COMMONWEALTH OF KENTUCKY
KENTUCKY SUPREME COURT
NO. 2025-SC-0440

BROOKS WILLIAM HOUCK — **APPELLANT**

v.

COMMONWEALTH OF KENTUCKY — **APPELLEE**

* * * * *

BRIEF OF APPELLANT BROOKS WILLIAM HOUCK

ON APPEAL FROM THE NELSON CIRCUIT COURT
CASE NO. 2023-CR-00309

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Michael D. Risley
Jennifer Henry Jackson
Jordan Butler
STITES & HARBISON, PLLC
400 West Market Street, Suite 1800
Louisville, KY 40202-3352
Telephone: (502) 587-3400
Facsimile: (502) 587-6391
mrisley@stites.com
jjackson@stites.com
jbutler@stites.com

Counsel for Appellant Brooks Houck

Certificate of Service

I hereby certify that this brief was filed using the Court's e-filing system, which includes service on all registered users of that system, and further that a true copy of the foregoing brief was served by first class mail, postage prepaid, upon Hon. Shawn D. Chapman, Deputy Solicitor General for Criminal Appeals, Office of the Solicitor General, Criminal Appeals Division, 1024 Capital Center Drive, Frankfort, KY 40601, on this 20th day of January, 2026. It is further certified that appellant did not remove the Record on Appeal from the Clerk's office.

/s/ Michael D. Risley
Michael D. Risley

INTRODUCTION

Brooks Houck was convicted of murder and sentenced to life in prison even though the Commonwealth presented no evidence of an actual murder. No body was found and no murder weapon was introduced into evidence. The Commonwealth offered no evidence of how the alleged murder was committed, presented no evidence of a murder scene, and could not even identify the venue of the alleged murder, the Special Prosecutor candidly admitting "I don't know where she was murdered!" None of the types of evidence that has been relied on to support a conviction in the absence of direct evidence of a murder − a confession, evidence of violence between the missing person and the defendant − was presented here. As the Special Prosector further admitted about Brooks, "Am I saying he's the one who killed her? No. I don't know who killed her."

The presiding judge, who years before had expressed shock that someone might be interested in having a relationship with Brooks because he was "the prime suspect in the disappearance and presumed death of his previous girlfriend," erred in submitting the case to the jury. In so doing, Judge Simms committed several additional errors, including (1) failing to recuse himself in light of his prior comment; (2) trying Brooks and Joseph Lawson together; (3) failing to strike for cause potential jurors who knew of Steve Lawson's conviction arising from Crystal Rogers's disappearance; and (4) allowing the introduction of prejudicial hearsay evidence from multiple witnesses.

For these several reasons, Brooks Houck is entitled to a reversal of his conviction.

STATEMENT CONCERNING ORAL ARGUMENT

Brooks Houck requests oral argument. The seriousness of the issues presented and the length of his sentence warrant this Court hearing argument in this case.

STATEMENT OF POINTS AND AUTHORITIES

STATEMENT OF THE CASE

A. Crystal Rogers goes missing in 2015

On or about July 4, 2015, Crystal Rogers disappeared. [VR 6/25/25 1:45:55] On July 5, her car was located on the Bluegrass Parkway. [*Id.*]

B. Crystal Rogers's disappearance is investigated but no charges are brought against anyone

The Nelson County Sheriff's Office immediately undertook an investigation into Crystal Rogers's disappearance. Brooks Houck, with whom Crystal Rogers lived at the time [VR 6/25/25 2:05:52], cooperated fully with the investigation. He submitted to multiple interviews with the Nelson County Sheriff's Office and the Kentucky State Police. [VR 6/26/25 11:40:47- 11:41:11] He gave law enforcement permission to search both his home and his truck. [VR 6/26/25 11:35:18, 11:35:22] He voluntarily allowed himself to be fingerprinted. [VR 6/26/25 11:35:10] He gave authorities full access to his cell phone [VR 6/26/25 11:36:00] and Crystal's cell phone [6/26/15 11:36:12] for forensic testing.

