COMMONWEALTH OF KENTUCKY
KENTUCKY SUPREME COURT
SUPREME COURT NO. 2011-SC-725

CITY OF FORT THOMAS — APPELLANT

KENTUCKY COURT OF APPEALS
CASE NO. 2010-CA-1072

v.

APPEAL FROM THE CAMPBELL CIRCUIT COURT
CASE NO. 09-CI-1145

CINCINNATI ENQUIRER
d/b/a KENTUCKY ENQUIRER — APPELLEE

APPELLANT'S BRIEF

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that true and correct copies of Appellant's Brief have been served via First Class U.S. Mail on this the 13 day of August, 2012, upon the following: Clerk of the Kentucky Supreme Court, New Capitol Building, Room 235, 700 Capital Avenue, Frankfort, KY 40601; Clerk of the Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, Kentucky, 40601; Hon. Fred A. Stine, Campbell Circuit Court, 330 York Street, Second Floor, Division 2, Newport, KY 41017; Paul Alley, Esq. Graydon Head & Ritchey LLP, 2400 Chamber Center Drive, Suite 300, Fort Mitchell, KY, 41017; and John Greiner, Graydon Head & Ritchey LLP, 1900 Fifth Third Center, 511 Walnut Street, Cincinnati, OH 45202.

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STATEMENT CONCERNING ORAL ARGUMENT

Since this is a case presents issues of first impression, Appellant believes oral argument is important, and will be helpful to the court in deciding the issues on appeal. Therefore, Appellant request oral argument.

STATEMENT OF POINTS AND AUTHORITIES

STATEMENT OF THE CASE

In June 2007, Cheryl McCafferty shot and killed her husband, Robert McCafferty, in the home they shared with their two teenage children in Fort Thomas, Kentucky. After conducting a criminal investigation, the City of Ft. Thomas Police Department arrested Cheryl McCafferty and charged her with murdering her husband. (R.A. 4) After the arrest, the City turned over its investigative file to the Commonwealth Attorney for use in the criminal prosecution of Mrs. McCafferty. (R.A. 109) The Commonwealth Attorney used some of the documents and evidence in the investigative file as trial exhibits and provided other documents and evidence from the file to Mrs. McCafferty's defense team during discovery.

Among the exhibits that the Commonwealth Attorney admitted into evidence at the trial were two videotapes. The first was generated by a police cruiser camera, and depicted the exterior of the McCafferty's home on the day of Mr. McCafferty's death. The second was made during a walk-through of the home on the day of the crime, and depicted the exterior and the interior of the home. (R.A. 104)

On March 9, 2009, a jury convicted Mrs. McCafferty of manslaughter in connection with Mr. McCafferty's death. (R.A. 4) Before the sentencing phase of her trial began, Mrs. McCafferty entered into an agreement with the prosecution regarding her sentence. The Campbell Circuit Court accepted the agreement and, on March 16, 2009, sentenced Mrs. McCafferty to serve 18 years in prison with the eligibility for parole after she had served twenty percent of that time. (R.A. 3 – 4, 10 – 11)

Mrs. McCafferty did not waive her right, under Kentucky Rule of Criminal Procedure 11.42, to ask the Court to vacate, set aside or correct her sentence at a later date. (R.A. 10 – 11) Therefore, under the law, Mrs. McCafferty retained the right to seek such relief at least three years after her sentencing, i.e. until March 16, 2012. (Ky. R. Crim. Proc. 11.42(10))

On March 16, 2009, the day that Mrs. McCafferty was sentenced, WCPO Channel 9 News submitted an open records request to the City of Fort Thomas ("the City") for all videotapes made during the police investigation of Mr. McCafferty's death. (R.A. 14) When it initially turned its file over to the Commonwealth Attorney, the City retained copies of the two videotapes. Therefore, in response to WCPO's open records request, the City provided copies of those videotapes to WCPO. (R.A. 16) In so doing, the City explained that footage depicting the interior of the house, including the bedrooms of the McCaffertys' two children, had been redacted from one of the videotapes, because the public disclosure of such footage would have constituted an unwarranted violation of the children's privacy, as contemplated by KRS 61.878(1)(a). (*Id.*; R.A. 13)

