

COMMONWEALTH OF KENTUCKY
NELSON CIRCUIT COURT
DIVISION ONE
CASE NO. 23-CR-00309

ELECTRONICALLY FILED

COMMONWEALTH OF KENTUCKY

PLAINTIFF

v.

BROOKS WILLIAM HOUCK

DEFENDANT

**DEFENDANT BROOKS HOUCK'S RESPONSE IN OBJECTION
TO COMMONWEALTH'S MOTION TO CONSOLIDATE**

The Defendant, Brooks Houck ("Brooks"), by counsel, and in Response to the Commonwealth's Motion to Consolidate this matter with pending criminal cases involving Stephen Lawson and Joseph Lawson hereby objects. In support of this Response, the undersigned states as follows:

FACTUAL BACKGROUND

On or about July 4, 2015, Crystal Rogers disappeared. On July 5, 2015, her family located her abandoned car on the Bluegrass Parkway.

In the days and weeks after Ms. Rogers's disappearance, Brooks cooperated fully with the investigation. He submitted to interviews with the Nelson County Sheriff's Office and the Kentucky State Police. He gave law enforcement permission to search wherever they needed to search. Despite his meaningful cooperation, local law enforcement named him as the main suspect and, unbelievably, went so far as to release significant portions of their ongoing investigation – including Brooks's voluntary police interview – to the media. As a result, the media attention and sensationalism surrounding this case has risen to a level rarely, if ever, before seen in this Commonwealth. Public curiosity has been amplified further by social media.

The outsized media coverage of this case led to intense, mounting pressure on law enforcement to charge someone in connection with Ms. Rogers's disappearance. As a practical matter, the appointment of a special prosecutor to investigate this case was not a mandate to investigate Ms. Rogers's disappearance, but to charge and attempt to convict Brooks Houck. Police interviews of Joseph Lawson and Stephen Lawson clearly indicate that they became collateral damage in law enforcement's efforts to fulfill their mandate.

The Commonwealth lacks dispositive proof that Ms. Rogers is deceased. *If* Ms. Rogers is deceased, the Commonwealth can do no more than guess at who killed her, how she died, why she died, and where she died. There is no crime scene, murder weapon, or realistic motive for the alleged crime. Ms. Rogers's body has never been found. And while the Commonwealth will surely represent to a jury that it does not need a crime scene, a murder weapon, or even the body of the alleged deceased to proceed in a murder case, the nearly nine years law enforcement has spent digging up subdivisions and farmland across Nelson County tells a different story about what they know is important.

Desperately needing to "solve" this case, the Commonwealth sought to mask their evidentiary problems by targeting the Lawsons with the goal of getting either or both to cooperate against Brooks. The intense pressure and astounding promises required to achieve the goal of obtaining the testimony necessary to indict and arrest Brooks is simply unprecedented. By way of example, Kentucky State Police Detective BL told Stephen Lawson, "**You have a blanket to get out of murder.**"¹ Unsurprisingly, given the amount of pressure brought to bear on these two men, the coercive tactics implemented, and the incredible promises made to obtain their cooperation, law enforcement was able to elicit multiple inconsistent statements from

¹ See June 8, 2023 Interview with Stephen Lawson at VR 05:20:35.

Stephen Lawson and Joseph Lawson. Some combination of those statements enabled the Commonwealth to indict and detain Brooks. Understanding the prosecutorial and investigative bias that laid the foundation for these statements is crucial to the analysis as to whether consolidation is appropriate.

A. Stephen Lawson

The Commonwealth subpoenaed Stephen Lawson to testify before the Nelson County Grand Jury on May 10, 2023. His testimony did not incriminate Brooks, and was generally consistent with his 2015 grand jury testimony, as well as previous interviews he had given with the Federal Bureau of Investigation and the Nelson County Sheriff's Department. As a result, he was indicted on May 24, 2023 for tampering with physical evidence. Stephen Lawson was arrested on June 8, 2023, which is when negotiations began to obtain an incriminating statement against Brooks.

Stephen Lawson was promised immunity. Detective TH told Stephen Lawson that he was being offered "the opportunity of a lifetime"² and that "these charges can disappear."³ The special prosecutor advised, "I have the power today, ok. I done talked to the Judge. You can roll on home tonight."⁴ Of critical importance, the prosecutor stated:

Let me give you this much. **What you say today is considered plea negotiations. Once I arrive the whole game changes, ok? And it's a rule, there is a criminal rule on it.** [emphasis added]. I don't remember off the top of my head. But anyway, what you say today will not be used against you, ok? I can promise you that. If you are 100 percent honest with me, this all just goes away. Ok? 100 percent honest with me, and that means all of it. You are, I'll take care of you and I'll take care of Rebecca. All right? You hold the key to this.⁵

² June 8, 2023 KSP Interview with S. Lawson at VR 00:50:50.

³ *Id.* at VR 00:51:54.

⁴ *Id.* at VR 01:25:45.

⁵ *Id.* at VR 01:26:20.