Despite his meaningful cooperation and without any evidence to support its position, local law enforcement immediately focused the investigation on Brooks. [VR 6/30/25 3:48:42]

Early in the investigation, significant portions of law enforcement's ongoing investigation – including one of Brooks's lengthy voluntary police interviews – were released to the media. [VR 6/26/25 11:57:30] The materials made their way to the internet and YouTube, where they were available to the entire world. [6/26/25 11:58:20] Yet Brooks was not charged with any crime relating to Crystal Rogers's disappearance at that time or in the several years that followed, reflecting the lack of any substantial

evidence connecting Brooks with Crystal Rogers's disappearance. Indeed, even up to the time the case was submitted to the jury, the Commonwealth could not present any substantive evidence of Brooks's guilt, the Special Prosecutor admitting in his closing argument that "Am I saying he killed her? No. I don't know who killed her." [VR 7/7/25 3:09:40]

C. Judge Simms makes public comment in 2017 concerning Brooks's supposed involvement in Crystal Rogers's disappearance

Many people quickly and irreversibly made up their minds concerning Brooks's supposed guilt, including Judge Charles Simms, who later would be the presiding judge in his criminal case. In 2017, six years before Brooks was charged with any crime relating to Crystal Rogers's disappearance, Judge Simms was presiding over a custody dispute involving Crystal Maupin, who was in a relationship with Brooks at the time. Although Brooks was not a party and not involved in that custody dispute, Judge Simms went out of his way to direct a comment toward Brooks that reasonably called into question Judge Simms's ability to impartiality preside over any subsequent criminal case brought against Brooks:

> [T]his Court is simply astonished that Crystal [Maupin] would want a relationship with a man [Brooks Houck] who is the prime suspect in the disappearance and presumed death of his previous girlfriend.

[TR 163, 184, Order in *Mark D. Maupin v. Crystal Dawn Maupin*, Nelson Circuit Court, Civil Action No. 13-CI-00667 (May 25, 2017), included in the Appendix at tab C].

D. Brooks is indicted in 2023

Brooks Houck was indicted by the Nelson County Grand Jury on September 20, 2023, over eight years after Crystal Rogers went missing. In Indictment no. 23-CR-309

(copy included in the Appendix at tab B), Brooks was charged with two crimes:

> Count I
>
> On July 3, 2015, and/or July 5, 2015, in Nelson County, Kentucky, the above-named Defendant, acting alone or in complicity with another, committed the offense of Murder by intentionally or under circumstances manifesting extreme indifference to human life wantonly causing the death of Crystal Rogers.
>
> Count II
>
> On July 3, 2015, and/or July 5, 2015, in Nelson County, Kentucky, the above-named Defendant, Tampering With Physical Evidence, when believing that an official proceeding may be pending or instituted, he destroyed, mutilated, concealed, removed or altered the physical evidence which he believed was about to be produced or used in such official proceeding, with the intent to impair its verity or availability in the official proceeding.

Indictment no. 2023-CR-309 [TR 1].[1]

Brooks bond was initially set at $10,000,000. [TR 9] The court denied Brooks's motion asking that the bond be reduced.[2] [TR 131]

Brooks was arraigned on October 5, 2023 and entered a plea of not guilty. [TR 136]

Also indicted were Steven Lawson (father) and Joseph Lawson (son). *See Commonwealth v. Steven Eugene Lawson*, Nelson Circuit Court no. 2023-CR-0371; *Commonwealth v. Joseph L. Lawson*, Nelson Circuit Court no. 2023-CR-0239. Both

[1] The indictment, along with several other items, were originally filed under seal. The Court unsealed all documents in an order filed on July 11, 2025. [TR 907]

[2] Brooks appealed the court's order denying his motion to reduce the amount of the bond, with the Court of Appeals finding that the court had not abused its discretion in setting the bond at $10,000,000. *See Houck v. Commonwealth*, No. 2023-CA-1209 (Ky. App. Nov. 28, 2023). This Court denied Brooks's motion for discretionary review on March 6, 2024. *See Houck v. Commonwealth*, No. 2023-SC-572 (Ky. March 6, 2024).

were charged with conspiracy to commit murder and tampering with physical evidence. *Id.*

E. Pre-trial motions

A series of motions were filed prior to trial.

1. Motion to recuse

Brooks submitted an affidavit to the Chief Justice seeking the recusal of Judge Simms, based on (1) Judge Simms's public comment in 2017 that reasonably called Judge Simms's impartiality into question; and (2) the amount of the bond.[3] [TR 163-221]

Chief Justice Van Meter declined to remove Judge Simms from the case but remanded the motion to the Nelson Circuit Court to have Judge Simms treat the affidavit as a motion to recuse. [TR 222-25] Judge Simms denied Brooks's motion to recuse. [TR 235-243]

2. Motion for a change of venue

Brooks moved for a change of venue. [TR 261-78] The Commonwealth did not object. [TR 330] The parties eventually agreed on Warren County as the venue in which the case would be tried. [TR 401]

3. The Commonwealth's motion to consolidate Brooks's trial with the trials of Steve Lawson and Joseph Lawson

The Commonwealth moved to consolidate Brooks's case with the cases of Steve Lawson and Joseph Lawson for trial. [TR 299-302] Brooks opposed the motion, pointing out that consolidating the cases for trial would prejudice Brooks by allowing introduction of evidence that may be relevant to the claims against either Steve Lawson