Thereafter, on April 6, 2009, the *Cincinnati Enquirer* ("the *Enquirer*") submitted a broad open records request to the City for "access to, and copies of, the investigation into Robert McCafferty's death." (R.A. 5, 14) Observing that Mrs. McCafferty retained the right to seek post-judgment relief through a Rule 11.42 Motion, the City concluded that the law enforcement action against Mrs. McCafferty was not yet complete. (R.A. 5, 17 – 18) Therefore, it denied the *Enquirer's* request. (*Id.*) In explaining its decision to the *Enquirer*, Ft. Thomas Police Chief Michael Daly wrote:

> Cheryl McCafferty has the right to file a motion, within three years of final judgment, under Rule of Criminal Procedure 11.42, to vacate, set aside or correct the sentence. Section (6) provides that "If it appears the movant is entitled to relief, the court shall vacate the judgment and discharge, resentence or grant him or her a new trial, or correct the sentence as may be appropriate."
>
> Therefore, your request is denied pursuant to the exemption to open records set forth in KRS 61.878(1)(h), which exempts records of law enforcement agencies until enforcement action is completed. Due to the right of a defendant to file a motion under Rule of Criminal Procedure 11.42, the action has not been completed.

Id.

Of course, KRS 61.878(1)(h) exempts from disclosure "records of law enforcement agencies ... that were compiled in the process of detecting and investigating statutory or regulatory violations, if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication."

In accordance with KRS 61.880(2), the Enquirer appealed the City's denial of its open records request to the Attorney General. (R.A. 7) Before the Attorney General, the City relied on *Skaggs v. Redford,* 844 S.W.2d 389 (Ky. 1992), for the proposition that its investigative file was exempt from disclosure under KRS 61.878(1)(h) because the law enforcement action against Mrs. McCafferty would not be complete until either she had served her entire sentence or her time for filing a Rule 11.42 motion had expired. *See* 09-ORD-104, p. 3. It also explained exactly how it would be prejudiced by the premature disclosure of any part of its file:

> There was no waiver by Cheryl McCafferty of her legal right to file a motion, within three years of final judgment (March 16, 2009), under Rule of Criminal Procedure 11.42, to vacate, set aside or correct the sentence. If she would file a motion and be entitled to relief, the court may grant her a new trial. In the event of a second trial, the law enforcement records would be essential to the new trial. Premature release of this information would be detrimental to the prosecution of this case. For example, there was considerable coverage in the news media regarding whether there was spousal abuse. At trial, the defense attorney did not assert this defense; however, this could be asserted in a new trial and any information contained in the law enforcement records, regarding abuse or lack thereof, would be essential to the prosecution of the case.

See 09-ORD-104, p. 3.

The Attorney General concluded that the City had correctly construed KRS 61.878(1)(h), and "ha[d] sufficiently, if briefly, explained the potential harm that would result from the release of its investigative file." *See* 09-ORD-104, p. 6. (Appendix No. 3) Thus, the Attorney General opined that the City had correctly denied the *Enquirer's* open records request with one exception. *See* 09-ORD-104, p. 6. Specifically, the Attorney General noted that the City had not

addressed the disclosure of the videotapes to WCPO and therefore had not articulated a basis for not disclosing those tapes to the Enquirer. Assuming that no such basis existed, the Attorney General opined that the City should have produced a copy of those videotapes to the *Enquirer*. *See* 09-ORD-104, p. 7.

Upon receipt of the ruling from the Attorney General, the City immediately produced copies of the videotapes to the *Enquirer*. And, just as it had when it provided the videotapes to WCPO, the City redacted footage from the videotape that depicted the interior of the house, including the bedrooms of the McCaffertys' two children. (R.A. 7, 13, 57)[1]

Dissatisfied with the Attorney General's decision and the redaction of the one videotape, the Enquirer appealed to the Campbell Circuit Court. On appeal, the parties addressed three issues: (1) whether KRS 61.878(1)(h) provided a basis on which to deny an open records request for an investigative file where a criminal defendant has been convicted and sentenced, but retains the right to challenge her sentence under Rule 11.42; (2) whether KRS 61.878(1)(a) provided a basis for redacting the footage of the McCafferty children's bedrooms; and (3) whether the City had willfully violated the Open Records Act by initially failing to produce the videotapes, such that the *Enquirer* was entitled to its costs and attorney fees. (R.A. 42 – 80, 82 – 98)

