

RENDERED: FEBRUARY 14, 2020; 10:00 A.M.  
NOT TO BE PUBLISHED

OPINION RENDERED ON FEBRUARY 7, 2020 WITHDRAWN

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2018-CA-001710-MR

DAVID JONES, INDIVIDUALLY;  
AND DAVID JONES, ON BEHALF  
OF ALL PERSONS  
SIMILARLY SITUATED

APPELLANTS

v. APPEAL FROM CLARK CIRCUIT COURT  
HONORABLE JEAN CHENAULT LOGUE, JUDGE  
ACTION NO. 17-CI-00067

CLARK COUNTY, KENTUCKY;  
AND FRANK DOYLE, INDIVIDUALLY

APPELLEES

OPINION  
AFFIRMING

\*\* \*\* \* \* \*\*

BEFORE: COMBS, JONES, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: David Jones, individually and on behalf of all persons

similarly situated, brings this appeal from a November 1, 2018, order of the Clark

Circuit Court granting summary judgment to Clark County, Kentucky, and Frank Doyle, individually, (collectively referred to as appellees) on Jones' claims. We affirm.

Jones was arrested and incarcerated on October 26, 2013, in the Clark County Detention Center. While in the detention center, Jones was charged a \$35 booking fee and \$10 fee for each day of his confinement. Jones was incarcerated for approximately fourteen months and was released on December 15, 2014, after posting bond. All charges against Jones were ultimately dismissed. Subsequently, Jones received a bill totaling \$4,008.85 for fees associated with his incarceration at the detention center. Jones submitted a one-time payment of \$20.

Jones then filed an action against Clark County, Kentucky, and Frank Doyle, Clark County Jailer, in the United States District Court for the Eastern District of Kentucky. Therein, Jones alleged that the assessed fees for his incarceration violated Kentucky Revised Statutes (KRS) 441.265 and the due process clause of the Fourteenth Amendment of the United States Constitution. Jones also raised various claims under state law. Clark County and Doyle thereafter filed a motion to dismiss.

In *Jones v. Clark County*, Action No. 5:15-CV-350-JMH, 2016 WL 1050743 (E.D. Ky. March 11, 2016), the federal district court determined that no

violations of the due process clause occurred citing to *Sickles v. Campbell County*, 501 F.3d 726 (6th Cir. 2007). The district court dismissed Jones' claims.

Jones then appealed to the United States Court of Appeals for the Sixth Circuit. In *Jones v. Clark County*, 666 F. App'x 483 (6th Cir. 2016), the Sixth Circuit concluded that the due process clause presented no impediment to the assessed incarceration fees:

Jones's procedural due process rights have not been violated. The only action taken by the defendants to get Jones's money was to bill for it and accept partial payment. This is not a case in which the state has confiscated or converted property, such as property in the prisoner's pockets, or amounts sent to him by friends, or Social Security checks sent to him. Instead Jones was merely billed. We are pointed to no authority identifying a procedural due process right not to be *billed* by the government for amounts that the billed person contends he does not owe. The billed party, after all, still possesses and owns the money until some further process is imposed upon him.

Stated in doctrinal terms, Jones does not have a property interest in not being billed. The bill from Clark County, on its own, has not deprived Jones of a protected property interest. A protected property interest is "defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." *Bd. of Regents v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972). Jones points to no source of law that entitles him to enjoy his money unfettered by government bills, correct or incorrect. An erroneously high bill from the government, without more, does not

deprive the bill's recipient of a protected property interest; the IRS does not deprive a taxpayer of protected property interest every time it erroneously bills the taxpayer for more unpaid taxes than is due. Jones's procedural due process claim thus fails at the outset.

Even if the process of billing and receiving partial payment could be thought of as a deprivation of a property interest, such a deprivation is inherently protected by process. In this case, process inheres in the action the government takes to get payment of the bill. The prisoner can refuse to pay the bill, leaving the burden on the jailer, who "may file a civil action to seek reimbursement from that prisoner for any amount owed which remains unpaid." KRS 441.265(3). In such a suit the defendant can raise all the state or federal issues he wants to challenge his liability. In jail-reimbursement cases, in addition, a prisoner can "negotiat[e]" with the jailer, and the jailer may "release the prisoner from all or part of the prisoner's repayment obligation if the jailer believes that the prisoner will be unable to pay the full amount due." KRS 441.265(7).