[3] The Court of Appeals had not issued its Opinion in Brooks's appeal relating to the amount of the bond at the time Brooks moved to recuse Judge Simms.

or Joseph Lawson but which would not otherwise be admissible if Brooks were to be tried individually. [TR 303-26] Brooks further pointed out that the Lawsons' statements to the police would be admissible if they were tried in the same trial as Brooks, with Brooks being deprived of his constitutional right to confront the witnesses against him because the Lawsons could not be compelled to testify at trial. [*Id.*]

In an order entered on November 5, 2024, the court denied the Commonwealth's motion as it related to Steve Lawson but granted it as it related to Joseph Lawson and Brooks being tried in a single trial. [TR 475-84]

4. Motion to exclude testimony of Stacie Crammer

Stacie Cranmer was the subject of two pre-trial motions. The first was a stand-alone motion asking that Cranmer not be allowed to testify concerning a conversation she supposedly overheard in which Steve Lawson allegedly said that Brooks had told him that there was a girl on meth with five kids that he needed to take care of. [TR 809] Cranmer also was included in a second motion Brooks filed asking the court to exclude hearsay testimony from a number of potential witnesses, including Cranmer. [TR 826, 836]

The court denied Brooks's motions and allowed Cranmer to testify. [TR 843]

5. Motion to exclude testimony of Rebecca Greer

Rebecca Greer was included in the motion Brooks filed asking the court to exclude hearsay testimony from several witnesses. [TR 826] Greer is Steve Lawson's ex-wife who it was believed would testify concerning Steve Lawson allegedly saying that he was paid $50,000 to move Crystal Rogers's car. [TR 833]

The court denied Brooks's motion and allowed Rebecca Greer to testify. [TR

888]

6. Motion to exclude testimony of Heather Snellen

Heather Snellen was also included in Brooks's motion to exclude witnesses offering hearsay testimony. [TR 826] The offending testimony from Snellen, who had previously dated Steve Lawson, was that she overheard a conversation between Steve Lawson and Joseph Lawson about moving a body to the Houck farm years after Crystal Rogers's disappearance. [TR 832]

The court denied Brooks's motion and allowed Heather Snellen to testify. [TR 888]

7. Motion to exclude testimony of Barbara Coulter

Brooks also sought to exclude the testimony of Barbara Coulter, Steve Lawson's Mother and Joseph Lawson's Grandmother. [TR 826] Barbara Coulter had not been disclosed by the Commonwealth as a potential witness until after the trial against Steve Lawson had concluded, a trial in which Barbara Coulter testified that Steve Lawson had told her that all he did was to pick up Joseph Lawson at Crystal Rogers' car. [TR 835]

The court denied Brooks's motion and allowed Barbara Coulter to testify. [VR 7/1/25 11:26:53]

F. The trial of Steve Lawson

The Commonwealth's case against Steve Lawson was tried before the case against Brooks and Joseph Lawson. Was tried That trial, which occurred in Warren County just a month before the trial in this case, resulted in Steve Lawson being found guilty of conspiracy to commit murder and tampering with physical evidence. *See* Final Judgment of Conviction in *Commonwealth v. Steven Eugene Lawson*, Nelson Circuit

Court nos. 23-CR-165 and 23-CR-371 (Aug. 7, 2025). Steve Lawson has appealed his conviction, with his appeal currently pending in the Court of Appeals.

G. The trial in this case

1. Jury selection

Not surprisingly since the trial in this case occurred less than a month after the conclusion of Steve Lawson's trial, multiple jurors, including jurors 16, 48, 77, and 100, indicated that they knew that Steve Lawson had recently been tried and found guilty. [VR 6/24/25 12:16:36; 11:31:32; 12:18:02; and 12:28:20] Consistent with keeping all evidence of Steve Lawson's trial and conviction out of the trial of this case, Brooks moved the court to strike each of those jurors for cause. [*Id.*] The court denied Brooks's motion based on the jurors' indication that they could decide the case impartially despite knowing of Steve Lawson's conviction. [*Id.*] As a result, the defense was required to strike those four tainted jurors with four of their preemptory strikes. the defense indicated on their strike sheet that they would have struck jurors 4, 50, 67, 90, and 120 had their motions to strike jurors 16, 48, 77, and 100 (among others) for cause had been granted:

> . * Δ counsel have struck #'s 100, 41, 48, 77, 72 + 16 had our cause motions been granted, would have struck #'s 67, 120, 50, 90, 4

Defendants' joint strike sheet [TR 895, included in the Appendix at tab D].