It was clear from the very beginning that everything Stephen Lawson said was part of ongoing negotiations to achieve the ever-elusive carrot of immunity being dangled by the prosecutor. As noted in Stephen Lawson's Motion to Dismiss or, in the alternative, to Suppress Statements, the following is a timeline of key statements made by the police and the prosecutor to Stephen Lawson:

**June 8, 2023 Interview Involving the
Prosecutor and KSP Detectives BL and TH**

Statement	Time Stamp
Detective BL: "My goal is to have you home this evening"	VR 00:07:45
Detective BL: "Our goal is to not ruin your life"	VR 00:08:55
Detective BL: "We do have a prosecutor on hand today, ok, if you was to want some kind of deal ... there could be some kind of immunity, depending on what you say."	VR 00:10:40
Detective BL: "You benefit us."	VR 00:15:10
Detective BL stated: "We are wanting you to work with us, we want your cooperation."	VR 00:16:35
Detective BL: "I don't want you to worry today that if you divulge something you are going to get time. If that's a worry for you, we have the Commonwealth Attorney on hand, on the property, to where we can make you an offer."	VR 00:21:10
Detective TH stated: "We are offering you the opportunity of a lifetime. You can say whatever you want, as long as it is 100 percent the truth, regardless of the incriminating nature of what you say and you can walk out of here today." Detective BL walked in the room and stated, "I was just talking to the Commonwealth Attorney - we are good to go."	VR 00:50:50
Detective TH repeated his statement that Stephen Lawson could say what he wanted regardless of the incriminating nature and still go home that day.	VR 00:51:20
Detective BL: "I want you to be comfortable that anything you say, it's not going to be held against you." Detective BT repeated what Detective BL said and advised that the Commonwealth Attorney is on his way.	VR 1:18:00
Special Prosecutor Shane Young walked into the room and advised Stephen Lawson that he is the prosecutor on the case.	VR 01:24:10-30
Mr. Young: "If you are 100 percent honest with us I am going to help you. I am going to help you. It's on record,	VR 01:24:45

Statement	Time Stamp
<u>it's on tape, whatever you say to me I am not going to use against you.</u>	
Mr. Young: "I have the power today, ok? I done talked to the judge. You can roll on home this evening."	VR 01:25:45
Stephen Lawson: "I want that in writing, whatever I say is cool."	VR 01:26:10
Mr. Young: "Let me give you this much. What you say today is considered plea negotiations. Once I arrive the whole game changes, ok? And it's a rule, there is a criminal rule on it. [emphasis added]. I don't remember off the top of my head. But anyway, what you say today will not be used against you, ok? I can promise you that. If you are 100 percent honest with me, this all just goes away. Ok? 100 percent honest with me, and that means all of it. You are, I'll take care of you and I'll take care of Rebecca. ⁶ All right? You hold the key to this."	VR 01:26:20
Stephen Lawson: "Ok, I'll talk to these gentlemen then."	VR 01:26:20
Mr. Young: "If you need me, I'll be right out here." [Mr. Young walked out to watch the interview on a monitor].	VR 01:26:20
Detective BL: "This is important. The big one. For you to get immunity it has to be 100 percent honest."	VR 02:18:30
Detective BL said, "We are going to give your son the same deal." ⁷	VR 02:19:30
Mr. Young [came back into the room]: "I've been doing this 25 years. I've never extended this offer to anybody, ever. I've never done it. I've identified people who are involved, but low enough involved that I am willing to give them immunity. You're it for me."	VR 02:54:20-35
[Mr. Young reentered the room]: "I'm listening to this. I'm going to call bullshit on this. Why the fuck would you tell that story. You need to cut the bullshit and you need to come fucking clean. <u>I'm giving you blanket immunity, take advantage of it.</u> "	VR 03:57:40
Detective BL: "This is your life. You and your wife's freedom is in your hands."	VR 03:58:30
Detective BL: "You have a blanket to get out of murder."	VR 05:20:35
Mr. Young: " <u>I don't care what your role was. I don't care Joey's role. You go home.</u> Tell 100% of the truth."	VR 05:22:40
Mr. Young: "You're telling most of the truth.... It's getting late. In order for you to not go to jail I got to call a judge."	VR 05:21:50

⁶ Rebecca G... was Stephen Lawson's wife.

⁷ As stated, it was abundantly clear from the beginning that the Commonwealth was involved in plea negotiations with Joseph Lawson from the very beginning as well.

Statement	Time Stamp
Detective BL: “You’re going to have to come back to the Grand Jury and tell the truth this time.” Stephen Lawson said, “I’m confused again.” Mr. Young stated, “No, you’re not confused. If you walk out of here I’m treating you as a witness, not a defendant.”	VR 06:37:40
Mr. Young: “I think you have been about 70 to 80 percent truthful with me. At his point you don’t have immunity.”	VR 06:38:45
Mr. Young stated, “Here in the next couple of days we’re going to have to come the rest of the way for you to get this.”	VR 06:39:15

June 14, 2023 Grand Jury

At the direction of the prosecutor and as part of the ongoing negotiations, Stephen Lawson testified before the Nelson County Grand Jury on June 14, 2023.