Formally analyzed under the three-factor *Eldridge* test for what process is due, Jones's argument fails. We balance "[1] the private interest that will be affected by the official action; . . . [2] the risk of an erroneous deprivation . . . and the probable value, if any, of additional or substitute procedural safeguards; and . . . [3] the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. at 335, 96 S. Ct. 893.

Balancing those factors, Jones was not due much process. In *Sickles*, this court balanced the factors for a different aspect of this same pay-for-your-own-incarceration regime—the aspect that allows Kentucky's

county jailers automatically to withhold a portion of transfers into prisoners' canteen accounts, which contain funds that the prisoners can use at the commissary, without the order of a sentencing court. *See Sickles*, 501 F.3d at 728–29. We concluded that only minimal process was due and that Kentucky's pay-for-your-own-incarceration statute did not violate due process. *See id.* at 731. The same conclusion is required here.

First, the private interest at stake is minimal. Jones was merely billed for the reimbursement. No property was seized. The lack of a clearly defined property interest in the first place suggests that the property interest is minimal. Second, any risk of an erroneous deprivation is minor and, as the district court suggested, less than the risk in *Sickles*. *Jones*, 2016 WL 1050743, at \*4. In *Sickles*, we assessed the risk of an erroneous deprivation when the county automatically withholds a portion of transfers into prisoners' accounts. We reasoned that the withholding “involves elementary accounting that has little risk of error and is non-discretionary.” *Sickles*, 501 F.3d at 730. Here, too, elementary accounting determines Jones's bill—a simple multiplication of the per diem rate and the number of days spent in prison before formal charges. Here, too, the bill is non-discretionary—as the district court explained, “it applies to all persons confined in the Jail.” *Jones*, 2016 WL 1050743, at \*4. Furthermore, here, the risk of deprivation is diminished by process that the Kentucky statute provides to Jones, but did not provide to *Sickles*, as indicated above. Third, the government's interest in being able to proceed by billing is huge. It is hard to imagine how a government can obtain funds allegedly owed to it without being able to send a bill. Moreover, it would be paradoxical to hold that process should precede a bill. Due process at its core involves adequate notice, and a bill at its essence provides notice of a debt. It would not make sense to require notice before sending a notice.

*Id.* at 486-87. The Court declined to exercise jurisdiction on Jones' state law claims.

On February 3, 2017, Jones filed a Class Action Complaint against appellees in the Clark Circuit Court. Jones alleged that he:

[B]rings this action as a class action pursuant to Rule 23.01, *et seq.* of the Kentucky Rules of Civil Procedure. This class consists of all persons admitted to, incarcerated in, or released from the Jail who have had their cash confiscated and kept by Defendants, or have been billed by Defendants, for the costs of their confinement when the charges for which they were incarcerated were subsequently dismissed.

Complaint at 3. In particular, Jones claimed that KRS 441.265 did not permit the assessment of incarceration fees when all charges against a prisoner had been dismissed. Additionally, Jones maintained that the assessment of such fees violated Sections 1, 2, 10, and 17 of the Kentucky Constitution. Jones further alleged that appellees were negligently engaged in a conspiracy and improperly converted Jones' property. He also sought damages based upon the claims of unjust enrichment and restitution.

Appellees filed an answer and, thereafter, a motion for summary judgment. Appellees argued that the assessed fees were authorized under KRS 441.265 and did not violate the Kentucky Constitution. Jones responded by arguing that under KRS 441.265, such fees could only be assessed by a sentencing

court and not by the detention center. Moreover, Jones maintained that the assessed fees violated Sections 1, 2, 10, and 17 of the Kentucky Constitution. As a result, Jones also asserted he was entitled to damages upon the claims of negligence, conspiracy, conversion, unjust enrichment, and restitution.

By order entered November 1, 2018, the circuit court granted summary judgment in favor of Clark County and Doyle. The circuit court determined that KRS 441.265 permitted the detention center to assess \$4,008.85 in fees and that no provision of the Kentucky Constitution was violated. This appeal follows.

