

Lexington-Fayette Urban County Government Special Council Meeting

Lexington, Kentucky March 15, 2011

The Council of the Lexington-Fayette Urban County Government, Kentucky convened in special session on March 15, 2011 at 5:00 P.M. Present were Mayor Gray in the chair presiding, and the following members of the Council: Council Members Lawless, Martin, McChord, Myers, Stinnett, Beard, Blues, Crosbie, Ellinger, Farmer, Ford, Gorton, Henson and Kay. Absent was Council Member Lane.

*

*

*

TRIAL OF POLICE SERGEANT EARL J. RAYFORD

(Charges)

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

STATEMENT OF FORMAL CHARGES
PURSUANT TO KRS 95.450
(To be filed with the Clerk of the
Lexington-Fayette Urban County Council)

CHARGES

Earl J. Rayford is hereby charged with misconduct in violation of KRS 95.450(1) and with the following in violation of the below-listed ordinance of the Lexington-Fayette Urban County Government and General Orders of the Division of Police of the Lexington-Fayette Urban County Government:

I.

Misconduct, Section 23-42(12) of the Code of Ordinances and General Order 73-2(H), Operational Rules Section 1.02 in that:

General Order 73-2(H) Operational Rules Section 1.02, which was in effect on or before August 20, 2010 provides:

Officers shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the Division. This shall include that which tends to bring the Division into disrepute or reflects discredit upon the Officer as a member of the Division.

On August 20, 2010 at approximately 1217 hours Sergeant Rayford was off duty and requested, via Dispatch, that officers be sent to attempt to pick up a subject known as Delvagio Lax in the area of 1053 Winburn Drive. According to Sergeant Rayford, the subject had an outstanding warrant and was possibly armed. Prior to the pick up, Sergeant Rayford provided the officers additional information about Mr. Lax. The officers located Mr. Lax and arrested him on gun-related and drug charges. After initially having difficulty locating the warrant information, the officers also served the outstanding warrant. Incident to arrest, officers located approximately \$455.75, suspected to be drug trafficking proceeds, on Mr. Lax's person. As Mr.

Lax was being lodged at the jail and one of the officers was booking in the evidence, Sergeant Rayford called and requested that the money be released to the arrested subject's girlfriend. The officer booking in the money was contacted and asked to release the money to Mr. Lax's girlfriend because, according to Sergeant Rayford, it was her rent money. The officer took the money to the address Sergeant Rayford advised the girlfriend would be located. Upon arrival, the officer was met by Sergeant Rayford's wife. She greeted the officer by name and advised she was the girlfriend's mother and she would take the money. According to the officers, Sergeant Rayford never revealed the family relationship surrounding this incident. Sergeant Rayford's secretiveness regarding his personal relationship with the subjects involved and requesting that the money be handed over to a family member was inappropriate and did not reflect favorably upon him as a Division Officer or a Supervisor. Due to Sergeant Rayford's actions, the original drug charge placed on the suspect was changed from "trafficking in a controlled substance" to "possession of a controlled substance". This led prosecutors to question the circumstances surrounding the incident.

Sergeant Rayford's request that the booking officer return evidence, seized incident to arrest, to his family member constitutes misconduct in violation of KRS 95.450 and Section 23-42(12) of the Code of Ordinances, and violates General Order 73-2(H), Operational Rules Section 1.02, in that his conduct does not reflect favorably upon the Division of Police, brings disrepute to the Division, reflects discredit on him as a member of the Division and tends to impair the operation and efficiency of the Division.

Signed
Ronnie Bastin, Chief
Division of Police

COMMONWEALTH OF KENTUCKY
COUNTY OF FAYETTE

The foregoing was subscribed, sworn to and acknowledged before me by Ronnie Bastin, Chief, Division of Police, this the 23rd day of February, 2011.

My commission expires: July 29, 2011

Signed
Renita M. Happy
Notary Public, Kentucky, State-at-Large

WAIVER

In Re: Earl Rayford

Earl Rayford hereby waives his rights pursuant to KRS 95.450 to a hearing within three days of formal charges being filed with the Lexington-Fayette Urban County Council. It is further mutually agreed that this matter shall be heard on a date requested by counsel for both parties and scheduled by the Council.