The Campbell Circuit Court ruled in favor of the City on all three issues. (See Appendix No. 2) With respect to the first issue, the Court concluded:

> This Court finds that because Cheryl McCafferty has not waived her right to file a collateral attack against her sentence under Ky. R. Crim. P. 11.42, law

[1] In the meantime, in June 2009, while the open records matter was pending before the Attorney General, the Campbell Circuit Clerk, who maintained possession of the trial exhibits, was inundated with requests from the media for trial materials. Because the Clerk did not have the resources to devote to responding to such requests, the Campbell Circuit Court ordered the City in June 2009, to retrieve trial materials from the Clerk and to display the items publicly so that members of the media could have access to them. It should be noted that the *Enquirer* was one of the media outlets that took advantage of the opportunity to view the trial materials. On that point, the *Enquirer* observed in one of its articles about the trial: "The physical evidence from the trial of Cheryl McCafferty will be available for review this afternoon at the police station. Officials decided to show off the evidence after numerous requests from media outlets, including 'Dateline NBC.'" (R.A. 98)

> enforcement action is not complete. Accordingly, the exemption claimed under KRS 61.878(1)(h) applies and the decision of the Attorney General concerning the police investigative file is affirmed based upon the plain meaning of the statue and the Kentucky Supreme Court's holding in *Skaggs*.

(R.A. 111)

> On the second issue, the court explained:
>
> The Court has reviewed the un-redacted footage of the interior of the McCafferty home and finds that the City is permitted to withhold the redacted footage of the interior of the McCafferty home under KRS 61.878(1)(a) due to the privacy interests of the minor children, who under the facts of this case, are also victims of the crime. The video depicts footage of the bedrooms of the minor children and the personal effects contained therein. The crime did not occur in either bedroom. Further, a child's bedroom is clearly a very personal space given that it is their refuge within in the home. To release the video footage of the innocent children's bedrooms in light of the facts of the McCafferty case for the sake of giving the public an eye into the crime scene constitutes a clearly unwarranted invasion of privacy. ...
>
> Finally, there is no depiction of the police investigating the crime scene. It is simply a walk-through of the interior of the house which ultimately culminates in the bedroom where the lifeless body of Robert McCafferty was found. There is no footage of detectives doing any analysis, evidence collection, interviews or any type of investigative work. ...
>
> After balancing the privacy interest of the minor children and other family members against the public's interest in viewing the footage of the interior of the home, there is no reason that [the *Enquirer*] should be entitled to receive the un-redacted video of the interior of the home. The privacy interest of the victim children and family far outweigh the public's interest in viewing the crime scene.

(R.A. 107 – 108)

Finally, the Circuit Court found that the City did not act in bad faith in failing to initially produce the videotapes or in redacting the videotape when it was produced. Therefore, the Court concluded that the City did not "willfully" withhold the videotapes and was not liable for the *Enquirer's* costs or attorneys fees. (R.A. 108 – 109)

The Enquirer appealed the trial court's decision to the Court of Appeals, which affirmed the trial court's decision on the propriety of redacting the videotape. (Court of Appeals Opinion

at p. 14 – 16) (Appendix No. 1) However, in a 2-1 decision, the Court of Appeals, reversed the trial court on the other two issues.

First, the Court ruled that the City should have disclosed the entire investigative file to the *Enquirer* when the *Enquirer* initially sought the file in April 2009. In making that ruling, the Court of Appeals generally agreed with the City's interpretation of *Skaggs,* but nevertheless ruled against the City. The Court's ruling was based on its erroneous interpretation of an issue of first impression, i.e. what constitutes "harm" by the "premature release" of a law enforcement investigative file; on the Court's impermissible factual finding that the City would not be harmed by the premature release of the file; and, on the Court's erroneous application of *Skaggs*, in which this Court clearly held that a law enforcement agency's investigative file is exempt from disclosure under KRS. 61.878(1)(h) until the criminal prosecution of the subject is complete. (Court of Appeals Opinion at p. 5 – 12)

In addition, the Court of Appeals ruled that the City's decision to withhold the file was willful based on the fact that *another agency*, i.e., the Commonwealth Attorney, had already disclosed some of the contents of the City's police file by making some of the contents trial exhibits and by disclosing some of the contents to Mrs. McCafferty's defense lawyers. (Court of Appeals Opinion at p. 12 – 14) That decision is particularly unjust in light of the fact that the City had a good faith basis, founded on *Skaggs* and on KRS 61.878(1)(h), for determining that the file was exempt. More importantly, the decision will have onerous implications for law enforcement agencies throughout the Commonwealth. As a consequence of the Court of Appeals' decision, law enforcement agencies that turn their investigative files over to prosecutors must now undertake the impractical, costly, and time consuming duty of monitoring the prosecutor's decisions on the use and disclosure of the documents in those files.