To begin, summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). All facts and inferences therefrom are to be viewed in a light most favorable to the nonmoving party. *Id.* Our review proceeds accordingly.

Jones contends that the circuit court erroneously rendered summary judgment in favor of Clark County and Doyle. Jones initially maintains the circuit court improperly interpreted KRS 441.265 as permitting the detention center to assess fees in the absence of an order from the “sentencing court.” Jones’ Brief at 5. Jones believes KRS 441.265 mandates that “an order of a sentencing court” is required “before a prisoner’s confiscated money can be kept.” Jones’ Brief at 5.

KRS 441.265 reads, in part:

(1) A prisoner in a county jail shall be required by the sentencing court to reimburse the county for expenses incurred by reason of the prisoner's confinement as set out in this section, except for good cause shown.

(2) (a) The jailer may adopt, with the approval of the county's governing body, a prisoner fee and expense reimbursement policy, which may include, but not be limited to, the following:

1. An administrative processing or booking fee;
2. A per diem for room and board of not more than fifty dollars (\$50) per day or the actual per diem cost, whichever is less, for the entire period of time the prisoner is confined to the jail;
3. Actual charges for medical and dental treatment; and
4. Reimbursement for county property damaged or any injury caused by the prisoner while confined to the jail.

(b) Rates charged may be adjusted in accordance with the fee and expense reimbursement policy based upon the ability of the prisoner confined to the jail to pay, giving consideration to any legal obligation of the prisoner to support a spouse, minor children, or other dependents. The prisoner's interest in any jointly owned property and the income, assets, earnings, or other property owned by the prisoner's spouse or family shall not be used to determine a prisoner's ability to pay.

(3) The jailer or his designee may bill and attempt to collect any amount owed which remains unpaid. The

governing body of the county may, upon the advice of the jailer, contract with one (1) or more public agencies or private vendors to perform this billing and collection. Within twelve (12) months after the date of the prisoner's release from confinement, the county attorney, jailer, or the jailer's designee, may file a civil action to seek reimbursement from that prisoner for any amount owed which remains unpaid.

....

(6) Payment of any required fees may be automatically deducted from the prisoner's property or canteen account. If the prisoner has no funds in his account, a deduction may be made creating a negative balance. If funds become available or if the prisoner reenters the jail at a later date, the fees may be deducted from the prisoner's property or canteen account.

(7) Prior to the prisoner's release, the jailer or his designee may work with the confined prisoner to create a reimbursement plan to be implemented upon the prisoner's release. At the end of the prisoner's incarceration, the prisoner shall be presented with a billing statement produced by the jailer or designee. After the prisoner's release, the jailer or his designee may, after negotiation with the prisoner, release the prisoner from all or part of the prisoner's repayment obligation if the jailer believes that the prisoner will be unable to pay the full amount due.

And, KRS 441.005(3)(a) defines "prisoner" as "any person confined in jail pursuant to any code, ordinance, law, or statute of any unit of government and who is . . . [c]harged with or convicted of an offense."

The proper interpretation of KRS 441.265 was addressed by this Court in *Cole v. Warren County*, 495 S.W.3d 712 (Ky. App. 2015).<sup>1</sup> Therein, appellants argued that the Warren County Jail violated KRS 441.265 by confiscating money and checks made payable to prisoners upon booking and by utilizing these funds to pay assessed fees associated with incarceration. Appellants believed that KRS 441.265 required an order from the sentencing court before the fees could be assessed by the jail. The Court of Appeals concluded otherwise:

[W]e will address the trial court’s interpretation of KRS 441.265. The appellants allege that the Jail’s procedure of confiscating and keeping cash and checks without an order from a sentencing court violates Kentucky law, specifically, KRS 441.265. KRS 441.265(1) states: “[a] prisoner in a county jail shall be required by the sentencing court to reimburse the county for expenses incurred by reason of the prisoner’s confinement as set out in this section, except for good cause shown.” The trial court found that given the use of the word “reimburse,” KRS 441.265(1) provides a method for repayment of fees past due to the Jail, rather than permission for the automatic charging of fees upon incarceration. Further, the trial court acknowledged that qualifying the particular court as “sentencing” implies that Section 1 applies to convicted inmates. Hence, the trial court held that a sentencing court’s order is not required when the inmate has the funds to pay the required fees available—such an order is only necessary when the prisoner still owes fees at the time of his sentencing.