Done this 17th day of February, 2011

Signed
Earl Rayford

To be filed with the Urban County Council Clerk,
Notice of Filing Waived:

Signed
Keith Horn
Attorney for Lexington-Fayette Urban County Government

Signed
William C. Jacobs
Attorney for Earl Rayford

NOTICE

TO: Police Sergeant Earl J. Rayford

YOU ARE HEREBY notified that the attached charges were filed on February 24, 2011 with the Clerk of the Urban County Council and that the Lexington-Fayette Urban County Council has set the aforementioned case for hearing on the 15th-day of March, 2011 at 5:00 P.M. in the Council Chamber at 200 East Main Street, Lexington, Ky. at which time and place you will be given an opportunity to be heard.

DATE: February 25, 2011

Signed
Susan Lamb
Clerk of the Urban County Council

CERTIFICATE

The foregoing charges and notice were served by delivering a true copy of same to Police Officer Earl J. Rayford on this 26th day of February, at 7:35 a.m./ p.m.

Lieutenant John P. Gensheimer
Serving Official

LEGAL NOTICE

NOTICE is hereby given that a SPECIAL MEETING of the Lexington-Fayette Urban County Council will be held on Tuesday, March 15, 2011 at 5:00 p.m. in the Council Chambers, 200 E. Main St., Lexington, Ky. for a police hearing.

BY ORDER OF THE URBAN COUNTY COUNCIL
Susan Lamb,
Council Clerk

PUBLISHED: March 10, 2011
Lexington Herald-Leader
CLASSIFIEDS

The Mayor opened the hearing.

The defendant was present and represented by Attorney William Jacobs.

The hearing was open.

Mr. Beard made a motion, seconded by Ms. Henson, and passed by majority vote (Ms. Lawless was absent when the vote was taken), to continue with discussion of the police disciplinary issue.

Ms. Gorton made a motion, seconded by Mr. Kay and passed by majority vote (Ms. Lawless was absent when the vote was taken), to schedule a Special Council Meeting for the police disciplinary hearing on April 26, 2011 at 5:00 p.m. in the Council Chamber.

Mr. William Jacobs, attorney for Police Sergeant Earl Rayford, presented the following motion to dismiss and gave his reasons for the motion.

LEXINGTON-FAYETTE URBAN COUNTY COUNCIL

In RE: Earl Rayford

MOTION TO DISMISS THE CHARGES

Comes Sgt. Earl J. Rayford for his motion to dismiss the Charges preferred against him on February 23, 2011, and in support hereof states¹:

A summary of the circumstances of the Charge is as follows: On August 20, 2010, Sgt. Rayford learned that the man who his step-daughter was seeing was using an alias. Undertaking to learn the man's true identity, Sgt. Rayford learned not only that the man's actual name was Delvagio Lax but that there were two warrants [Franklin and Bourbon County] outstanding for the arrest of Mr. Lax.

Shortly after noon on August 20, 2010, while off duty, Sgt. Rayford telephoned Dispatch to inform them of what he had learned about Mr. Lax and requested a pick up. Sgt. Rayford asked Dispatch to have the dispatched officers to contact him before attempting pick up. Sgt. Rayford was called by Officer Jackson. Sgt. Rayford informed him of the description of Mr. Lax, the exact location (1053 Winburn Drive) where Mr. Lax could be found, the make of Mr. Lax's vehicle, the relationship of Mr. Lax to Sgt. Rayford's step-daughter and that Mr. Lax might be armed.

About 45 minutes later, Sgt. Rayford called Officer Jackson and Officer Hoskins, using their numbers in his cell phone, to inquire about any arrest. One of the officers told Sgt. Rayford that Mr. Lax was where Sgt. Rayford said he would be and that he did have a gun in his possession as well as drugs. Shortly after Sgt. Rayford had spoken to the officers, he learned from Mrs. Rayford that Mr. Lax was in possession of Mrs. Rayford's daughter's rent money which she (Sgt. Rayford's stepdaughter) had withdrawn that morning from the credit union.

