

Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

January 2016

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Comprehensive Statewide Jury Verdict Coverage

Civil Jury Verdicts

Complete and timely coverage of civil jury verdicts including circuit, division, presiding judge, parties, case number, attorneys and results.

Civil Rights - A school counselor was falsely accused of sodomizing an elementary school student – the investigating detective secured an arrest warrant for the counselor (essentially ruining the counselor’s professional career) despite an absence of evidence – a federal jury assessed punitive damages of \$500,000

Wesley v. Covington Police, 2:10-51

Plaintiff: Paul J. Hill, Ft. Mitchell

Defense: Jeffrey C. Mando, *Adams*

Stepner Woltermann & Dusing,

Covington

Verdict: \$1,089,000 for plaintiff

Federal: **Covington**, J. Bunning,
12-10-15

Richard Wesley worked as a school counselor in 2009 for the Sixth District Elementary school in Covington, KY. That February a student, Jaheem Scott, age 7, accused Wesley of inappropriate sexual conduct. Initially Jaheem indicated Wesley had fondled him but as time passed, Jaheem’s story shifted. The boy would later recall that Wesley had anally sodomized him.

Wesley was suspended from his school position and a police investigation began. It was led by Joanne Rigney, a detective for the Covington Police. She interviewed the boy and sent him for a medical exam. It showed no evidence of sexual abuse.

Relying on this evidence, Rigney went to a magistrate and secured a warrant for Wesley’s arrest on a charge of Sexual Abuse in the First Degree. He was arrested at home and taken to jail. Wesley was let out later that day on a \$5,000 cash bond.

Thereafter the criminal case was submitted to a grand jury in the summer. By this time Jaheem’s mother (Meisha Diarra) no longer wished to prosecute. The grand jury returned a No True Bill. The entire episode left Wesley devastated. He’d lost his job at the school and his career was in shambles. Wesley has since left the area and has claimed he is unable to return to education because of post-traumatic stress.

In this lawsuit Wesley sued the police and alleged Rigney lacked probable cause to secure the arrest warrant. Importantly Jaheem’s version

was not reliable and Rigney’s investigation was deficient. Notably the medical exam was not suggestive of abuse and Wesley was never even interviewed.

Besides the unlawful arrest count, Wesley presented an alternative retaliation claim. Child Protective Services had been pursuing its own investigation and issued an initial report substantiating abuse. Wesley appealed that report and it was his alternative theory that Rigney sought his arrest because of his appeal of that report. The arrest occurred a few days after the appeal. If Wesley prevailed he sought compensatory and punitive damages.

Initially the trial judge granted summary judgment for the police on the grounds of qualified immunity. The Sixth Circuit reversed and the case returned for trial.

The police defended on the merits

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Kentucky Trial Court Review

January 2016

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that Jaheem's version was credible and included significant descriptive detail. In Rigney's judgment, Jaheem did not seem coached and his version was well-articulated. The defense also discounted the lack of evidence in the medical exam, explaining that is common in these cases.

This case was tried for four days. The jury found for Wesley on the unlawful arrest count, specifically answering for him that Rigney, (1) lacked probable cause to secure the arrest warrant, (2) omitted material facts in the warrant application, and (3) acted intentionally, deliberately or with reckless disregard.

The jury rejected the retaliatory arrest count. Then to damages

Wesley took lost wages of \$132,000 and \$7,000 more for legal expenses. His past pain and suffering was \$300,000 and he took \$150,000 for in the future. Finally the jury assessed \$500,000 in punitive damages. The verdict for Wesley totaled \$1,089,000 and a consistent judgment was entered by the court. The plaintiff has since moved for an award of attorney fees.

Read the complete *Wesley v.*

Covington jury verdict at the following link:

[Wesley v. Covington Jury Verdict](#)

Ed. Note - Readers will observe we've made some changes to the KTCR in 2012. We will begin to add images and other media to what has previously been a "text-only" publication. That will include images of evidence, jury verdicts, the parties or anything else that brings color to a story. We are also publishing links to documents from cases including opinions, verdicts, instructions and whatever else might be interesting. The links will almost always be to an our website and a PDF document. We hope you enjoy the additions to the publication.