June 14, 2023 Interview Involving the Prosecutor and KSP Detectives BL and TH

Statement	Time Stamp
Detective BL: “We are going to try to straighten a few things up. You are here based on an agreement between your attorney and the Commonwealth Attorney. That’s a full cooperation agreement.”	VR 00:01:15
Detective TH: “The more you tell us the more you help Steve.”	VR 00:08:50
Stephen Lawson said, “I don’t want to get things backward, I will get into trouble.”	VR 00:34:50
Detective TH: “If you want us to go to Shane [the prosecutor] and tell him you are good you need to make us believe everything you say.”	VR 00:51:30
Detective BL: “You are facing 20 years.” ⁸	VR 00:56:30
[At one point during the interview] Stephen Lawson: “What do you all want me to say.”	VR 02:14:20
Mr. Young again said that he is offering immunity but that everything has to be truthful.	VR 02:49:40

⁸ At this point, Stephen Lawson had not been charged with conspiracy to commit murder but the immunity offer and the plea negotiations clearly concerned this charge as well because conspiracy to commit murder has a maximum penalty of 20 years. Tampering only has a 5 year maximum.

Statement	Time Stamp
Detective BL: "When we leave here today, if we uncover something else, I don't know that you will get this deal."	VR 02:49:40

**August 22, 2023 Interview Involving the
Prosecutor and KSP Detectives BL and TH**

Statement	Time Stamp
Detective BL: "We're going to kind of start back from the beginning. We're going to get it all on tape. And we're going to get a good statement... Your attorney is present, the prosecutor is both present and observing in a separate room. There has been some discussion worked out as long as you are honest and truthful."	VR 00:14:25
Detective TH: "You are at a crossroads. You are going to have to come clean."	VR 00:31:30
Detective BL: "You are going to have to come clean. We are trying to save your ass."	VR 00:32:10
Detective BL: "The more stuff you say, the more truth you say, the more freedom.... This is a gift like I ain't never seen."	VR 00:37:25
Stephen Lawson: "I've put myself on your side of the table. <u>I want to be on your team, and your team, more than you will ever know.</u> That's a fact, too."	VR 03:18:34
Detective BL: "This is the rest of your life."	VR 03:35:30
Detective TH: "You got to take this all the way home Steve."	VR 03:50:24
Detective BL: "You're going to have to get real about this Steve... Steve, I don't want to send you to the penitentiary."	VR 03:57:50
Detective BL: "I'm getting ready to walk out - and you know who's going to be going to the penitentiary."	VR 03:59:45
Stephen Lawson: "You all act like I don't want to be on your team."	VR 04:10:03

**September 12, 2023 Interview Involving the
Prosecutor and KSP Detectives BL and TH**

Statement	Time Stamp
Detective BL: "Man, before we get started I want you to think about some things. Your	VR 00:00:10

Statement	Time Stamp
mama, you want to see her, right? Your mother, your wife, your grandchildren, your retirement? Think about these things. You could take your last breath in the penitentiary. That’s not what we want.”	
Detective BL: “Steve, you got to clean this shit up now....This is for you, your mom is sitting out there now.”	VR 00:43:05
[Mr. Young walked in the room from viewing the interview on the monitor] Mr. Young: “Nobody thinks you hurt her. Get back on point. Take that out. You are frustrating me.” [Mr. Young left the room to again watch on the monitor]	VR 00:46:30
Detective BL: “We got to bring this home tonight Steve.”	VR 01:02:05
Stephen Lawson: “Y’all are helping me tremendously, and I hope I’ve helped y’all” Detectives BL and TH: “You have!” Stephen Lawson: “I don’t want to get hemmed up and go to prison.”	VR 02:25:10

September 20 Grand Jury

At the direction of the prosecutor and as part of the ongoing negotiations, Stephen Lawson testified yet again before the Nelson County Grand Jury on September 20, 2023.

Post-September 20 Grand Jury

Per Stephen Lawson’s previously filed motion, he continued to cooperate with the investigation as part of ongoing negotiations. In December 2023, the Commonwealth indicted him for conspiracy to commit murder. Stephen Lawson was arrested and has been detained ever since.

None of Stephen Lawson’s statements from June 8, 2023 to the present are admissible.

They were all made as part of ongoing plea negotiations.

B. Joseph Lawson

Like his father, Joseph Lawson was initially charged with tampering with physical evidence in a sealed indictment. On June 21, 2023, Joseph Lawson was arrested and taken in for an interrogation by the Kentucky State Police. If anything, Joseph Lawson's interview was even more troubling than law enforcement's multiple interviews of Stephen Lawson.

To provide some context for some of the statements outlined below, Joseph Lawson has paraplegia as the result of a motor vehicle accident. As outlined in Joseph Lawson's bond reduction motion, he cannot voluntarily move the lower half of his body and is confined to a wheelchair. The interview began with Joseph Lawson's clear invocation of his Sixth Amendment right to counsel, which was blatantly ignored. Constitutional niceties are secondary to "solving" this case. As they did with Joseph Lawson's father, law enforcement dangled the carrot of immunity with the prosecutor on hand and with his express authorization.