¹ Attached hereto for the convenience of the Council is the statement of formal Charges to which this Motion is addressed, the same incorporated herein by reference and marked Exhibit A.

Sgt. Rayford called Officer Jackson (who was at the Detention Center) to ask if money was found on Mr. Lax's person, Officer Jackson said "yes," and that the money was in the possession of Officer Hoskins who was en route to Headquarters.

Sgt. Rayford called Officer Hoskins and learned that the sum of \$455.75 was found in Mr. Lax's possession, a sum which was almost exactly the amount that Sgt. Rayford's step-daughter had withdrawn from the credit union that morning.

Thereafter, and before Officer Hoskins did anything with the money and before any charge had been placed against Mr. Lax, Officer Jackson and Officer Hoskins conferred and elected to place a charge of "possession of a controlled substance" rather than "trafficking in a controlled substance" against Mr. Lax. Proof that Officer Jackson and Officer Hoskins agreed to charge Mr. Lax with possession prior to Officer Hoskins carrying the money to Mrs. Rayford is found in the portion of Officer Hoskins' memorandum attached hereto and marked Exhibit B, incorporated herein by reference.

After Officer Hoskins and Officer Jackson had decided to charge Mr. Lax with "possession" rather than "trafficking," Officer Hoskins took the money to the address furnished by Sgt. Rayford (618 Elm Tree Lane). At that location, Officer Hoskins was met by Mrs. Rayford. Officer Hoskins delivered the money to Mrs. Rayford and left. Shortly thereafter, Officer Hoskins called Sgt. Rayford and asked if it would be any problem getting Mrs. Rayford to sign a receipt, i.e., a Property Release Sheet as evidence that she had received the money. Sgt. Rayford told Officer Hoskins that it would be no problem. Whereupon Officer Hoskins went to the address where he had delivered the money to Mrs. Rayford and obtained her signature on the receipt, i.e., a Property Release Sheet.

The charge against Sgt. Rayford is found at the end of the paragraph at the top of page 2 of the Charges and is as follows:

Due to Sergeant Rayford's actions, the original drug charge placed on the suspect was changed from "trafficking in a controlled substance" to "possession of a controlled substance". This led prosecutors to question the circumstances surrounding the incident.

Attached hereto and marked Exhibit C is the statement of Officer Jackson which establishes that the charge of "trafficking in a controlled substance" was never placed against Mr. Lax. Therefore, Officer Jackson's own words prove that it would be impossible for Sgt. Rayford's actions to have caused "the original drug charge placed on the suspect [to be] changed from 'trafficking in a controlled substance' to 'possession of a controlled substance'" because the original charge brought by Officer Jackson against Mr. Lax was "possession of a controlled substance."

Nothing Sgt. Rayford did was “secretive” in that Officer Hoskins knew that it was Mrs. Rayford to whom he was delivering the money before he gave it to her. Nothing in the Charge states that Sgt. Rayford **ordered** Officer Jackson or Officer Hoskins to do anything.

WHEREFORE, Sgt. Rayford moves the Council to dismiss the Charge against him because the Charge cannot be proven in light of the statements of Officer Jackson and Officer Hoskins, attached hereto.

/s/ William C. Jacobs
WILLIAM C. JACOBS
173 North Limestone Street
Lexington, KY 40507
(859) 255-2464

ATTORNEY FOR SGT. RAYFORD

EXHIBIT A

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

STATEMENT OF FORMAL CHARGES
PURSUANT TO KRS 95.450
(To be filed with the Clerk of the
Lexington-Fayette Urban County Council)

CHARGES

Earl J. Rayford is hereby charged with misconduct in violation of KRS 95.450(1) and with the following in violation of the below-listed ordinance of the Lexington-Fayette Urban County Government and General Orders of the Division of Police of the Lexington-Fayette Urban County Government:

I.