Of the jurors the defense would have struck if their for cause motions had been granted, jurors 4 and 50 ended up on the jury that convicted Brooks in this case. [TR 896]

2. The evidence presented by the Commonwealth

While the Commonwealth presented dozens of witnesses in its case in chief, neither Steve Lawson nor Joseph Lawson testified. None of the other witnesses called by the Commonwealth actually offered any testimony sufficient to support Brooks being convicted of either of the crimes with which he was charged.

The Commonwealth's main witness was Detective Jonathon Snow, who was the lead investigative detective. Detective Snow spent over 3500 hours on the case from the time of Crystal Rogers's disappearance in July 2015 through December 2016. [VR 6/26/25 11:18:37] He put in additional thousands of hours before he retired in 2019. [VR 6/26/25 11:19:00]

And the investigation involved far more officers and agencies beyond just Detective Snow and the Nelson County Sheriff's Office. Assistance was provided by the Kentucky State Police, the FBI, ATF, the Bardstown City Police, the Louisville Metro Police Department, and other sheriffs' departments. [VR 3:26:25 11:19:18] While Detective Snow would not agree that over 100 people were interviewed as a part of the investigation, he admitted that they interviewed "a lot of people." [VR 6/26/25 11:20:17] Massive amounts of phone data was analyzed, and hundreds of hours of video surveillance was reviewed. [VR 6/26/25 11:22:30] Over 70 search warrants were executed. [VR 6/26.25 11:26:00]

And yet the Commonwealth was unable to produce sufficient evidence that Brooks Houck was guilty of either of the crimes with which he was charged.

Detective Snow testified that he was called on July 5 concerning a missing person report for Crystal Rogers, whose car was found on the Bluegrass Parkway. [VR 6/25/25

1:45:55] Detective Snow went directly to the car while it was still on the Bluegrass Parkway. [VR 6/25/25 1:46:00] After inspecting the car and having it towed, Detective Snow asked Brooks, with whom Crystal was living, to come in and be interviewed, which Brooks agreed to do. [VR 6/25/25 2:05:32] In fact, throughout the investigation, Detective Snow asked Brooks to come in to be interviewed multiple times and Brooks voluntarily came in every time. During the third interview, Detective Snow told Brooks:

> You've been nothing but cooperative with me. I appreciate that. We've talked this makes three times.

[VR 6/26/25 10:40:23]

The Nelson County Sheriff reported at a press conference that Brooks had been cooperative. [VR 6/25/25 11:42:11]

Brooks's cooperation went beyond agreeing to being interrogated multiple times. He agreed to a search of his house and his truck, from which the authorities collected nothing of evidentiary value. [VR 6/26/25 3:33:34] He voluntarily consented to being fingerprinted. [VR 6/26/25 11:35:09] He handled over his cell phone to allow its contents and history to be downloaded and analyzed. [VR 6/26/25 9:02:50] Brooks likewise voluntarily gave the authorities permission to forensically analyzed Crystal's cell phone. [VR 6/25/25 3:07:05]

In addition to searching Brooks's home, Detective Snow testified that the Houck family farm was searched several times, including divers going into a pond and a lake on the family farm. [VR 6/26/25 11:30:07] Fingerprints and DNA were taken from Crystal's car and analyzed. [VR 6/25/25 3:39:12] While there was a fingerprint taken from Crystal's phone, it was not a match for Crystal Rogers, any member of the Houck family, Steve Lawson, or Joseph Lawson. [VR 6/26/25 1:34:09] The authorities never

identified to whom that fingerprint belonged. [*Id.*]

The police car of Brooks's brother, Nick, was searched and forensically tested. [VR 6/26/25 10:46:12]

According to Detective Snow, Brooks told him that he had worked on the day of July 3 and arrived home at about 5:00 p.m. [VR 6/25/25 2:49:24] Brooks took a tractor to Circle K to get gas before returning home around 5:30. [VR 6/25/25 2:54:36] Crystal, their 2 1/2-year-old son Eli, and Kylie, one of Crystal's four other children who lived with Brooks and Crystal, were there. [VR 6/26/25 8:38:20] They remained at home until around 7:30, when Brooks, Crystal, and Eli went to the Houck family farm. [VR 3/35/25 2:58:11] While there, they interacted with the cows and walked through the property. [VR 6/26/25 8:39:25] They fed the cows, which took some time. [VR 3/26/25, 8:40:48, 8:43:35] They built a fire. [VR 6/26/25 9:34:50]

Brooks thought they left the farm around 11:30. [VR 6/25/25 2:06:27] Upon arriving home, Brooks went to bed. [VR 6/25/25 3:00:31] As was common, Crystal stayed up for a while. He believed she was playing a game on her phone. [VR 6/25/25 3:00:01, 6/26/25 8:46:25] Eli stayed up with her, a common occurrence at their house. [VR 6/26/25 10:05:38]

When Brooks woke up the next morning, Eli was in bed with Brooks but Crystal was not. [VR 6/26/25 8:28:38] Brooks did not report her missing, because she had left the house for periods of time before. [VR 6/26/25 2:38:10] At 8:06 a.m., Brooks tried to call Crystal but she did not answer. [VR 6/26/25 1:21:50] He called her twice more on July 4 and 5 with no answer. [VR 6/26/26 1:23:00] He called Barbara Roby, a family member of Crystal's with whom Crystal often spent time, to see if Crystal was with her.