---

<sup>1</sup> The Kentucky Supreme Court denied discretionary review of this decision.

We agree with the trial court's interpretation of KRS 441.265. The language of the statute is unambiguous, and seems clearly intended to provide a means for county jails to automatically deduct required fees when the inmate has the funds available.

....

KRS 441.265(6) states:

[p]ayment of any required fees may be automatically deducted from the prisoner's property or canteen account. If the prisoner has no funds in his account, a deduction may be made creating a negative balance. If funds become available or if the prisoner reenters the jail at a later date, the fees may be deducted from the prisoner's property or canteen account[.]

When KRS 441.265(1) is read in conjunction with KRS 441.265(6), we believe the statute unambiguously permits the exact practice used by the Jail. Required fees may automatically be deducted from the prisoners' property or inmate canteen accounts, and if a negative balance is created, KRS 441.265(1) permits a sentencing court to order a prisoner to reimburse the Jail. Thus, we disagree with the appellants' contentions that the trial court wrongly interpreted the statute and that the Jail's practice violates KRS 441.265(1).

*Cole*, 495 S.W.3d at 717-18 (footnote omitted). Of particular import, the Court of Appeals held that KRS 441.265 permitted the jail to automatically assess fees and deduct the amount of those fees from prisoners' property, including canteen

accounts. The Court further opined that if a prisoner owed fees at the time of sentencing, the sentencing court could order the prisoner to reimburse the jail.

The Court of Appeals' interpretation of KRS 441.265 is buttressed by the definition of "prisoner" contained in KRS 441.005(3)(a). Thereunder, a prisoner is anyone confined in a jail and "charged with" an offense. KRS 441.005(3)(a). As KRS 441.265 repeatedly utilizes the term "prisoner," it is clear that the provisions of KRS 441.265 were clearly intended to apply to prisoners, like Jones, who are incarcerated upon criminal charges but not convicted thereof.

Additionally, it must be pointed out that the jailer is statutorily empowered to "bill and attempt to collect any amount owed which remains unpaid" per KRS 441.265(3).<sup>2</sup> And, the jailer's ability to bill and collect unpaid fees is not contingent upon an order from a sentencing court. Rather, this authority exists by statute independent of the court.

Considering the plain language of KRS 441.265, the interpretation by the Court in *Cole*, 495 S.W.3d 712,<sup>3</sup> and the definition of prisoner contained in KRS 441.005(3)(a), we are bound by both statute and precedent to reach the conclusion that a jail or detention center may assess fees associated with

---

<sup>2</sup> The Clark County Detention Center is not pursuing collection of the outstanding fees against David Jones.

<sup>3</sup> A majority of this panel concurs that *Cole v. Warren County*, 495 S.W.3d 712 (Ky. App. 2016) is controlling and declines to seek *en banc* review per Supreme Court Rule 1.030(7)(d).

incarceration against a prisoner who is only charged with a crime and without an order from a sentencing court.

Jones next alleges that KRS 441.265 violates Sections 1, 2, 10, and 17 of the Kentucky Constitution. Jones generally argues that it is unconstitutional for the state to collect and keep monies from an innocent person. Jones cites to a plethora of cases; however, Jones fails to set forth any specific arguments as to how KRS 441.265 violates the above cited sections of the Kentucky Constitution. Jones even fails to set forth the language of these sections. As an appellate court, we will not construct legal arguments for a party.

Nonetheless, we have reviewed the circuit court's opinion upon whether KRS 441.265 violates Sections 1, 2, 10, and 17 of the Kentucky Constitution and adopt its erudite analysis herein:

The Court also concludes that the collection of fees from inmates who have not been convicted does not violate Sections 1, 2, 10 or 17 of the Kentucky Constitution. While Section 1(5) protects the rights of citizens "to acquire and protect property," this provision is coextensive with the due process provisions of the United States Constitution. *Franklin v. Nat. Res. & Envtl. Protection Cab.*, 1989 Ky. App. LEXIS 46. The federal courts have already determined in this case that charging and billing inmates for the costs of their confinement when those inmates have not been convicted does not violate the Fourteenth Amendment's Due Process Clause. *See Jones v. Clark Cty.*, 666 F. App'x 483 (6th Cir. 2016).