Of course, on March 12, 2012, after the Court of Appeals rendered its decision, the City's basis for withholding the police investigative file came to fruition: Cheryl McCafferty challenged her conviction by filing a Motion for Relief Pursuant to Criminal Rule 11.42. (*See* Supplemental Record, ordered to be filed by this Court on June 13, 2012)

ARGUMENT

I. THE COURT OF APPEALS MISAPPLIED *SKAGGS*, WHICH DEMANDS A CONCLUSION THAT THE POLICE INVESTIGATIVE FILE WAS EXEMPT FROM DISCLOSURE UNDER KRS 61.878(1)(h)

KRS 61.878(1)(h) provides, in relevant part:

> The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction …
>
> (h) Records of law enforcement agencies … that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. … [P]ublic records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action. …

Because KRS 61.878(1)(h) only exempts law enforcement investigative records until such time as the enforcement action is "complete," the main question presented by this Open Records appeal was whether or not the prosecution of Mrs. McCafferty was complete at the time the request was made. This was a simple question in light of this Court's holding in *Skaggs v. Redford,* 844 S.W.2d 389 (Ky. 1992) that a law enforcement action is *not* complete merely because a person has been tried, convicted, and has exhausted all of his appeals.

The convict in *Skaggs* was found guilty of murder and sentenced to death. His conviction was affirmed on direct appeal to the Kentucky Supreme Court, and he had no further avenues for appealing his conviction. Thus, he contemplated filing a petition for *habeas corpus* in federal court, and began to gather information to use in his petition. As part of that process, the convict

made an open records request of the agency that had prosecuted him, seeking all records in the agency's possession relating to his prosecution. The agency denied his request, contending that the prosecution was not complete within the meaning of KRS 61.878(1)(g) (which has since been renumbered to KRS 61.878(1)(h)). The convict appealed the agency's denial of his request arguing – much like the *Enquirer* in this case – that the law enforcement action was complete because he had been convicted and sentenced, and was entitled to no further appeals. *Id.*

Even though the convict had been convicted and sentenced and had no further appeals available, the Kentucky Supreme court ruled that the law enforcement action against the convict was not "complete" within the meaning of the applicable exemption because of the possibility that that convict *might* file a *habeas corpus* action. The Court said:

> ... we agree with the Commonwealth that the exemptions in the Open Records Act should be construed in a manner sufficiently broad to protect a legitimate state interest, and that *the state's interest in prosecuting the appellant is not terminated until his sentence has been carried out.* ... The Attorney General will be called upon to represent the Commonwealth in future litigation which is the underlying purpose of the appellant's present discovery efforts ... A common sense approach dictates that the defense of the prospective habeas corpus proceedings is part of the "law enforcement action" in the appellant's case. We agree with the appellee that the records fall squarely within the provisions of KRS 61.878(1)(g), and as such, they are "public records exempted under this provision [until] after enforcement action is completed."

Id. at 390.

In other words, the Court concluded that the law enforcement action against the convict was not complete within the meaning of KRS 61.878(1)(h) because the convict's sentence had not been carried out and he could file further judicial proceedings to challenge his conviction and sentence. As a result, the Court ruled that the records he had requested were exempt from disclosure under KRS 61.878(1)(h).

Likewise, the law enforcement action against Mrs. McCafferty was not complete at the time the request was made because her sentence had not been carried out and she retained the

legal right under Criminal Rule 11.42 to challenge her sentence. In fact, Mrs. McCafferty *did* file a Motion for Relief Pursuant to CR 11.42, such that the law enforcement action against her is *still* not complete. (Supplemental Record) The Court of Appeals recognized that such a challenge was possible. Consequently, based on *Skaggs*, the Court of Appeals should have ruled that the City's investigative file was exempt from disclosure under KRS 61.878(1)(h). Instead, the Court of Appeals ruled that the City had an obligation to turn over its entire investigative file to the *Enquirer*, ignoring the precedent set by this Court in *Skaggs*. That was error, plain and simple.