Joseph Lawson's interviews with the Kentucky State Police and the prosecutor were also part of plea negotiations and represent an effort to concoct a sufficient story to secure an immunity deal. The lengthy interrogation on June 21, 2023 started with police ignoring Joseph Lawson's clear invocation of his constitutional right to counsel and included Joseph Lawson telling law enforcement – with the prosecutor listening from a parked vehicle yards away and periodically joining the interrogation – that he had urinated on himself because he did not have a catheter or a diaper.⁹ At one point in the interview, Joseph Lawson advised law enforcement that they had kept him so long that he had not only urinated on himself but also defecated on himself.¹⁰

⁹ June 21, 2023 Interview with Joseph Lawson, Body Cam 1 at VR 00:30:35.

¹⁰ June 21, 2023 Interview with Joseph Lawson, Body Cam 2 at VR 02:11:10. The interrogation went on for several hours **after** Joseph Lawson invoked his right to counsel.

The conduct of law enforcement during a subsequent interview of Joseph Lawson that occurred on August 28, 2023 in the Grayson County Detention Center was arguably even more shocking than in the June 21, 2023 interview. The representations law enforcement made to Joseph Lawson strain credulity. Desperate to indict Brooks, Detective BL told Joseph Lawson, **“Whether you killed her or not wouldn’t be our concern.”**¹¹ Detective BL further stated, “We are trying to get you out of a crime.”¹²

The following is a timeline of key statements made by the police and the prosecutor to Joseph Lawson:

**June 21, 2023 Interview Involving the
Prosecutor and KSP Detectives BL and TH**

Statement	Time Stamp
Detective BL: “We already have, with the special prosecutor from the Attorney General’s office who has been assigned to this case...we have permission to set aside your warrant based on your cooperation.”	VR 00:01:40
Detective BL said: “It does me no good for you to go to the penitentiary.”	VR 00:04:40
Detective BL said: “If we call the attorney general this evening he will be here and he will make arrangements for you to go home.”	VR 00:05:30
Joseph Lawson: “I’d rather have a lawyer present.”	VR 00:06:05
Detective BL: “You want to talk to us we can call the attorney general and get you a deal or you can talk to an attorney.”	VR 00:06:50
Joseph Lawson: “I have urine in my pants right now because I don’t have a catheter or diaper.”	VR 00:30:35
Detective BL: “You’re fighting with us and we are not fighting with you, we are offering you something.”	VR 00:20:05
Joseph Lawson: “I’ll take your offer.”	
Joseph Lawson: “I’m not trying to go to jail.”	VR 00:24:30
Detective BL: “This is a forever life changer.”	VR 00:25:00

¹¹ August 28, 2023 Interview with Joseph Lawson at VR 00:11:10.

¹² *Id.* at VR 01:03:05.

Statement	Time Stamp
Mr. Young to Lawson: “got a chance for you and me to get something worked out but you have to tell me the truth.”	VR 00:00:30 of Body Cam 2
Mr. Young: “Here’s what I’m telling you - I want to help you. Need 100 percent truth. You have a chance to go home tonight. Already cleared it with the Judge. I’m not the police, I’m just the prosecutor, I need you to talk to these guys.”	VR 00:08:00 of Body Cam 2
Detective TH: “We can help you - get on our side - we can help you with these charges.”	VR 00:18:00 of Body Cam 2
Joseph Lawson: “What’s that thing they offered last time, the FBI?”	VR 00:26:50 of Body Cam 2
Detective BL: “Immunity” in response to Joseph Lawson’s question.	VR 00:26:55 of Body Cam 2
Detective TH: It’s “got to be balls ass honest.”	VR 00:27:20 of Body Cam 2
Detective BL: “You tell the truth I promise you will go home.”	VR 00:50:45 of Body Cam 2
Joseph Lawson: “You heard me say I wanted my lawyer.” Again, questioning did not cease.	VR 01:27:30 of Body Cam 2
(Mr. Young, who was listening from a vehicle in the parking lot, approached Joseph Lawson and they began cussing at each other.) Detective BL: “You’re going to the penitentiary.” Mr. Young (while walking away, yells): “Roll his ass in there [the jail].”	VR 01:31:15 of Body Cam 2
Mr. Young (returned from listening to the interrogation and told Joseph Lawson): he “called the Judge. He [the Judge] told me I can let you go if I want to. I’m leaning towards letting you go. If you help me I will take care of you. I don’t lie Joey ... I need to connect the dots.”	VR 02:07:45 of Body Cam 2
Joseph Lawson: “I’ve pissed and shit myself.”	VR 02:11:10 of Body Cam 2
Detective BL: “There’s a clause, you can have whatever you want as long as you tell the truth.”	VR 02:15:01 of Body Cam 2
Mr. Young: “Don’t be hiding from us[,]” after he decided to release Joseph Lawson from custody.	VR 02:20:10 of Body Cam 2
Detective BL (in the presence of Mr. Young): “Do not make us look for you or the deal is off.”	VR 02:20:13 of Body Cam 2
Detective BL: “Joey, this deal is with your full and honest and complete cooperation which means we are probably going to have to call you in multiple times to come in and talk to us.”	VR 02:22:12 of Body Cam 2
(At the conclusion of this lengthy interrogation and after Joseph stated multiple times that he had urinated and defecated on himself) Detective BL: “You need him to take you to a hospital or anything Joey?”	VR 02:23:25 of Body Cam 2