[VR 6/2625 1:23:07] He called Sabrina Ballard, Crystal's cousin with whom Crystal also often spent time, to see if she knew anything about Crystal's whereabouts. [VR 6/26/25 1:28:24] He texted Crystal on July 5, saying everyone is worried and asking her to call. [VR 6/26/25 1:29:17]

In one of the multiple interviews with Brooks, Detective Snow asked Brooks about a telephone number that had placed a 13-second call to Brooks shortly after midnight the morning of July 4. [VR 6/26/25 10:32:09] Brooks did not recognize the number but, without hesitation and with Detective Snow sitting there, called the number on speaker phone to see who had made the call. [VR 6/26/25 10:31:32-10:31:44] It turned out that it was Steve Lawson, who reminded Brooks (and told Detective Snow) that he had called about a rental property Brooks owned. [VR 6/26/25 10:32:36]

Detective Snow admitted that they did not find any evidence concerning how or where Crystal Rogers supposedly had died, stating "we do not have any information as to the method of death" and "we did not find proof of the crime scene, that is correct." [VR 6/26/25 11:33:18]

While Detective Snow tried to make a point about Brooks's timeline of events, such as Brooks saying they left the farm around 11:30 when video evidence showed that it was closer to midnight, Detective Snow admitted that Brooks's estimates as to when things occurred on July 3 were reasonably accurate. [VR 6/25/25 4:11:12]

Detective Snow asked Brooks about conflict between Brooks and Crystal about whether Brooks treated Eli, their shared child, better than Crystal's other four children. [VR 6/26/25 8:41:48] Brooks told Detective Snow that he and Crystal had discussed that topic on July 3, but it did not rise to the level of an argument. [VR 6/26/25 8:42:25]

None of the Commonwealth's other witnesses connected Brooks to Crystal Rogers's disappearance. One, Charlie Girdley, testified that Rosemary Houck, Brooks's Mother, told him something to the effect that "we're better off since she's been gone." [VR 6/30/25 10:44:30] Defense counsel objected to this hearsay testimony and the court sustained the objection. [VR 6/30/25 10:44:54]

Some witnesses testified concerning their dealings with Crystal Rogers on July 3. Others testified concerning their lack of contact with Brooks on July 3, contrary to Brooks's account of what he did that day. Multiple witnesses were called to testify concerning seeing a car on the side of the Bluegrass Parkway that may have been Crystal Rogers's car. But the Commonwealth presented no evidence that Brooks had anything to do with Crystal's car being on the Bluegrass Parkway.

The Commonwealth tried to build a series of inferences by (1) attempting to offer evidence connecting Brooks with Steve and Joseph Lawson and then (2) trying to connect the Lawsons with Crystal's car. Yet, as to any actual plan involving Brooks and the Lawsons, the Commonwealth admitted that it had no idea as to what that plan was. [VR 7/7/25 3:14:50]

In addition, the evidence of Brooks's relationship with Steve and Joseph Lawson was very minimal. The Lawsons had worked for Brooks. Forensic analysis of cell phones indicated that the 13-second call on July 4 was the only call between Brooks and Steve Lawson during the relevant timeframe. [VR 6/26/25 11:50:53]

Stacie Cranmer testified that she heard Steve Lawson say something to the effect that Brooks had told Steve Lawson that he needed to "take care" of a woman who had five children and was on meth. [VR 7/1/25 1:06:10] Cranmer, who cooperated with the

FBI [VR 7/1/25 1:09:03, 1:19:52], subsequently asked Steve Lawson about the comment, with Steve Lawson explaining that he actually was talking about "taking care of business" and that the woman to whom he was referring may have been Joseph Lawson's girlfriend. [VR 7/1/25 1:09:52] Also, there was no evidence presented at trial that Crystal was using drugs.

The connection between the Lawsons and Crystal Rogers or her car was equally lacking. The Commonwealth presented no forensic evidence connecting the Lawsons to either Crystal or her car. [VR 6/26/25 1:35:24; 1:36:02; 1:38:42] In the absence of any real evidence, the Commonwealth offered the testimony of witnesses who were subjected to coercive interrogation by the authorities, many of whom gave numerous contradictory statements to the testimony presented at trial in the years after Crystal Rogers's disappearance in July 2015.