Dental Negligence - The plaintiff blamed her of dentists for error in breaking part of a screw while installing a dental implant and then failing to promptly remove it

Hess v. King et al, 11-989

Plaintiff: Winter R. Huff, *Attorney Services of Kentucky*, Monticello

Defense: Melanie S. Marrs, *Fulkerson Kinkel & Marrs*, Lexington

Verdict: Defense verdict on liability

Court: **Pulaski**, Special Judge Gregory Lay, 9-24-15

Lura Hess, a college student, was born without incisors. A dental remedy is generally taken when a person is fully grown. Hess consulted with her long-term treating dentist, Dr. Katherine King, about resolving this situation in the fall of 2010. Dental implants were the solution.

The first implant was installed without incident by King's colleague, Dr. Richard Connelley. As Connelley installed the implant (10-1-10) on the other side, a screw broke off. One part of the screw fell into his hand. The other half of the screw remained in Hess's mouth. Connelley could not remove it.

Thereafter Hess treated with King. King failed to remove the screw fragment. Hess continued to report irritation and pain in her mouth. She lost faith with King and consulted with a Louisville dentist, Dr. Stephen Remmers. Remmers took an x-ray and was able to identify and ultimately remove the fragment in February of 2011.

In this lawsuit Hess sued both King and Connelley regarding the screw fragment snafu. She first blamed Connelley for breaking off the screw and then leaving the foreign object fragment in her mouth. Hess was also critical of King for failing to promptly identify and



Melanie Marrs

remove that foreign body.

Hess identified Remmers as her liability expert. However in his deposition Remmers was clear he was not identifying any standard of care violation. The defendants thus moved for summary judgment and cited the plaintiff's failure to produce expert medical proof.

Hess countered that while not explicitly identifying a standard of care violation, they could be inferred from his testimony. Notably King had not performed a post-implant x-ray which he identified as being compliant with the standard of care. Hess also argued alternatively that even in the absence of expert proof, this foreign body case was a classic *res ipsa loquitur* presentation. Judge Lay was persuaded and denied King's motion.

The case then advanced to a jury trial. If Hess prevailed she could be awarded pain and suffering of up to \$100,000. That suffering was specifically limited in the instructions from the date of the initial implant until the screw's removal the next February. Hess had also sought punitive damages

predicated on the defendants having purportedly concealed the problem from her. The court directed a verdict for the defendants on this count.

Connelley defended that the broken screw was just a complication that may have been related to a defect with the screw. King further defended that her response to the broken screw was reasonable. A defense expert was Dr. Brian Alpert, Oral Surgery, Louisville.

This case was tried in Somerset for three days. The jury's verdict was for both King and Connelley that they had not violated the reasonably competent dentist standard. Had the jury answered "yes" as to either defendant, it would have then separately considered causation. The initial "no" verdict ended the deliberations and Hess took nothing. A defense judgment closed the case. **Read** the complete *Hess v. King et al* jury verdict at the following link:

[Hess v. King Verdict](#)

Auto Negligence - A bicyclist suffered a tibial plateau fracture when struck by a motorist – a Louisville jury awarded the plaintiff pain and suffering damages (\$75,000) that were nearly double her medical bills

Taylor v. Rapp, 14-2907

Plaintiff: Sam Aguiar and Jonathan B. Hollan, *Aguiar Injury Lawyers*, Louisville

Defense: Peter J. Sewell, *Sewell O'Brien & Neal*, Louisville

Verdict: \$196,651 for plaintiff less 45% comparative fault

Court: **Jefferson**, J. Eckerle, 12-16-15

Jamelle Taylor, then age 32 and working as a temp, was riding a bicycle on a sidewalk adjacent to Shepherdsville Road on 1-19-15. He left the sidewalk and attempted to cross Bashford Avenue. A moment later he was struck by a motorist, John Rapp.