August 28, 2023 Interview Involving KSP Detectives BL and TH

Statement	Time Stamp
Detective BL: “The only reason you are here is because of your attorney at the time.”	VR 00:03:00
Joseph Lawson: “What can you all do for me?”	VR 00:04:30
Detective TH: “We can talk to Shane.” “Long term we can get you out of here.”	VR 00:04:30
Detective BL: “Steve [Lawson] is already cooperating but it would help us if somebody would tell us what Steve has already told us.”	VR 00:08:45
Detective BL: “Need you as a witness.”	VR 00:09:00
Joseph Lawson: “I’ll be your witness.”	VR 00:09:00
Detective BL: “Whether you killed her [Crystal Rogers] or not wouldn’t be our concern.”	VR 00:11:10
Detective TH: “Nothing you say will be used against you. We are trying to get you out.”	VR 00:24:45
Detective TH: “It doesn’t matter what you tell us. We are trying to help you.”	VR 00:32:45
Detective BL: “Shane [Young] set up the meeting at the jail here for us and you.”	VR 00:58:00
Detective BL: “We are trying to get you out of a crime.”	VR 01:03:05

Likewise, none of Joseph Lawson’s statements from June 21, 2023 to the present are admissible. They were all made as part of ongoing plea negotiations.

ARGUMENT

Kentucky Rule of Criminal Procedure (“RCr”) 6.20 authorizes the Court to join for trial two or more defendants if “they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses.” RCr 9.16, however, requires that trials be severed, or defendants not joined, “if it appears that a defendant or the Commonwealth is or would be prejudiced” by the joinder. In this matter, Brooks would be unfairly prejudiced by consolidation.

The Commonwealth cites *Commonwealth v. Rogers*, 698 S.W.2d 839 (Ky. 1989) in support of consolidation. *Rogers* requires a defendant to prove that joinder would be so prejudicial as to be “unfair” or “unnecessarily or unreasonably hurtful.” *Id.* at 840. As outlined

below, a joint trial of Brooks, Stephen Lawson, and Joseph Lawson would meet the standard of prejudice set forth in *Rogers*.

The Commonwealth's motion to consolidate fails to acknowledge any of the complex evidentiary issues at play with regard to these three defendants, likely because doing so would be a public admission that its case against Brooks is based in large part upon the inconsistent statements elicited from Stephen Lawson and Joseph Lawson after subjecting them to hours upon hours of coercive interrogation tactics and promising them a "get-out-of-jail-free" card if they said what law enforcement needed to charge Brooks. If the Kentucky Rules of Evidence and the Sixth Amendment are applied appropriately in this case, there is no way for the Commonwealth to present its case against Brooks at a joint trial while still complying with the Sixth Amendment. The reality is that the Commonwealth has used statements elicited from Joseph Lawson and Stephen Lawson to attempt to tie together circumstantial (at best) evidence and innuendo to build a case against Brooks. If that were not the case, Brooks would have been charged in connection with Ms. Rogers's disappearance years ago. Tellingly, he was not indicted until after statements were extracted from Stephen and Joseph Lawson.

A joint trial in this case would violate Brooks's Sixth Amendment rights. He has a right to expose the investigative bias that led to his charges, and impeach the inconsistent statements Joseph Lawson and Stephen Lawson gave to law enforcement. Further, he cannot mount a meaningful defense without showing the jury the tactics law enforcement employed to elicit statements from the Lawsons. Given the interplay of Kentucky Rule of Evidence 410, it would be impossible to do so in a joint trial, since those statements are inadmissible against Joseph Lawson and Stephen Lawson. In addition, even if the Lawsons' statements were properly redacted to remove any reference to Brooks, given the landscape of this case and the distinct role

he is alleged to have played, such statements would inculcate him in violation of his right to confront adverse witnesses. For these reasons, Brooks should be tried separately from Joseph Lawson and Stephen Lawson.

I. Exposure of a Myopic and Biased Investigation

The interviews of Stephen Lawson and Joseph Lawson demonstrate a “get Brooks” mentality that colored every decision made by law enforcement in this investigation. Police represented to both Lawsons that they were not concerned whether either one of them murdered Crystal Rogers as long as they agreed to cooperate against Brooks. Joseph Lawson and Stephen Lawson were told that it did not matter what they admitted to as long as they help the police “get Brooks.” The prosecutor said, “I don’t care what your role was. I don’t care Joey’s role. You go home.”¹³ Police repeatedly told both Joseph and Stephen Lawson that they were reporting directly to high ranking officials. The bias and pressure to charge Brooks demonstrated throughout these interviews is palpable. Brooks has a right to defend himself against these allegations and has every right to expose the bias in the investigation.

The issue, however, is that none of these interviews are admissible against Joseph Lawson or Stephen Lawson. Kentucky Rule of Evidence (“KRE”) 410 specifically states that “evidence ... is not admissible against the defendant who ... was a participant in the plea discussions” which includes; (4) “Any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty ...” On June 8, 2023, the prosecutor told Stephen Lawson:

If you are 100 percent honest with us I am going to help you. I am going to help you. It's on record, it's on tape, whatever you say to me I am not going to use against you.¹⁴

¹³ June 8, 2023 Interview of Stephen Lawson at VR 05:22:40.