Rebecca Greer, Steve Lawson's ex-wife, testified that in 2019 she overheard a conversation between Joseph Lawson and her daughter to the effect that Steve Lawson and Joseph Lawson had been paid $50,000 to move Crystal Rogers's car. [VR 7/1/25 12:48:48] Greer also testified that at a later point in time during an argument with Steve, Joseph said something to the effect of "keep it up and I am going to tell everybody about the car and your involvement." [TR 7/1/25 12:57:18] Rebecca Greer's testimony in no way implicated Brooks.

Heather Snellen was allowed to testify. Snellen testified that in 2017 she overheard a conversation between Steve Lawson and Joseph Lawson about moving a body on the Houck farm [VR 6/27/25 9:13:58] She did not hear the identity of whose body they allegedly were talking about. [VR 6/27/25 9:12:31] Despite supposedly

hearing this conversation in 2017, Snellen said nothing about this alleged conversation when interviewed by the FBI in 2020 and 2021. [VR 6/27/25 9:14:05] She likewise said nothing about it in multiple interviews with the Kentucky State Police in 2023. [VR 6/27/25 9:14:05] Her explanation for failing to do so was her years of illegal drug use. [VR 6/27/25 9:15:47]

Snellen first reported this alleged conversation in an interrogation session with the Kentucky State Police during which she was repeatedly threatened that her child would be taken from her [VR 6/27/25 8:58:13], told that her life would be ruined if she didn't have some answers [VR 6/27/25 8:57:46], and told she could home with her son if she remembered more. [VR 6/27/25 9:00:33] And after wilting to the coercion and telling the story of this alleged conversation for the first time, she actually sent a letter to law enforcement in which she fully recanted and said she was pressured into making the statements. [VR 6/27/25 9:17:10]

At the conclusion of Snellen's testimony, the court denied Brooks's motion that the jury be admonished that Snellen's testimony could not be used against Brooks. [VR 6/27/25 11:00:15] However, the court invited the parties to submit memoranda on the issue. [*Id.*] Four days later, the court changed course and indicated that it would give the requested admonition. [7/1/25 2:00:30] That admonition was given on July 7 [VR 7/7/25 9:18:24], ten days after Snellen had testified.

Barbara Coulter, Steve Lawson's Mother, testified that Joseph Lawson told her in 2022 that Steve Lawson had killed Crystal Rogers (although she did not disclose this statement until 2025. [VR 7/1/25 1:25:10, 1:30:25] The court admonished the jury that Coulter's testimony could not be used against Brooks. [VR 7/1/25 12:44:47, 9:18:30]

The Commonwealth also tried, but could not, place Steve Lawson on the Bluegrass Parkway on the night of July 3. Detective Tim O'Daniel, who works for the Digital Forensic Unit of the Louisville Metro Police Department, was allowed to testify as an expert on the issue of identifying where cell phone calls were made. Detective O'Daniel testified that the calls from Steve Lawson's phone on the night of July 3 hit on the north side of several cell towers, while the Bluegrass Parkway was south of the cell towers. On both direct examination [VR 6/27/25 11:29:15] and re-cross [VR 6/27/25 at 2:46:29], the best Detective O'Daniel could do to try to place Steve Lawson on the Bluegrass Parkway was to testify that it was "somewhat possible" for Steve Lawson to have been on the Bluegrass Parkway on the evening of July 3 but still have his phone strike the north side of each tower. On another occasion, the Commonwealth asked in a leading question whether it was "very possible" that Steve Lawson could have been on the Bluegrass Parkway with cell tower sectors of the 3 relevant towers pointing north. [VR 6/27/25 at 2:45:33] Detective O'Daniel hedged and said it "could be." [*Id.*]

While testifying, Detective O'Daniel went beyond the findings in his expert report and testified that it was his opinion that Steve Lawson was in the general area of the Bluegrass Parkway near Crystal Rogers's car based upon a review of the law enforcement records and the Call Detail Records. [VR 6/27/25 1:10:33]

The Commonwealth also tried to establish some connection between Crystal's disappearance with Brooks's Grandmother's car. It offered the testimony of two participants in a raccoon hunting competition who testified they saw a white Buick sedan car in the evening of July 3 that may have been similar to Brooks's Grandmother's car, although those witnesses could not provide the license plate number or any other specific

identifying information for the car. [VR 6/30/25 2:31:16]

