RENDERED: NOVEMBER 13, 2026; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-1494-MR

DAVID POLK — APPELLANT

v.

APPEAL FROM FULTON CIRCUIT COURT
HONORABLE TIMOTHY A. LANGFORD, JUDGE
ACTION NO. 25-CR-00067

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
VACATING AND REMANDING

** ** ** ** **

BEFORE: CETRULO, EASTON, AND L. JONES, JUDGES.

EASTON, JUDGE: We have yet another appeal about per diem jail fees from the 1st Judicial Circuit.[1] We vacate and remand.

A search of this circuit and the phrase "jail fees" reveals over two dozen appeal decisions. We will not speculate about what kind of "contest" this may reveal among the Commonwealth, the Department of Public Advocacy

[1] This circuit is composed from north to south of Ballard, Carlisle, Hickman, and Fulton counties in far western Kentucky bordering the Mississippi River.

(DPA), and the court, but it is time for it to end. We will use brevity this time for focus and get straight to the point. Anyone wishing to study the history of the issue can look at the many prior cases.

We incarcerate a lot of people in Kentucky, and that gets expensive. The General Assembly enacted Kentucky Revised Statutes (KRS) 441.265(1)(a) which *mandates* reimbursement by prisoners for the costs of their confinement (unless some amorphous "good cause" is shown not to do so). This is accomplished by the jailer adopting a policy which is approved by the county's governing body (here the fiscal court). One of the items allowed is per diem cost of confinement. KRS 441.265(2)(a)2.

DPA clearly dislikes this law. They represent indigent defendants who cannot afford to hire attorneys much less pay per diem for being jailed. On the other hand, the argument for accountability sounds great, especially in the political arena: "Make the criminals pay the costs of their own confinement rather than the taxpayers." But the courts are not here to agree or disagree with these competing policy arguments. We are here to make sure a valid law is properly enforced.

One of the many cases out of the 1st Judicial Circuit is *Ford v. Commonwealth*, 709 S.W.3d 203 (Ky. 2025). The Court in *Ford* reiterated the requirement of "some evidence" of the jailer's policy and approval of that policy

by the county. *Id*. at 206. A stipulation by a defendant does not suffice. *Id*. at 204.

Over three years ago, this Court (with the same presiding judge) vacated a per diem award in another case from the 1st Judicial Circuit with directions for how this issue could easily be addressed without a significant burden on anyone involved. *Frazier v. Commonwealth*, Appeal No. 2022-CA-0484, 2023 WL 1485344 (Ky. App. Feb. 3, 2023). The Court in *Ford* also suggested the Commonwealth should make sure the required documentation becomes part of the record.

This time, the circuit court adhered to these suggestions to some degree and made sure to include a copy of the jailer's policy and an ordinance approving that policy. Polk (or rather DPA) now points out that the ordinance filed in this case is outdated; it applied only to the county's fiscal year of 2022-2023. Yet the jailer's policy predates that year, is still in effect, and asserts without contradiction in this record that the current per diem is still $20.

Frankly, this record should suffice to permit the imposition of the fees. There is no reason to assume the per diem stated by the jailer has changed. If it had, we could think of no valid reason why this could not have been addressed by motion within ten days of the entry of the sentencing orders rather than the time

and expense of yet another appeal. All that would have been needed was to file a copy of any new ordinance by the county for the year in question.

On the other hand, as our experience with prior cases shows us, the fees change from time to time, and it could be argued that the better practice would be for the record to show approval by the county for the period of incarceration involved in the case. We have decided to vacate and remand this case with very specific directions to put an end to this waste of judicial resources through repetitious appeals.

To impose jail fees, the Commonwealth must present a copy of the jailer's policies and a copy of the official act of the county's fiscal court which approved that policy for the period of the incarceration at issue. Again, the Kentucky Rules of Evidence (KRE) do not apply to the sentencing hearing before the judge. KRE 1101(d)(5). There is no need for testimony about the policy or ordinance – no need for any stipulation. Given that these items are easily confirmable, any defense challenge to them would border on bad faith, absent some extraordinary circumstances not presented by this case.

The Commonwealth (whose attorney represents the same circuit of counties) could easily obtain copies of the jail policies for each county and current ordinances approving them for the time of any given defendant's confinement. The Commonwealth could keep a stack of such documents in the courtroom to

tender copies at each sentencing. As part of the pre-sentencing procedure, when the number of custody days is being ascertained anyway, the jailer could be asked to provide a ledger sheet or similar summary of what reimbursable items are being claimed. That is probably just a matter of printing out something from a computer program used by the jailer. We are talking about a matter of seconds to just submit this information for each case at the sentencing hearing itself.

For the reasons stated, we VACATE and REMAND for the required documentation for the imposition of the jail fees. It could be that Fulton County failed to approve the policy for the year in question. But should remand result in the Defendant owing more than originally imposed, that fits under the adage: "Be careful what you ask for, because you might just get it."

ALL CONCUR.

BRIEFS FOR APPELLANT:

Robert C. Yang
Assistant Public Advocate
Department of Public Advocacy
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Russell Coleman
Attorney General of Kentucky

Joseph Crawford White
Assistant Solicitor General
Frankfort, Kentucky