

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2005-CA-001755-MR

LAURA MARCO

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE SHEILA R. ISSAC, JUDGE  
ACTION NO. 05-CI-01871

UNIVERSITY OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: GUIDUGLI AND SCHRODER, JUDGES; MILLER,<sup>1</sup> SPECIAL JUDGE.

MILLER, SPECIAL JUDGE: Laura Marco brings this appeal from a summary judgment entered in Fayette Circuit Court on August 17, 2005. Having concluded that summary judgment was properly granted, we affirm.

On January 18, 2005, in the early morning hours, Officer Marco of the University of Kentucky Police Department (UKPD) initiated a traffic stop after suspecting the driver of

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<sup>1</sup> Retired Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

being under the influence.<sup>2</sup> The male driver was arrested for Driving Under the Influence (DUI), and three twenty-year-old female passengers were arrested for Alcohol Intoxication.<sup>3</sup> Marco requested a "paddy wagon" to transport the three females to the Lexington-Fayette County Detention Center. Officer Eugenia Wilson of UKPD arrived shortly thereafter in a police van. Officer Marco then placed the hand-cuffed female arrestees into the back of the van, which Officer Wilson drove. Officer Marco drove separately in her cruiser in order to transport the driver charged with DUI.

During the trip to the detention center, the arrestees banged on the walls of the van and screamed for help. Wilson admittedly ignored the pleas. Upon arriving at the "booking area" inside the jail parking lot, Wilson then noticed that the back door of the van was open and one of the arrestees was lying on her stomach with the front portion of her body "hanging" outside.

Unbeknownst to Wilson, the back door of the paddy wagon was improperly secured, and had been swinging back and forth throughout the ride to the detention center. Abbigail Houk, one of the female arrestees, was jolted to the floor of the van during the ride and began sliding out the back as the

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<sup>2</sup> Kentucky Revised Statutes (KRS) 189A.010

<sup>3</sup> KRS 222.202

van accelerated forward. Though they were handcuffed, Houk's friends managed to seize her legs and prevent her from falling out. The record indicates that as much as half of Houk's body was outside the van during the ride. To exacerbate the situation, statements from all three female arrestees alleged that various police officers, including Officer Marco, were laughing at the near-tragedy upon becoming aware of the incident.

Lt. John Costigan of UKPD was notified of the incident shortly thereafter by a jail employee and by an officer from the Lexington Police Department. An internal investigation was initiated. On January 19, 2005, Officer Marco was instructed to meet with the Acting Director of Public Safety, UKPD. The next day, January 20, 2005, the Director sent a letter to Marco detailing her violation of UKPD procedures and establishing her punishment: a three day suspension and ninety days probation.

Without pursuing the matter further via the University's "Grievance" procedures, Marco filed a declaratory judgment action<sup>4</sup> in Fayette Circuit Court on April 27, 2005. Marco alleged that Kentucky Revised Statute (KRS) 15.520<sup>5</sup> applied and that she was denied her rights under those provisions. The Circuit Court held that KRS 15.520 was inapplicable to the

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<sup>4</sup> KRS 418.040 and Kentucky Rules of Civil Procedure (CR) 57.

<sup>5</sup> KRS 15.520 is frequently referred to as the "Police Officer Bill of Rights."

investigation involving Marco. Summary judgment was entered on August 17, 2005. This appeal followed.

The facts of this case not being in dispute, and summary judgment having been entered, we are faced with but a question of law. See CR 56.03. The appellant essentially makes two arguments. First, Marco argues that the Police Officer Bill of Rights applies to this case. Second, she argues that summary judgment was inappropriate. We reject both arguments.

We are not persuaded that the Police Officer Bill of Rights is applicable to the circumstances of this case. The investigation in this case resulted from a report by personnel at the Fayette County Detention Center to Lt. Costigan. An internal investigation ensued. The investigation was not initiated upon the basis of a "complaint" as contemplated by KRS 15.520. Marco and Wilson readily conceded the basic facts of the case: the door to the police van was not properly secured, the door swung open, and Houk slid part way out the door, thereby endangering her safety. Upon this, minimal disciplinary sanctions were imposed upon Marco and Wilson.

KRS 15.520 applies to investigations resulting from a "complaint" against a police officer. The section is captioned "Complaints against police officers; manner of investigation and hearing." While the female arrestees did later provide statements concerning the incident, they filed no complaint, and

the initial investigation resulted from a report of the incident by Fayette County Detention Center personnel. Moreover, as Marco and Wilson admitted to the essential facts, an evidentiary hearing would have served no purpose. The essential facts are uncontested.

Finally, even if the Bill of Rights could be construed to apply to the facts of this case, upon Marco's own admissions, we discern no prejudice as minimal disciplinary penalties were imposed in relation to the breach of policy.

As Marco's complaint was based upon UKPD's failure to follow KRS 15.520, and the statute is inapplicable to this situation, Fayette Circuit Court properly granted summary judgment.

For the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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Barbara W. Jones  
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