Likewise, Section 2 of the Kentucky Constitution is interpreted to encompass the same due process interests reflected in the Fourteenth Amendment of the United States Constitution. *Com. v. Newkirk*, 2014 Ky. App. Unpub. LEXIS 1048, citing *Com., Nat. Res. & Envtl. Protection Cab. v. Kentec Coal Co.*, 177 S.W.3d 718 (Ky. 2005). Federal courts have already determined that billing an inmate for fees pursuant to state statutes that allow for the recovery of the costs of incarcerating him does not violate the Fourteenth Amendment, even in cases where the person is not ultimately convicted of a crime. *See, e.g., Harris v. Lexington-Fayette Urban Co. Govt.*, 685 F. App'x 470 (6th Cir. 2017); *Jones, supra*.

A person's rights under Section 10 of the Kentucky Constitution are coextensive with his rights under the Fourth Amendment of the United States Constitution. *Colbert v. Com.*, 43 S.W.3d 777 (Ky. 2001). A person has no Fourth Amendment rights in his canteen account while he is in jail. *Harper v. Oldham County Jail*, 2011 U.S. Dist. LEXIS 40353 (W.D. Ky.), quoting *Hudson v. Palmer*, 468 U.S. 517 (1984). Consequently, Defendants did not violate Jones' rights under Section 10 of the Kentucky Constitution to debit his canteen account to offset the costs of his incarceration while he was in the jail.

Section 17 of the Kentucky Constitution affords the same protections as the Eighth Amendment to the United States Constitution, *Turpin v. Com.*, 350 S.W.3d 444 (Ky. 2011), which only applies to convicted persons. *Ray v. Michelle*, 2016 U.S. App. LEXIS 23849 (6th Cir.). Since Jones was not convicted, he does not have any rights under the Eighth Amendment or under Section 17 of the Kentucky Constitution.

November 1, 2018, Order at 4-5. Consequently, we conclude that Jones failed to demonstrate a violation of Sections 1, 2, 10, or 17 of the Kentucky Constitution.

Jones also argues that the assessed incarceration fees violates the “fundamentally American presumption of innocence.” Jones’ Brief at 3. Jones particularly maintains that “[a]bsent a plea or an adjudication of guilt, a person is presumed innocent and owes the state nothing.” Jones Brief at 3. Jones relies upon *Nelson v. Colorado*, 137 S. Ct. 1249 (2017) for support. Jones maintains that the United States Supreme Court ordered the state of Colorado “to return money it had confiscated from a prisoner after his conviction was vacated on appeal and the state elected to not retry the charges.” Jones’ Brief at 3.

We view *Nelson*, 137 S. Ct. 1249 as distinguishable. In *Nelson*, appellant was ordered to pay after conviction sums to a victim compensation fund, a victims’ and witnesses’ assistance law enforcement fund, court costs, restitution, and a time payment fee. *People v. Nelson*, 362 P.3d 1070, 1072-75 (Colo. 2015) *overruled by Nelson*, 137 S. Ct. 1249.<sup>4</sup> The time payment fee was imposed each year that appellant had not fully paid the sums ordered by the court. As such, it is clear that *Nelson*, 137 S. Ct. 1249 did not involve incarceration fees, as in this case. We, thus, reject Jones’ contention of error.

We view any remaining allegations of error as moot or without merit.

---

<sup>4</sup> The holding in *Nelson v. Colorado*, 137 S. Ct. 1249 (2017) looked to the refund of costs, fees, and restitution to defendants whose convictions had been reversed or vacated. The incarceration fees assessed in our case were not dependent upon a conviction.

In sum, we are of the opinion that the circuit court properly rendered summary judgment in favor of appellees.

For the foregoing reasons, the order of the Clark Circuit Court is affirmed.

JONES, JUDGE, CONCURS.

COMBS, JUDGE DISSENTS AND FILES SEPARATE OPINION.

COMBS, JUDGE, DISSENTING: After careful deliberation, and upon consideration of the very fine oral arguments presented by both sides in this case, I file this dissent.