The Commonwealth offered the testimony of Terry Benjamin, who a member of the Nelson County Sheriff's Office met at a gun show in Louisville in May of 2016. [VR 7/1/25 8:55:11] At that time, Benjamin worked with a dog, Ranger, who Benjamin claimed was trained to detect both live humans and human remains (Ranger's training could not be proven, according to Benjamin, because those records had been lost). [VR 7/1/25 9:23:27] The next day, Benjamin and Ranger went to a car lot where Brooks's grandmother's car was located. [VR 7/1/25 8:55:18] According to Benjamin, Ranger narrowed in on that specific vehicle and gave his alert for the presence of human remains. [VR 7/1/25 8:59:30]

3. Brooks's motion for a directed verdict of acquittal

After the close of the Commonwealth's case, Brooks moved for a directed verdict of acquittal. [TR 847-54; VR 7/1/25 2:00:24] The court denied Brooks's motion for a directed verdict of acquittal on July 1. [VR 7/1/25 2:27:00]

4. The evidence presented by Brooks

The defense presented the testimony of six witnesses.

Heath Farthing, an independent consultant on police use of dogs, testified that dogs that are cross-trained, such as how Ranger supposedly was trained, tend to give a lot of false positives and therefore cross-training of dogs to search for both live persons and human remains is not recommended. [VR 7/2/25 8:50:55] On cross-examination, the Special Prosecutor agreed with Farthing 100% that things could have been done better. [VR 7/2/25 9:00:54]

Porter Hendrix, the third person participating in the raccoon hunting competition,

testified that he was never separated from the other two hunters, never being more than 20 feet apart. [VR 7/2/25 9:16:50] Hendrix, who did not know any of the people involved in the case [VR 7/2/25 9:19:53], never saw a car or heard anything unusual during the competition. [VR 7/2/25 9:20:58]

Rhonda McIlvoy, Brook's sister [VR 7/2/25 9:51:13], testified concerning Eli's eye condition and the tinting of Brooks's truck's windows. [VR 7/2/25 9:58:45, 11:16:11]

Professor Adrian Lauf testified as an expert witness on the issue of where Steve Lawson's car was located during the evening of July 3 and the early hours of July 4. Professor Lauf testified that the evidence indicated that during the relevant timeframe, Steve Lawson was not on the Bluegrass Parkway, but instead was on Boston Road, which is parallel to and north of the Bluegrass Parkway. [VR 7/2/25 1:19:56, 1:21:52, 1:23:13, 1:27:00, 1:32:23] That is why the calls from Steve Lawson's phone hit the north side of the cell phone towers. [VR 7/2/25 1:19:56] Professor Lauf further relied on NELOS data from AT&T and that AT&T indicated that its NELOS data was 90% accurate. [VR 7/2/25 1:59:05]

On cross-examination, the Special Prosecutor stated that he had talked to AT&T and they had never heard of the 90% accuracy statement. [VR 7/2/25 1:59:59] The Special Prosecutor affirmatively represented that someone from AT&T would testify. [*Id.*] However, the Commonwealth never called anyone from AT&T to testify.

Brooks called Professor Jeffrey Neuschatz, a cognitive psychologist, to testify concerning the coercive interrogation tactics employed by police authorities which led to several of the alleged admissions or statements used by the Commonwealth in its case.

Professor Neuschatz testified that the authorities detained Charles Girdley for ten hours and interrogated him for four hours, using techniques that were "very coercive." [7/3/25 8:58:24, 9:02:45] The authorities' interrogation of Heather Snellen lasted over 4 ½ hours and likewise was very coercive. [VR 7/3/25 9:03:04]

The defense also called Denver Butler, an experienced police detective with extensive experience in homicide investigations, who summarized law enforcement's exhaustive and unsuccessful efforts over the course of a decade to find Crystal Rogers' body or any physical evidence that she had been murdered. Detective Butler confirmed what Detective Snow had said: the analysis of Crystal's car did not reveal any evidence of either Steve or Joey Lawson ever touching the car. [VR 7/3/25 11:40:19] No evidence of any criminal activity was recovered from Brooks's house or truck. [VR 7/3/25 11:42:21] The police car of Nick Houck, Brooks's brother, was analyzed and nothing suspicious was found. [VR 7/3/25 11:44:04] Multiple searches of the Houck farm revealed nothing. [VR 7/3/25 11:44:49] Brooks's Grandmother's car was analyzed, and did not have any blood or DNA evidence. [VR 7/3/25 11:46:12, 11:52:06, 11:52:42] In short, the authorities' exhaustive work produced no evidence of any criminal activity on Brooks's part.