¹⁴ June 8, 2023 Interview of Stephen Lawson at VR 01:24:45.

Let me give you this much. **What you say today is considered plea negotiations. Once I arrive the whole game changes, ok? And it's a rule, there is a criminal rule on it.** I don't remember off the top of my head. But anyway, what you say today will not be used against you, ok? I can promise you that.¹⁵

Detective BL said, "We are going to give your son the same deal."¹⁶ Stephen Lawson's testimony before the Nelson County Grand Jury on June 14, 2023 and September 20, 2023 were also part of plea negotiations. Detective BL made that abundantly clear during Stephen Lawson's June 8th interview when he said, in the presence of the prosecutor, "You're going to have to come back to the grand jury and tell the truth this time."¹⁷ The goal of this condition on Stephen Lawson's promised immunity deal was, of course, for him to provide enough information to the grand jury to ensure Brooks was indicted. Every interview or statement Stephen Lawson gave and Nelson County Grand Jury appearance he made after June 8, 2023 are part of the continuing course of plea negotiations with Lawson attempting to secure an immunity agreement.

Joseph Lawson's interrogation began with Detective BL stating, "We already have, with the special prosecutor from the Attorney General's office who has been assigned to this case...we have permission to set aside your warrant based on your cooperation."¹⁸ Later in the interview, the prosecutor reiterated to Joseph Lawson that you "got a chance for you and me to get something worked out but you have to tell me the truth."¹⁹ It was equally clear from Joseph Lawson's interviews that he is likewise attempting to finalize an immunity agreement.²⁰

¹⁵ *Id.* at VR 01:26:20.

¹⁶ *Id.* at VR 02:19:30. As stated, it was abundantly clear from the beginning that the Commonwealth was involved in plea negotiations with Joseph Lawson from the very beginning as well.

¹⁷ *Id.* at VR 06:37:40.

¹⁸ June 21, 2023 Interview with Joseph Lawson, Body Cam 1 at VR 00:01:40.

¹⁹ June 21, 2023 Interview with Joseph Lawson, Body Cam 2 at VR 00:00:30.

²⁰ Joseph Lawson's June 21, 2023 statement is likewise inadmissible as police questioned him after he invoked his right to an attorney. *See Edwards v. Arizona*, 451 U.S. 477 (1981) (where a defendant invoked his right to counsel

Pursuant to KRE 410, none of Stephen Lawson or Joseph Lawson's statements from June 8, 2023 to the present are admissible against them. In *Roberts v. Commonwealth*, 896 S.W.2d 4, 5 (Ky. 1995), the Kentucky Supreme Court defined plea discussions as "discussions in advance of the time for pleading with a view to an agreement whereby the defendant will enter a plea in the hope of receiving certain charge or sentence concessions." *Id.* at 5 (Quoting *United States v. Robertson*, 582 F.2d 1356, 1365 (5th Cir. 1978)). In *Roberts*, the Court adopted a two-prong test to be applied in determining whether a conversation should be characterized as a plea discussion:

- (1) whether the accused exhibited an actual, subjective expectation to negotiate a plea at the time of the discussion; and
- (2) Whether the accused's expectation was reasonable given the totality of the objective circumstances.

Id. at 5-6.

In *Roberts*, the defendant struck a bargain that he would not be charged as a persistent felony offender ("PFO") if he gave a truthful statement. *Id.* at 5 The defendant's statement was not truthful, so the Court ruled that the Commonwealth was not bound by its agreement and could charge the defendant as a PFO. *Id.* at 6. But the Court also held that Roberts's statement was made in the course of plea discussions with the prosecutor. *Id.* Consequently, that statement was not admissible against him at trial pursuant to KRE 410. *Id.*

In *Kreps v. Commonwealth*, 286 S.W.3d 213, 217 (Ky. 2009), the defendant said he would be willing to provide a statement in exchange for reduced charges. Initially, the detective said he did not have the authority to make such an arrangement, but ultimately talked to the prosecutor who said he did not have a problem reducing Class C felonies to Class D felonies. *Id.* at 217-18. Afterwards, the defendant confessed. *Id.* at 218. The Kentucky Supreme Court

during a custodial interrogation, it is not a valid waiver of that right by showing the defendant responded to police-initiated interrogation after being advised of his rights).

reversed the conviction, finding that the defendant's statement should have been excluded pursuant to KRE 410. *Id.* at 219. *Kreps* makes it clear that when police officers represent to a defendant that they are acting with the authority of the prosecutor, they can also bind the Commonwealth, as the Kentucky State Police detectives interviewing Stephen Lawson and Joseph Lawson did here.

Both Lawsons exhibited a subjective expectation to achieve a resolution where they would not go to jail. *See Roberts*, 896 S.W.2d at 5. Stephen Lawson agreed to talk with police after the prosecutor told him that because they were engaged in plea negotiations, nothing he said would be used against him.²¹ Joseph Lawson inquired about immunity in his discussions with police and the prosecutor.²² Both Lawsons sought to avoid jail time by saying whatever they needed to say to obtain the immunity offer that was dangled in front of them.