The majority opinion relies principally on *Cole v. Warren County*, 495 S.W.3d 712 (Ky. App. 2015). In *Cole*, county jail inmates challenged the taking of monies from jail inmate accounts (including the confiscation and cashing of unendorsed checks payable to the inmates) as an offset for the expenses of confinement. This Court upheld the practice.

In the case before us, the same statute is at issue; namely, KRS 441.265. However, Jones argues that this case is distinguishable on its facts from *Cole* and, therefore, that we are **not bound by** the precedent of *Cole*. While it is a close call, I am persuaded that this case both limits and requires a new look at KRS 441.265 based on the different set of facts and issues alleged.

The issue is one of first impression and fundamental fairness: whether Jones could be billed for the cost of his incarceration when the charges underlying his confinement were later dismissed. After fourteen months in jail, **all charges** against him were dismissed. Nonetheless, he received a bill for \$4008.85. His federal claim failed because the 6th Circuit Court of Appeals did not believe that he had a due process right to be free from unjust billing. He then filed a claim in state court and invoked the literal language of KRS 441.265 in support of his claim. That statute provides in mandatory language as follows:

- (1) A prisoner in a county jail shall **be required by the sentencing court** to reimburse the county for expenses incurred by reason of the prisoner's confinement as set out in this section, except for good cause shown.

(Emphasis added.)

The statutory language is clear and unambiguous on its face. A **sentencing court** alone is vested with jurisdiction to order payment for lodging in the county jail, and no such order was ever entered – or apparently even sought – to authorize the charge of over \$4000 in this case. Instead, the county, though its jailer and/or designee, **assumed** the right, *sua sponte*, to become in effect a collection agency without the requisite, mandatory order of the court. The amount at issue is not *de minimis*; if Jones had stolen that sum of money, he would have been chargeable with a felony.

I am wholly persuaded that the Clark County Jail was bound by the literal terms of the very statute upon which it relies in pursuing this money.

The issue is not the taking of funds from a prisoner's inmate account as an off-set against expenses as was the case in *Cole*. Rather, the issue before us is whether a person erroneously jailed can face prospectively a huge sum of debt for the time spent incarcerated when the very dismissal of those charges underscored the error of his confinement in the first place. The reasoning is circular and the result is both ridiculous and unjust.

The ramifications are numerous and ponderous. A person unjustly jailed – upon his release – can look forward to becoming an instant debtor through no fault of his own. His ability to support himself or his family would be compromised – as would be his credit rating. The debt would arguably be subject to garnishment against his wages or a debt to be charged against his estate in the event of his death. He would be subject as well to the psychological pain of the anxiety arising from the prospect of how to pay what may be for him an insurmountable debt.

Although the circuit passed off as “*de minimis*” any right to be free from receiving an unjust bill, I would submit that the Kentucky Constitution at Section 2 ensures us all of the right to be free from the fearsome results of the exercise of arbitrary power. Indeed, among the Four Freedoms etched in history

by President Franklin D. Roosevelt, addressing the economic uncertainties flowing from the Great Depression, was the right of “Freedom from Fear.” (Address to Congress, January 6, 1941, setting forth the Four Freedoms underlying our democracy: freedom of speech and expression, freedom of worship, freedom from want, and freedom from fear).

Finally, and perhaps most importantly, Clark County can never reimburse Jones for the lost months of his life during which he was deprived of his liberty – truly a non-compensable damage. Absent a judicial decree, it should **not** be permitted to add to his damage the debt for the time unjustly spent in its jail.

I would implore the Supreme Court or the General Assembly to rectify this glaringly unjust state of affairs.

**BRIEFS FOR APPELLANTS:**

Gregory A. Belzley  
Prospect, Kentucky

Matt Boyd  
Lexington, Kentucky

**ORAL ARGUMENT FOR  
APPELLANTS:**

Gregory A. Belzley  
Prospect, Kentucky

**BRIEF FOR APPELLEES:**

Jeffrey C. Mando  
Jennifer L. Langen  
Covington, Kentucky

**ORAL ARGUMENT FOR  
APPELLEES:**

Jeffrey C. Mando  
Covington, Kentucky