

COMMONWEALTH OF KENTUCKY  
SUPREME COURT OF KENTUCKY  
FILE NO. 2011-SC-000157-CL

**FILED**  
APR 05 2012  
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SUPREME COURT

COMMONWEALTH OF KENTUCKY

APPELLANT

VS.

**Certification of Law from Jefferson District Court  
Division 304  
Honorable Sheila Collins, Judge  
File No. 11-M-004285**

MICHAEL. L. WILSON

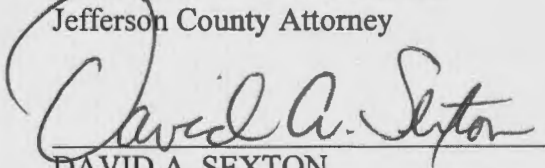
APPELLEE

\*\*\*\*\*  
**REPLY BRIEF FOR THE COMMONWEALTH**  
\*\*\*\*\*

Respectfully submitted,

**JACK CONWAY**  
Attorney General

**MICHAEL J. O'CONNELL**  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Reply Brief For The Commonwealth* was mailed by U.S. First Class mail, postage prepaid, to: Honorable Sheila Collins, Judge, Jefferson District Court, Hall of Justice, 600 West Jefferson Street, Louisville Kentucky 40202; Honorable Jack Conway, Attorney General, Office of Criminal Appeals, 1024 Capital Center Drive, Frankfort, Kentucky 40601; Honorable Paul Gold, Suite 320, Republic Plaza, 200 South Seventh Street, Louisville, Kentucky 40202; Honorable Erica Lee Williams, Judge, Jefferson District Court, Hall of Justice, 600 West Jefferson Street, Louisville, Kentucky 40202; Honorable David Hoskins, Kentucky Association of Criminal Defense Lawyers, P. O. Box 910369, Lexington, Kentucky 40591-0369; and to Honorable R. David Stengel, Commonwealth's Attorney, 514 West Liberty Street, Louisville, Kentucky 40202, on this Wednesday, the Fourth (4<sup>th</sup>) day of April, 2012. I hereby further certify that the record on appeal was not withdrawn from the Clerk of the Supreme Court of Kentucky or the Jefferson District Court.



DAVID A. SEXTON

## ARGUMENT

1. The Appellee's argument that somehow the Commonwealth engaged in improper conduct when it obtained the arrest warrant in this case is nothing short of remarkable. The Appellee complains that the Jefferson County Attorney, as the Commonwealth's representative in the Jefferson District Court, "routinely contacts Jefferson District Court judges *ex parte* requesting an arrest warrant... ." (Appellee's Brief, p. 5). According to the Appellee, "[i]f there was a fundamental constitutional guarantee violated in this case, it was a violation by the Jefferson County Attorney..." (*Id.*). Incredibly, he goes on to claim that the Jefferson County Attorney should not be permitted to seek an initial arrest warrant and requests "an instruction to the Jefferson County Attorney to refrain from communicating its desire for an arrest warrant to the Jefferson District Court **absent notice to the defense attorney.** [emphasis added]". (Appellee's Brief, p. 17).

Of course, the Appellee conveniently neglects the provisions of RCr 2.02 and 2.04 which authorize the procedure utilized by the Jefferson County Attorney in this case when it sought an arrest warrant. As the Commonwealth has previously set out, a criminal complaint was made under oath and signed by the complaining party setting out the elements of the charged offense against the Appellee as required by RCr 2.02. Furthermore, the Jefferson County Attorney, in conformity with RCr 2.04, presented the information contained in the criminal complaint to a judge of the Jefferson District Court who determined that probable cause existed to believe that an offense has been committed, that the Appellee had committed such an offense, and that an arrest warrant was appropriate given the violent nature of the charged offense. Of course, that procedure fully complied with the requirements of RCr 2.04. The position taken by the Appellee that no arrest warrant should issue without notice to a defense attorney is a manifestly senseless proposal.

Taken to its logical conclusion, the Appellee's proposal would seemingly require some sort of registry where those who think they might be charged with a crime could register with the government to provide their attorney information. Furthermore, the Appellee's suggestion of notice to an offender's attorney before an arrest warrant issues would severely eviscerate the legitimate concerns served by the issuance of an arrest warrant. Prior notice to an offender and his attorney about the existence of an impending arrest would surely frustrate the government's interest in seeing to it that an offender actually appears in court to answer to the charged criminal offense. Further, arrest warrants serve the interest of preventing a repetition of the charged offense or the commission of further offenses or intimidation against victims. In domestic violence cases, a warrant of arrest can also help prevent manipulation, coercion, or exploitation of the victim of the sort the record suggests may very well have happened in this case given the claimed recantation to the Appellee's defense lawyer.

2. In his Brief, the Appellee goes on to set out that "the alleged victim (the wife of the defendant) had contacted the defense attorney and had subsequently signed an affidavit stating that the alleged abuse had never occurred and any papers contrary to that had been signed by her while she was under the effects of medication from the hospital, where she had gone for an injury to her back not related to the allegations of domestic violence." (Appellee's Brief, p. 16). He goes on in an attempt to justify his *ex parte* request to set aside the warrant for his arrest as based on "untrue allegations". (Appellee's Brief, p. 9). Of course, Appellee's attempt to justify his *ex parte* motion to set aside the arrest warrant as arising from "untrue allegations" rings especially hollow given the Appellee's plea of guilty to the charged offense in the Jefferson District Court. Needless to say, the purported recantation to the Appellee's defense lawyer demonstrates precisely why the Commonwealth ought to be entitled to give its version of events when a previously issued warrant of arrest is set aside. The Commonwealth would have

welcomed the opportunity to present the evidence obtained at the hospital the night of the attempted strangulation before the arrest warrant was summarily set aside.

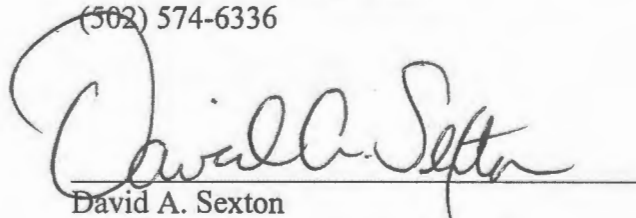
**CONCLUSION**

The Commonwealth simply seeks an opportunity to be heard and weigh in when a criminal defendant attacks an arrest warrant requiring his or her initial detention following the commencement of criminal charges. While the Jefferson District Court enthusiastically approved the *ex parte* practice as nothing less than “**absolutely acceptable**”, justice demands that the Commonwealth be given an opportunity to be heard given the important interests served by arrest warrants in the criminal justice system.

Respectfully submitted,

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