Misconduct, Section 23-42(12) of the Code of Ordinances and General Order 73-2(H), Operational Rules Section 1.02 in that:

General Order 73-2(H) Operational Rules Section 1.02, which was in effect on or before August 20, 2010 provides:

Officers shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the Division. This shall include that which tends to bring the Division into disrepute or reflects discredit upon the Officer as a member of the Division.

On August 20, 2010 at approximately 1217 hours Sergeant Rayford was off duty and requested, via Dispatch, that officers be sent to attempt to pick up a subject known as Delvagio Lax in the area of 1053 Winburn Drive. According to Sergeant Rayford, the subject had an outstanding warrant and was possibly armed. Prior to the pick up, Sergeant Rayford provided the officers additional information about Mr. Lax. The officers located Mr. Lax and arrested him on gun-related and drug charges. After initially having difficulty locating the warrant information, the officers also served the outstanding warrant. Incident to arrest, officers located

approximately \$455.75, suspected to be drug trafficking proceeds, on Mr. Lax's person. As Mr. Lax was being lodged at the jail and one of the officers was booking in the evidence, Sergeant Rayford called and requested that the money be released to the arrested subject's girlfriend. The officer booking in the money was contacted and asked to release the money to Mr. Lax's girlfriend because, according to Sergeant Rayford, it was her rent money. The officer took the money to the address Sergeant Rayford advised the girlfriend would be located. Upon arrival, the officer was met by Sergeant Rayford's wife. She greeted the officer by name and advised she was the girlfriend's mother and she would take the money. According to the officers, Sergeant Rayford never revealed the family relationship surrounding this incident. Sergeant Rayford's secretiveness regarding his personal relationship with the subjects involved and requesting that the money be handed over to a family member was inappropriate and did not reflect favorably upon him as a Division Officer or a Supervisor. Due to Sergeant Rayford's actions, the original drug charge placed on the suspect was changed from "trafficking in a controlled substance" to "possession of a controlled substance". This led prosecutors to question the circumstances surrounding the incident.

Sergeant Rayford's request that the booking officer return evidence, seized incident to arrest, to his family member constitutes misconduct in violation of KRS 95.450 and Section 23-42(12) of the Code of Ordinances, and violates General Order 73-2(H), Operational Rules Section 1.02, in that his conduct does not reflect favorably upon the Division of Police, brings disrepute to the Division, reflects discredit on him as a member of the Division and tends to impair the operation and efficiency of the Division.

Signed
Ronnie Bastin, Chief
Division of Police

COMMONWEALTH OF KENTUCKY
COUNTY OF FAYETTE

The foregoing was subscribed, sworn to and acknowledged before me by Ronnie Bastin, Chief, Division of Police, this the 23rd day of February, 2011.

My commission expires: July 29, 2011

Signed
Renita M. Happy
Notary Public, Kentucky, State-at-Large

Exhibit B – Portion of Officer Hoskins' Memorandum

...to Mr. Jones, who was not going to jail. We told him we need to take it with us for evidentiary purposes.

Ofc. Jackson said he would do the arrest report and the two citations. I would take care of booking in the evidence and that associated paperwork. We had agreed to charge the warrant, CCDW and trafficking controlled substance. On the way to headquarters, I attempted to run Mr. Lax's information to obtain his social security number. I noticed that no warrant information came up. Again, I ran his information and again no warrants came up. I called Ofc. Jackson and asked him if he had ran Mr. Lax because I didn't show any warrants. He told me he hadn't.

I called Sgt. Rayford to ask where he had learned Mr. Lax had a warrant. He told me he has been trying to find it all day that there was some mix-up with the spelling of his name or the reversal of his first and last name, but ultimately he spoke with Bourbon County who confirmed the active warrant. I called Ofc. Jackson back and told him that he would probably have to go through channel 1 to have the warrant faxed to him.

