles of fairness, financial equity, and the best interests of the children outlined in KRS 403.110. Trial courts can award attorneys fees under KRS 403.220, "in the court's sound discretion with good reason," rather than by application of mandatory fee reimbursements that are inconsistent with just disposition of family law matters.

Constitutional Law

KRS 100.3471, enacted in 2017, authorizes an appellee, upon motion to the circuit court, to impose on an appellant the requirement to post an appeal bond in cases involving zoning and land use disputes brought under Chapter 100. The circuit court has discretion only as to the amount of the bond. The statute dictates the penalty for failure to post bond as mandatory dismissal of the appeal.

A nonprofit historic preservation organization appealed from a decision of a planning commission approving the demolition of a structure listed as historic. The nonprofit claimed it could not afford to post the required bond. On appeal, the nonprofit argues that KRS 100.3471 is unconstitutional.

Is legislation requiring the appeal bonds and mandating dismissal in the event of a failure to post bond unconstitutional?

Yes. *Bluegrass Tr. for Historic Pres. v. Lexington Fayette Urb. Cnty. Gov't Plan. Comm'n*, 701 S.W.3d 196 (Ky. 2024).

KRS 100.3471 violates Ky. Const. § 115, which declares, "[i]n all cases, civil and criminal, there shall be allowed as a matter of right at least one appeal to another court." Requiring an appeal bond amounts to penalization of good faith assertions of legal rights.

The Court abrogated its holding in *Seiller Waterman, LLC v. Bardstown Cap. Corp.*, 643 S.W.3d 68 (Ky. 2022), to the extent that case held that cases originating as administrative actions were not "cases originating in our courts system" entitled to the appeal rights guaranteed by Section 115.

KRS 100.3471 is an unconstitutional attempt by the General Assembly to regulate appellate jurisdiction, which, under Ky. Const. § 116, falls solely within the province of the Kentucky Supreme Court. Section 111(2) of the Ky. Constitution is not in conflict with Section 115 and provides merely that the General Assembly may confer a statutory right of appeal in those instances where a constitutional right of appeal does not already exist.

Property Law

Neighborhood association and its constituent neighbors sued to challenge rezoning of property from residential to general business and to enforce restrictive covenants prohibiting any use other than farming. Property owner claimed neighbors had waived enforcement of the restrictions when they had previously failed to object to property owner constructing a commercial storage facility on the property.

Did the neighbors waive the right to enforce the restrictive covenants?

Yes. *RAZ, Inc. v. Mercer Cnty. Fiscal Ct.*, 706 S.W.3d 17 (Ky. 2024), reh'g denied (Dec. 19, 2024)

The right to enforce a restrictive covenant may be lost by waiver or abandonment. *Bagby v. Stewart's Ex'r*, 265 S.W.2d 75, 77 (Ky. 1954).

Prior acquiescence through inaction to construction of commercial storage units amounted to a permanent waiver of the covenant, which allowed only farming uses. Storage units were not passive residential or farming uses that did not affect the character of the neighborhood, but commercial uses allowing public access.

For the same reasons, the fiscal court's rezoning of the property was supported by substantial evidence of the changing physical and economic characteristics of the area.

Statutory Interpretation

KRS 457.050, as enacted in 2018, required a power of attorney to be signed by two disinterested witnesses. In 2020, the legislature amended the statute to remove the witness signature requirement. KRS 457.060, also originally enacted in 2018, provides a POA executed on or after July 14, 2018 is valid if its execution complies with KRS 457.050. KRS 457.460 makes chapter 457 applicable to POAs created before, on, or after July 15, 2020 but also makes chapter 457 inapplicable to (POA) acts done before July 15, 2020.

In April 2019, decedent executed a durable power of attorney appointing her daughter as her agent. POA was not signed by two witnesses as required by KRS 457.050. Her daughter signed documents admitting decedent to long term care facility and subsequently brought suit for damages against the facility on behalf of decedent's estate. The trial court held the POA was invalid because it did not comply with KRS 457.050 and that the 2020 amendment was not retroactive.

Was decedent's power of attorney valid?

No. *Wiley v. Masonic Homes of Kentucky, Inc.*, 694 S.W.3d 322 (Ky. 2024)

KRS 446.080(3) states, "[n]o statute shall be construed to be retroactive, unless expressly so declared." Courts may, however, construe statutes to have retroactive application without express declaration when they are absolutely certain the legislature intended such a result or when the substance of the statute is remedial in nature and no new rights or duties are created.

Inaction by the legislature in changing the words of KRS 457.060 "is a weak reed upon which to lean" and does not amount to a certain intention to make the statute retroactive.

Because under KRS 457.100 decedent's POA expired upon her death (less than a month before the amendment to KRS 457.050 became law), KRS 457.460 could not retroactively save an already invalid POA.

Torts

Plaintiff was injured when a vehicle left the parking lot and struck the business he was patronizing. Almost two years later, Plaintiff brought an action for negligence and punitive damages against the owner of the business. The trial court dismissed the suit as untimely under the one-year statute of limitations for personal injury claims. Plaintiff argued the two-year statute of limitations in the Motor Vehicle Reparations Act should apply to his claim.

Did the MVRA apply to Plaintiff's claims?

No. *T & J Land Co., LLC v. Miller*, 701 S.W.3d 380 (Ky. 2024)

While recovery under the MVRA is not limited only to the owner, operator or occupant of a motor vehicle, it does not extend so far as to provide recovery where neither the plaintiff nor the defendant were the owner, operator or occupant of the motor vehicle that caused the injury. Here, plaintiff made no allegations against defendant regarding the operation of a vehicle. Extending the MVRA to cover premises liability claims would be overly broad and not contemplated by the statute.

Plaintiff and her dog were attacked by a neighboring tenant's dog while out walking on the apartment grounds. Plaintiff was injured and her dog died from the attack. Plaintiff sued the landlord for negligence. Defendant landlord filed a motion to dismiss based on KRS 258.235(4), the strict liability dog-bite rule, arguing the property was not "owned and occupied" by the landlord. Plaintiff, who did not cite KRS 258.235 in her complaint, argued her suit could stand under general negligence theories. The trial court granted Defendant's motion to dismiss, and the Court of Appeals affirmed.

Was it error to for the trial court to dismiss Plaintiff's complaint?

Yes. *Deramos v. Anderson Communities, Inc.*, 709 S.W.3d 197 (Ky. 2025)

Common law negligence and statutory strict liability are two separate and distinguishable legal concepts with their own legal standards. KRS 258.235(4) does not replace common law negligence in dog bite cases but rather converts *part* of that doctrine to strict liability.

Plaintiff did not allege strict liability in her complaint, and it was error for the trial court to apply KRS 258.235(4) to dismiss her complaint. The statement in her complaint that landlord was negligent was sufficient to put defendant on notice that this was a suit for negligence, not strict liability.