Taylor recalled that he had seen Rapp at a stop sign some 20 feet from the location of the impact. He believed he had the right of way. Rapp for his part never saw Taylor before striking him.

However it happened Taylor was struck hard and sustained a minimally displaced tibial plateau fracture. It was surgically repaired. Taylor incurred medical bills of \$38,151 and he sought \$107,500 more for future care.

In this lawsuit Taylor sought damages from Rapp. Beyond his medicals he sought lost wages of \$8,500. The jury could award \$483,485 for impairment as quantified by a vocational expert, Sara Ford. The instructions limited his past suffering \$145,000. He could take double that sum in the future.

In developing his liability proof, Taylor relied on an accident expert, Rob Miller, Taylorsville, who



Sam Aguiar

implicated Rapp for (1) failing to yield, and (2) not appreciate the bicyclist who was in his plain view of sight.

Rapp defended first on liability and blamed Taylor for pulling into his path. His accident expert was Steve Grundhoefer, Engineer, Evansville, IN. He also diminished the severity of the claimed injury with an IME expert, Dr. Frank Bonnarens, Orthopedics, Louisville.

This case was tried for six days. As the jury deliberated

it had a question for Judge Eckerle: How will apportionment of fault affect what is awarded to the plaintiff? The court replied that the jury should award damages without regard for fault.

The jury returned with a verdict that was mixed on fault. It was assessed 55% to Rapp and the remainder to Taylor. Taylor then took his medical bills as claimed plus \$50,000 for future care.

The jury added lost wages as claimed and \$25,000 for impairment. He took \$50,000 for past suffering and \$25,000 more for future care. The raw verdict totaled \$196,651. A consistent judgment less PIP and comparative fault was entered.

Taylor had also presented a bad faith claim against Rapp's insurer. The claim was bifurcated. That claim will now proceed.

VERDICT FORM B

We, the Jury, find for Plaintiff, Jamelle Taylor, under these instructions and award him

the following damages:

| | | |
|---|---|-------------------------|
| A. | Past medical expenses (not to exceed \$38,151.15, the amount claimed); and/or | \$ 38,151.15 |
| B. | Future medical expenses (not to exceed \$107,500.00, the amount claimed); and/or | \$ 50,000 ⁰⁰ |
| C. | Lost wages (not to exceed \$11,580.00, the amount claimed); and/or | \$ 8,500 ⁰⁰ |
| D. | Future lost wages (not to exceed \$483,845.00, the amount claimed); and/or | \$ 25,000 ⁰⁰ |
| E. | Past pain and suffering (not to exceed \$145,000.00, the amount claimed); and/or | \$ 50,000 ⁰⁰ |
| F. | Future pain and suffering (not to exceed \$290,000.00, the amount claimed). | \$ 25,000 ⁰⁰ |
| TOTAL (not to exceed \$1,076,076.16, the amount claimed): | | \$ 196,651.15 |

Jurors if not unanimous:

1. [Signature]
2. [Signature]
3. [Signature]
4. [Signature]
5. [Signature]
6. [Signature]

FOREPERSON (if unanimous)

7. [Signature]
8. [Signature]
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11. _____

DATE: 12/16/2015

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Kentucky Trial Court Review

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Verdict _____

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Police Negligence/Conspiracy

The estate of a sheriff's candidate alleged he was murdered at the direction of a political rival – the jury found against a deputy sheriff who facilitated the murder but exonerated his boss the then-sitting sheriff

Browning v. Harlan County Sheriff,
10-445

Plaintiff: Brad C. Freeman, Todd K. Childers and Aaron M. Howard,
Freeman & Childers, Corbin

Defense: Michael J. Schmitt and Jonathan C. Shaw, *Porter Schmitt Banks & Baldwin*, Paintsville and

Kellie Wilson, Harlan for Sheriff Dunn

Danny Lee Lunsford, Jr., *Howard Law Office*, Harlan for Deputy Roger Hall
Verdict: \$31,080 for plaintiff against Deputy Hall with fault assessed 50% to decedent and Hall; Defense verdict on liability for Sheriff Dunn
Court: **Harlan**, Special Judge Robert McGinnis, 12-14-15

Paul Browning Jr. served as the Harlan County Sheriff in the early 1980's. While still in office he was convicted of conspiring to attempt to murder political rivals (a school board member and a magistrate). He

continued to operate his office from jail until he was removed by Governor John Y. Brown, Jr. Browning was later paroled in 1985.