II. THE RELEASE OF A LAW ENFORCEMENT INVESTIGATIVE FILE PRIOR TO THE COMPLETION OF CRIMINAL PROSECUTION *IPSO FACTO* CONSTITUTES "HARM"WITHIN THE MEANING OF KRS 61.878(1)(h)

Under the Open Records Act, KRS 61.878(1)(h) exempts from disclosure "records of law enforcement agencies ... that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication."

The statute itself plainly defines the type of "harm" that justifies reliance on the exemption. Police investigative files are not subject to disclosure if their disclosure would (1) reveal the identity of informants not otherwise known or (2) prematurely release information to be used in a prospective law enforcement action or administrative adjudication. Either of those two scenarios constitutes "harm" within the meaning of KRS 61.878(1)(h). In short, if the disclosure would reveal the identity of an informant or would prematurely release information to a person who might be the subject of a future law enforcement action, harm is conclusively presumed.

That interpretation of KRS 61.878(1)(h) is fully supported by *Skaggs, supra.* There, this Court only inquired as to whether the criminal proceedings against the subject were complete. Once it determined that the criminal proceedings were not complete, this Court logically presumed that the release of the investigative file was premature, that the law enforcement agency in question would be harmed by the release, and that if the file was exempt from disclosure under KRS 61.878(1)(h).

In the present case, the Court of Appeals concluded that the City would not have been harmed by releasing its investigative file in April 2009, despite recognizing that Mrs. McCafferty's criminal prosecution was not complete at that time. In the Court of Appeals' estimation, the fact that Mrs. McCafferty's criminal prosecution was not complete was not enough to establish that the City would be harmed by release of the file.

Rather, the Court of Appeals read a burden into the statute that the statute's language does not support by requiring proof of *additional* harm. The Court of Appeals set about attempting to define "harm" and "premature release," apparently believing that "there are no guidelines contained in the statutes about what constitutes 'harm' or 'premature release' of information." (Court of Appeals Opinion at p. 9 – 12) Ultimately, the Court of Appeals looked to the Freedom of Information Act. Drawing from the federal statute, the Court of Appeals concluded that the types of harm sufficient to justify reliance on KRS 61.878(1)(h) were "interference with enforcement proceedings, deprivation of a fair trial, identity of a confidential source, and circumvention of the law." (Court of Appeals Opinion at p. 11 – 12) Because the City had not offered one of these explanations to the *Enquirer* when denying the *Enquirer's* request, the Court of Appeals ruled that the City failed to establish that it would be harmed by the premature disclosure of the file.

The Court of Appeals erred in failing to recognize that the release of a law enforcement investigative file prior to the completion of a criminal proceeding is, by definition under KRS 61.878(1)(h), premature and harmful to the law enforcement agency.

III. THE COURT OF APPEALS' DECISION IMPOSES AN ONEROUS AND IMPRACTICAL DUTY ON LAW ENFORCEMENT AGENCIES THAT WAS NOT INTENDED BY KRS 61.878(1)(h)

The Court of Appeals also found that the City had "willfully" violated the Open Records Act, such that the *Enquirer* was entitled to recover attorney fees and costs. The Court felt that the City should have released "any materials which had been previously released. Such materials would have included whatever was previously released to other media sources and whatever had been made public during trial by means of discovery or trial exhibits." (Court of Appeals Opinion at p. 13) In effect, the Court ruled that once the City turned its investigative file over to the Commonwealth Attorney, the City had a duty to monitor any and all disclosures made by the Commonwealth Attorney during the course of discovery and trial, and to provide the *Enquirer* with whatever documents had been disclosed by the Commonwealth Attorney to the public (in the form of trial exhibits) or to the defense team (in discovery) in response to its Open Records request.

The ramifications of that ruling are enormous. Local police departments and sheriff's offices initiate an untold number of criminal investigations every year. They turn many of those investigations over to the Commonwealth Attorney or the County Attorney so that a suspect may be prosecuted. The Court's ruling would require local law enforcement agencies to track prosecutor's action in every one of those cases, to stay abreast of which documents from the investigative file the prosecutor is disclosing through discovery and trial, so that, should the police department or sheriff's office receive an Open Records request, it will know which documents it must release and which it may withhold. If they do not take those steps, the police

departments and sheriff's offices will be subject to a determination that they have "willfully" withheld documents in violation of Open Records laws.