Moreover, the expectation both Lawsons had that they were involved in negotiations was certainly reasonable. *See Roberts*, 896 S.W.2d at 5. The prosecutor was not only present but actively involved in these interrogations. The prosecutor and the detectives acting at his behest offered immunity. The prosecutor and the detectives acting at his direction made statements that nothing either defendant said in their interviews would be used against them. It could not be clearer. The statements made by Joseph Lawson and Stephen Lawson from June 8, 2023 to present are inadmissible against them pursuant to KRE 410.

Law enforcement's myopic focus on Brooks demonstrated throughout these interviews is not only relevant but crucial to Brooks's defense. However, introduction of any portion of these statements in a trial involving Stephen Lawson and Joseph Lawson would be improper. Denying Brooks the ability to question law enforcement officers about statements they made in these

²¹ June 8, 2023 Interview of Stephen Lawson at VR 01:26:20.

²² June 21, 2023 Interview with Joseph Lawson, Body Cam 2 at VR 00:26:50.

interviews would improperly curtail his right to defend himself and demonstrate to the jury the level of bias that has tainted this investigation since its inception. As such, Brooks cannot be tried jointly with Stephen Lawson and Joseph Lawson.

II. Brooks is entitled to impeach Joseph Lawson and/or Stephen Lawson with all of their statements.

Brooks has a constitutional right to probe and expose methods by which law enforcement extracted statements from Joseph Lawson and Stephen Lawson, in addition to the inherent bias of these witnesses, and the inconsistent statements they made. This poses a problem if all three defendants are tried together, since such statements are inadmissible against Joseph Lawson and Stephen Lawson pursuant to KRE 410, and potentially other evidentiary rules as well. “The exposure of a witness’s motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination.” *Davis v. Alaska*, 415 U.S. 673, 679 (1986). The United States Supreme Court has deemed it reversible error when the trial court excluded evidence that a key prosecution witness’s criminal charge had been dismissed after he agreed to talk with investigators about a murder. *Delaware v. Van Arsdall*, 475 U.S. 673, 676 (1986).

Stephen Lawson testified in the Nelson County Grand Jury in 2015. He was interviewed by the FBI in 2020. Moreover, the FBI utilized a confidential informant to surreptitiously record Stephen Lawson.²³ Likewise, Joseph Lawson was interviewed by the FBI in 2020.²⁴ Additionally, a couple of individuals who admitted to being actively addicted to heavy drugs at

²³ Importantly, in the recording obtained by the confidential informant, Stephen Lawson did not implicate himself or Brooks. In fact, he affirmatively stated that he did not think Brooks had anything to do with Ms. Rogers’s disappearance.

²⁴ The FBI’s interview was conducted as part of a proffer agreement in the presence of an Assistant United States Attorney. Pursuant to federal proffer rules, the statements cannot be used against a defendant unless the defendant later testifies inconsistently with his proffer statement.

the relevant points in time claim in interviews with law enforcement that Joseph Lawson or Stephen Lawson made incriminating statements to them as well.

Stephen and Joseph Lawson's pre-June 2023 statements, with the exception of Joseph Lawson's federal proffer examination, may be introduced against them through federal agents, testimony of lay witnesses, and testimony of a confidential informant. Stephen Lawson's and Joseph Lawson's subsequent inadmissible statements are not only frequently inconsistent with each other but wholly inconsistent with their respective statements prior to June 8, 2023. The problem with trying these defendants jointly is that while the Commonwealth should not be able to introduce any of Stephen Lawson's or Joseph Lawson's statements made after June 8, 2023 against them, Brooks has a right to probe into the inconsistency of their statements as part of his defense. In fact, to deny him the right to cross-examination about these inconsistencies would effectively obviate his right confront the witnesses against him in violation of the Confrontation Clause of the Sixth Amendment.

In short, statements Stephen Lawson and Joseph Lawson made on June 8, 2023 and thereafter and Joseph Lawson's 2020 interview with the FBI cannot be introduced as evidence against them. However, Brooks must be able to probe into the inconsistencies of these statements in order to attack the veracity of statements Stephen and Joseph Lawson made prior to June 8, 2023. The only way this can be effectively accomplished while preserving the constitutional rights of all three defendants is to try Brooks separately from the Lawsons. While separate trials may be inconvenient, the inconvenience does not outweigh each of these defendants' constitutional right to a fair trial, especially when such gravely serious charges are involved.

III. Redactions would not protect Brooks's Sixth Amendment rights.

The Confrontation Clause of the Sixth Amendment, extended against the States by the Fourteenth Amendment, guarantees the right of a criminal defendant to be confronted with the witnesses against him. The right of confrontation includes the right to cross-examine witnesses. *Pointer v. Texas*, 380 U.S. 400, 404 (1965). As such, the Government cannot admit statements made by Stephen Lawson or Joseph Lawson against Brooks unless one or both elected to testify. To do so would violate Brooks's Sixth Amendment rights.

In *Bruton v. United States*, 391 U.S. 123 (1968), the Supreme Court ruled that a defendant is deprived of his Sixth Amendment right of confrontation when a facially incriminating confession of a non-testifying co-defendant is introduced at their joint trial, even if the jury is instructed to consider the confession only against the co-defendant. Typically, the way around this quandary that arises often in joint trials is to redact the statement of the non-testifying co-defendant to remove any reference to the defendant. *See Richardson v. Marsh*, 481 U.S. 200 (1987). Nevertheless, a redaction that is facially valid may still amount to a Sixth Amendment violation if it can only be reasonably interpreted as inculcating the defendant. *Gray v. Maryland*, 523 U.S. 185 (1998).

