

**PUBLISHED OPINIONS
KENTUCKY COURT OF APPEALS
JANUARY 1, 2024 to JANUARY 31, 2024**

Note to practitioners: These are the Opinions designated for publication by the Kentucky Court of Appeals for the specified time period. Practitioners should Shephardize all case law for subsequent history prior to citing it.

I. CRIMINAL LAW

A. COMMONWEALTH OF KENTUCKY v. TYRONE ANTOINNE HARTSFIELD

[2022-CA-1388-MR](#)

1/05/2024

2024 WL 56917

Opinion by COMBS, SARA WALTER; ACREE, J. (CONCURS) AND ECKERLE, J. (CONCURS)

DISCRETIONARY REVIEW GRANTED 06/05/2024

In this criminal case of first impression, the Commonwealth challenged the Fayette Circuit Court's denial of a motion *in limine* to exclude a portion of police video camera footage. In that disputed footage, the police officer who responded to a rape investigation was heard to comment that he did not believe the victim's allegations against the defendant. The Court of Appeals reversed and concluded that the trial court erred in denying the Commonwealth's motion to exclude and that the testimonial nature of the video improperly infringed upon the province of the jury to determine the victim's credibility.

II. OPEN RECORDS

A. TIMOTHY WILLIAMS v. CABINET FOR HEALTH AND FAMILY SERVICES

[2022-CA-0935-MR](#)

1/26/2024

2024 WL 294346

[2022-CA-1360-MR](#)

Opinion by GOODWINE, PAMELA R.; CALDWELL, J. (CONCURS) AND LAMBERT, J. (CONCURS)

In appeal 2022-CA-0935-MR, Timothy Williams challenged the Boone Circuit Court's judgment denying his claims under the Kentucky Open Records Act ("KORA"). Williams raised several arguments including that the trial court erred in finding that the Cabinet for Health and Family Services ("Cabinet") did not willfully withhold records under Kentucky Revised Statute (KRS) 61.882(5). The Court of Appeals affirmed the trial court's judgment, holding its decision was not clearly erroneous. In appeal 2022-CA-1360-MR, the Cabinet appealed from orders including the judgment awarding Williams \$2,000,000 in punitive damages for violations of the Kentucky Whistleblower Act ("KWA"). Williams, an employee of the Cabinet, sent a letter to the Office of the Inspector General alleging the Cabinet failed to initiate or follow up on 93 reports of child abuse or neglect. After his report, Williams claims to have experienced various personnel actions as retaliation for his letter. A jury awarded him \$2,000,000 in punitive damages, and the Cabinet appealed. The Court of Appeals construed "personnel action," as used in KRS 61.103(3), to mean "any act relating

to a state employee which tends to discourage, restrain, depress, dissuade, deter, prevent, interfere with, coerce, or discriminate against an employee who has made a good faith report under the KWA.” Relying on the requirements for claims of retaliation under the Kentucky Civil Rights Act (“KCRA”), the Court also held such a personnel action must constitute a materially adverse change in the terms and conditions of the person’s employment to meet the plaintiff’s burden in KRS 61.103(3). The Court affirmed the trial court’s order denying summary judgment on this issue, holding there had been genuine issues of material fact as to whether any of the personnel actions alleged by Williams were materially adverse. However, the Court reversed the judgment awarding punitive damages because (1) at trial, Williams was permitted to present evidence of personnel actions which occurred outside the 90-day limitation in KRS 61.103(2); (2) the trial court failed to use the statutory language from KRS 61.103(3) in the jury instructions; and (3) the punitive damages award was grossly excessive under the due process clause of the Fourteenth Amendment. The Court remanded the matter for a new trial on Williams’ KWA claims.