There is no indication in statute or case law that such a duty was ever contemplated by the drafters of the Open Records Act. Indeed, no other court has ever imposed such a duty on law enforcement agencies. Not only will the duty imposed on law enforcement agencies by the Court of Appeals be impractical to implement, but the resources of police departments and sheriff's offices are limited. The imposition of such a duty will strain their resources beyond measure, forcing law enforcement agencies to spend inordinate amounts of time tracking documents when they could spend that time on the purposes for which they were created – the protection of citizens through the prevention of crime and the apprehension of criminals.

Because the Open Records Act does not contemplate the type of duty the Court of Appeals has imposed on law enforcement agencies, and because such a duty would unduly burden those agencies, the City respectfully requests the Court make clear that no such duty exists, by ruling that the City did not "willfully" violate KRS 61.878.

IV. ASSUMING, *ARGUENDO*, THAT THE LAW ENFORCEMENT INVESTIGATIVE FILE WAS SUBJECT TO DISCLOSURE UNDER THE OPEN RECORDS ACT, THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN FINDING THAT THE CITY OF FORT THOMAS DID NOT WILFULLY VIOLATE THE ACT.

Assuming *arguendo* that this Court departs with its previous ruling in *Skaggs* and holds that the City's investigative file is subject to disclosure under the Open Records Act, the Court of Appeals erred in finding that the Circuit Court abused its discretion when it found the City had not "willfully" violated KRS 61.878.

The Court of Appeals ruled that the Circuit Court abused its discretion in finding that the *Enquirer's* request was vague. (Order, p. 14). As grounds, the Court of Appeals observed that all

of the documents which were made public during the trial were put on display and known to all parties. As a result, the court concluded that the request was not vague as a matter of law. (*Id.* at 14). Unfortunately, the Court of Appeals misinterpreted the Circuit Court's findings. The Circuit Court found that the City did not willfully violate KRS 61.878, but not because the *Enquirer's* request was vague. To the contrary, the Circuit Court found the City was reasonable in assuming the *Enquirer* already had access to the documents.

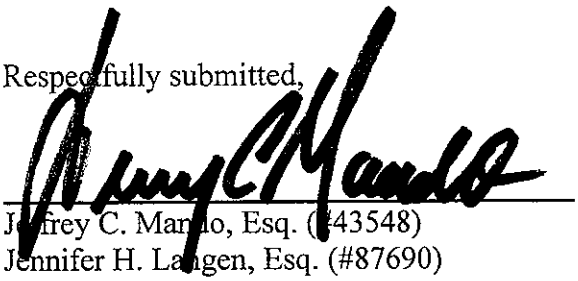
The Campbell Circuit Court found that the documents requested by the *Enquirer* were available through the police department and the Circuit Clerk. (R.A., p. 104) Additionally, the Court noted the information was put on display for the various media outlets and that notice was published in the *Enquirer* on June 4, 2009. (R.A. at 105) Consequently, the Circuit Court found that it was reasonable for the City to assume that the *Enquirer* had access to these documents and therefore was under no duty to produce them. (R.A. p. 104)

The abuse-of-discretion standard defers to the trial court's choice among reasonable possibilities, even where the appellate court might have chosen differently. *Elery v. Commonwealth*, 368 S.W.3d 78 (Ky. 2012). In this case, it was not unreasonable for the Circuit Court to find that the City's failure to disclose the investigative file was not "willful." Indeed, it was entirely was certainly reasonable for the City to assume the *Enquirer* had access to the documents already introduced at trial as those documents were put on display. Consequently, the Circuit Court did not abuse its discretion and its finding that the City's failure to disclose those documents was not "willful" should be upheld.

CONCLUSION

In light of the foregoing, Appellant, the City of Fort Thomas, respectfully requests that the Court reverse the decision of the Court of Appeals and reinstate the ruling of the Campbell Circuit Court.

Respectfully submitted,



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APPENDIX

1. Court of Appeals Opinion
2. Trial Court Opinion
3. Attorney General Opinion