Browning sought to reenter public life in 2002 and serve again as the Harlan County Sheriff. He announced his candidacy in February and intended to challenge the then-sitting Sheriff Steve Dunn.

This announcement was a real problem for one of Dunn's deputies, Roger Hall. Hall it seems was crooked and was working in concert with a local drug dealer. The thinking was that if Browning won

the election, Hall's chicanery would be interrupted.

Hall first thought the easiest solution was to just bring Browning into the scheme. Hall secretly recorded Browning indicating he would accept a bribe. Hall intended to rely on that recording to blackmail Browning if the need arose.

Despite having that bargaining chip in hand, Hall didn't feel secure enough in his position. He is alleged to have made a decision to assassinate Browning. Hall hired the uncle of a local drug dealer to do the deed for \$1,000. Browning was lured to a secluded location in nearby Bell County where he was shot and killed. Browning was 57 at the time of his death. His body and burnt-out truck were discovered days later.

It would be several years later in 2009 that the plot was discovered. Hall pled guilty in state court to a charge of facilitation to commit murder.

A year later the Browning estate sued Hall and alleged his conduct in orchestrating the murder fell short of the reasonably competent deputy sheriff standard. The estate also alleged the shooting was done in the furtherance of the sheriff's office.

Beyond that claim against Hall, the estate also targeted Sheriff Duff. It suggested that Duff had been involved in the planning and execution of the assassination plot. The sheriff and his deputy moved for summary judgment on the basis of sovereign immunity and the then-presiding Roderick Messer denied the motion based on KRS 70.040.

The defendants took an interlocutory appeal. The Court of Appeals affirmed Judge Messer in a February 2013 non-published opinion rendered by Judge Taylor. The Kentucky Supreme Court denied discretionary review.

The case returned to Harlan for



Michael Schmitt

trial. If the estate prevailed it sought Browning's burial expense of \$6,080 and \$1,477,000 for his destruction. The jury could also assess punitive damages against Hall. Interestingly while the case implicated a plot to assassinate, the suit as it went to the jury was framed in terms of negligence. The plaintiff's proof burden was only that the defendants failed to comply with the standard of care.

Hall, who had already admitted his involvement in the matter, defended the case as well as he could. Duff for his part denied any involvement in the plot. He described himself as a diligent sheriff. In fact he had never actually hired Hall in the first place, Hall having been inherited from the prior administration. Moreover just a few months after Browning's murder (and before Hall's involvement was known), Duff had fired Hall because of an illicit affair with the drug dealers' wife. The estate countered that the murder was premeditated and that even if Duff wasn't the mastermind, he was aware of what

was happening.

The case was later assigned to Special Judge Robert McGinnis who tried it to a jury. On motion of the parties the case was heard in nearby Whitesburg before a panel of Letcher County residents.

The jury's verdict in Whitesburg was mixed. The construction of the instructions was peculiar too. The first question to the jury asked if the plaintiff violated the standard of care. The jury answered that he had.

It next answered that Deputy Hall violated the deputy sheriff standard of care. However it rejected an additional query that asked if he acted in the furtherance of the sheriff's office. Importantly the jury further rejected that Sheriff Duff had acted negligently. Having so found the sheriff's office was exonerated.

The jury continued to comparative fault, the claim still viable against Hall. It assessed fault equally to the decedent and Hall. Then to damages Browning's estate took the funeral bill as claimed. Any award for destruction or pain and suffering was rejected. The jury finally imposed punitive damages of \$25,000 against Hall. A consistent judgment reflected the mixed verdict.

Read the following documents from *Browning v. Duff*:

[The Original Complaint](#)

[The Court of Appeals Opinion](#)

[The Jury's Verdict](#)