While at headquarters preparing my evidence, Sgt. Rayford called me and told me not to book the money in because it belongs to Mr. Lax's girlfriend. He told me that money was her rent money and she wouldn't be able to pay it if she didn't get the money back. I was uneasy with the request at first but then thought how Mr. Lax told us it was his girlfriend's rent money, for us not to take it. Sgt. Rayford told me to take the money and meet her at 618 Elmtree Lane, which was supposed to be the girlfriend's aunt's house. I called Ofc. Jackson when we hung up and asked him about it. He told me Sgt. Rayford had just called him and told him the same thing, to not book the money in. Ofc. Jackson told him I was the one booking the money in. Ofc. Jackson and I discussed that we could no longer charge trafficking without the money so we would have to go with just possession.

After booking in the firearm and the crack cocaine, I made my way to 618 Elmtree. However, I was greeted by someone whom I believed to be older than should be for a girlfriend of a 25 year old. She immediately said, "Hi Ofc. Hoskins" well before she was within range to read my nametag. She then proceeded to tell me to give her the money because her daughter may try to use it to bail out Mr. Lax and the money is supposed to be her rent money. I looked at her funny and she then told me she was Sgt. Rayford's wife. At that point, I finally realized that the reason Sgt. Rayford knew so much about this situation was because the girlfriend was actually Sgt. Rayford's daughter. I then gave the money over to Connie Rayford and went back to my car. I was not at all comfortable with the way this whole call had played out. Thinking this wasn't right, I called Sgt. Famularo and asked him about what had just happened. He told me to get Ms. Rayford to sign an evidence release form for taking the money. I called Sgt. Rayford back and told him that I wasn't comfortable with giving her the money and I wanted her to sign a release for it. He told me that wouldn't be a problem and to go back by, he would have his wife looking for me. Ms. Rayford did sign the release.

I am uncomfortable with the way this call played out on several levels, but most specifically that he told us to not book the money in and that this warrant was so difficult to find. Ofc. Jackson told me after the fact that when he called channel 1 about this warrant, they asked him if this was the same person Sgt. Rayford has been calling about. Ofc. Jackson stated channel 1 could not locate the warrant after nearly 30 minutes of looking. Ofc. Jackson said he accidentally found it in E-Warrants by typing in random spellings and combinations of Mr. Lax's name. When Ofc. Jackson called back down to tell communications he had found it, they were...

Exhibit C - Excerpt of Statement of Officer Jackson

Gensheimer: O.K. So then when ultimately did you change the charge?

Jackson: At...when we got there, I hadn't actually filled out the Citation, with putting "Trafficking" on it. So it was just, at that point, I made the decision that it was no longer Trafficking. I was just gonna put "Possession". He was charged with Possession.

Gensheimer: O.K. So was that before you ever talked to Hoskins again or did you talk to him after...before you ultimately did the ticket? Do you remember?

Jackson: Ah...I didn't have to change the ticket so I'm...

Gensheimer: Right.

Jackson:...assuming that, I mean...it was probably...I think I talked to Hoskins somewhere after that. Um, I think I filled out all the other stuff first maybe and I hadn't put the, ah...I never changed the ticket so I think I just had it in my mind that he was gonna...I was planning on charging him with Trafficking. And once I heard that, then I kind of just was holding off to see what...what was gonna transpire. And then when Hoskins explained to me what happened, I charged him with Possession.

The Mayor asked Mr. Keith Horn, Dept. of Law, to respond to the motion.

Mr. Horn stated the reasons against the motion to dismiss and referenced the charges.

There was discussion about the motion.

Mr. Blues made a motion, seconded by Mr. Myers and passed by majority vote (Mr. Beard recused himself and Ms. Crosbie was absent when the vote was taken), to deny the motion to dismiss and to proceed with the rescheduled hearing date on April 26, 2011 at 5:00 p.m.

Ms. Glenda George, Dept. of Law, asked the Council to set a time limit for counsel.

Mr. David Enlow, attorney for the Council, spoke about the time limit.

Ms. Gorton made a motion, seconded by Mr. Ellinger and passed by majority vote (Ms. Lawless was absent when the vote was taken), to approve a ninety minute time limit for each side to present their case.

*

*

*

Upon motion of Ms. Gorton, seconded by Ms. Crosbie, the Council adjourned at 5:30 p.m.

Clerk of the Urban County Council