Should the Court admit any or all of Stephen Lawson's and Joseph Lawson's post-June 2023 statements or Joseph Lawson's proffer interview with the FBI, those statements cannot be redacted in a manner that adequately protects Brooks's Sixth Amendment rights. Both Joseph Lawson and Stephen Lawson have given statements littered with inconsistencies. Because of the distinct roles they are alleged to have played in Ms. Rogers's disappearance and the myriad of inconsistencies in their statements, practically speaking, there is simply no way to redact any of their statements without implicating Brooks.

As stated in *Gray v. Maryland*, 523 U.S. at 186, a jury will often react similarly to an unredacted confession and a confession that is not or cannot be properly redacted “for it will realize that the confession refers specifically to the defendant, even when the State does not blatantly link the defendant to the deleted name.” Moreover, Stephen Lawson’s and Joseph Lawson’s statements cannot properly be redacted to eliminate not only Brooks’s name, but any reference to his existence. See *Richardson*, 481 U.S. at 211 and *Peacher v. Commonwealth*, 391 S.W.3d 821, 834 (Ky. 2013) (“In a joint trial, the Confrontation Clause ban applies even to hearsay statements offered as evidence against the co-defendant declarant himself, if the declarant does not testify and if the statement either expressly or by immediate implication tends to incriminate another defendant.”).

This case is distinguishable from the cases finding that redaction is sufficient to protect a defendant’s Sixth Amendment rights at a joint trial for a number of other reasons: the sheer number of times Stephen Lawson and Joseph Lawson gave recorded statements, the length of those interviews, the multitude of inconsistent statements, and the time period over which those interviews occur. By way of example, below is a list of interviews, testimony, and statements given by Stephen Lawson in this case, not including recorded statements he made to a confidential informant:

9/26/2015 Nelson County Grand Jury Appearance
8/6/2020 FBI Interview (5+ hours)
6/8/2023 KSP Interview (approximately 6.5 hours)
6/14/2023 Nelson County Grand Jury Appearance
6/14/2023 KSP Interview (3+ hours)
6/19/2023 KSP Interview (30 minutes)

8/22/2023 KSP Interview (4+ hours)

9/12/2023 KSP Interview (over 2.5 hours)

9/20/2023 Nelson County Grand Jury Appearance

Stephen Lawson alone has given over twenty hours of statements, interviews, and testimony for the Commonwealth to sanitize of any reference to Brooks. All twenty hours – from start to finish – are full of inconsistencies, later-admitted lies, and responses to leading questions aimed at implicating Brooks in the disappearance of Crystal Rogers. The required redaction of this overwhelming amount of material cannot be accomplished without materially altering the content of the statements in a way that would inevitably prejudice Brooks or Stephen Lawson, or both. Any attempt by the Commonwealth to claim that the statements made by Joseph Lawson or Stephen Lawson are truthful is laughable, as it will be simultaneously arguing that the Lawsons' statements were not truthful, and, as a result, they are not entitled to immunity.

As previously noted, without the statements of Joseph Lawson and Stephen Lawson, there is not and was not sufficient evidence to indict Brooks for 8 years. Even if the large number of statements given by Joseph Lawson and Stephen Lawson can be properly redacted to remove any reference to Brooks – which is unlikely – there is no way for the Commonwealth to make a case against Brooks without using the testimony and statements of the Lawsons against him. To do so in a joint trial would violate Brooks's Sixth Amendment rights. In *Peacher*, the co-defendant's statements were properly redacted and not admitted against the defendant. 391 S.W.3d at 835. However, both the prosecutor and co-defendant's counsel urged the jury to use co-defendant's redacted statement in evaluating the evidence against the defendant. *Id.* *Peacher* argued on appeal that this violated his right to confront adverse witnesses and undermined the rationale of *Richardson*. *Id.* The Kentucky Supreme Court noted that *Peacher's* concern was

legitimate, but the error was not properly preserved because Peacher's counsel did not object to this aspect of counsel's arguments at trial. *Id.* at 836.

It cannot be emphasized enough that it would be impossible for the Commonwealth to tell a coherent story in an opening statement about what it believes happened to Ms. Rogers without using Stephen and Joseph Lawson's statements to attempt to tie together circumstantial evidence that the Commonwealth believes may be incriminating against Brooks. Trying these men together will not only violate Brooks's Sixth Amendment rights and unduly prejudice him, it will create a trial circus regarding what evidence is admissible and against whom.

CONCLUSION

Simply put, there is no way for the Commonwealth to introduce evidence against all three defendants at a joint trial without violating the Kentucky Rules of Evidence, violating Brooks's Sixth Amendment rights, or both. For these reasons, the Commonwealth's motion to consolidate should be denied.

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 2024, a copy of the foregoing was electronically filed with the CM/ECF filing system which will serve notice upon all parties of record.

/s/ Brian Butler
Counsel for Defendant, Brooks Houck