5. Brooks's renewal of his motion for a directed verdict of acquittal

Brooks renewed his motion for a directed verdict of acquittal at the close of all the evidence, both orally and by written motion. [VR 7/3/25 2:08:30] The court denied Brooks's renewed motion. [VR 7/3/25 2:15:40]

6. The jury instructions

The parties submitted jury instructions they requested be given to the jury. The

court did not give the instructions any party submitted but instead crafted its own instructions. [TR 898] Brooks objected to the court's instructions based on the instructions not being appropriate to the particular facts of this case. [VR 7/7/25 8:19:00] The court overruled Brooks's objections and submitted to the jury the instructions it had drafted. [VR 7/7/25 8:38:38, TR 898]

The court gave an instruction with three subsections on the charge of murder:

INSTRUCTION NO. 4
(Murder)
(Class A Felony)

Under this Instruction, you will find the Defendant not guilty or you will find him guilty of one of the following: (1) Murder, or (2) Complicity to Murder, or (3) Murder, Principal or Accomplice.

INSTRUCTION NO. 4-A
(Murder)

> You will find the Defendant guilty of Murder under this Instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:
> That in Nelson County on or about July 3, 2015, and/or July 4, 2015, and before the finding of the Indictment herein, the Defendant intentionally killed Crystal Rogers.

INSTRUCTION NO 4-B
(Complicity to Murder)

> If you do not find the Defendant guilty under Instruction No. 4-A, you will find the Defendant guilty of Complicity to Murder under this Instruction, if and only if, you believe from the evidence beyond a reasonable doubt all of the following:
>
> A. That in Nelson County on or about July 3, 2015, and/or July 4, 2015, and before the finding of the Indictment herein, an individual other than Brooks Houck killed Crystal Rogers;

AND

B. That prior to the killing, the Defendant acted in complicity with that individual to kill Crystal Rogers;

AND

C. That in so doing, the Defendant intended that Crystal Rogers would be killed.

INSTRUCTION NO. 4-C
(Murder, Principal or Accomplice)

If you believe from the evidence beyond a reasonable doubt that the Defendant is guilty of either Murder under Instruction No. 4-A or Complicity to Murder under Instruction No. 4-B, but you are unable to determine from the evidence whether the Defendant committed the crime as Principal under Instruction No. 4-A or as accomplice under Instruction No. 4-B, then you will find him guilty of Murder, Principal or Accomplice, under this Instruction and so state in your verdict.

[TR 898, included in the Appendix at tab E] The verdict form gave the jury the option of finding Brooks guilty under any of the three subsections. [TR 900]

The court gave a single instruction on the charge of complicity to tampering with physical evidence:

INSTRUCTION NO. 5
(Complicity to Tampering with Physical Evidence)
(Class D Felony)

You will find the Defendant guilty of Complicity to Tampering with Physical Evidence under this Instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

A. That in Nelson County on or about July 3, 2015, and/or July 4, 2015, and before the finding of the Indictment herein, a person other than the Defendant moved Crystal Rogers' vehicle to make it appear that Crystal Rogers had left the Defendant's property;

AND

> B. That the Defendant believed that this vehicle was about to be produced or used in an official proceeding;
>
> AND
>
> C. That the Defendant acted in complicity with this other person to move the vehicle with the intent to impair its accuracy or availability at an official proceeding;
>
> AND
>
> D. That the vehicle of Crystal Rogers was physical evidence as defined under Instruction No. 3.

[TR 900] Inconsistent with the instruction on complicity to tampering with physical evidence, the verdict form submitted with the instructions dealt solely with tampering with physical evidence. [TR 903]

7. The Commonwealth's closing argument

The Commonwealth made several admissions concerning the weakness of the evidence during its closing argument. First, on the critical question of whether the Commonwealth provided sufficient evidence to support a murder conviction, the Special Prosecutor said this about Brooks Houck:

> Am I saying he's the one who killed her? **No. I don't know who killed her.** I can tell you who's involved.

[VR 7/7/25 3:09:40 (emphasis added)]

The Special Prosecutor further admitted:

> I cannot tell you whether the defendant was the person who actually killed her or he was complicit, meaning he didn't kill her but was just helping. I don't know.

[VR 7/7/25 4:53:40]

As to where the murder allegedly took place, the Special Prosecutor said:

> I don't know where she was murdered.

[VR 7/3/25 1:44:35]

As for some plan to dispose of Crystal Rogers's car, the Special Prosecutor said:

> I submit to you ladies and gentlemen, what happened was, there was another plan. I don't know what that plan is … I'm not in their heads, I don't know what they had going on.

[VR 7/7/25 3:14:50]

8. The jury hears excluded testimony during deliberations

During jury deliberations, the jury requested to view Charles Girdley's testimony. [VR 7/8/25 at 10:18:08]. The jury viewed the testimony up to the point where he testified about what Brooks's Mother supposedly said about Crystal being gone. [VR 7/8/25 at 10:45:00] Brooks requested an admonition to the jury to disregard Girdley's inadmissible answer, which the court denied. [VR 7/8/25 10:46:43]. The court also denied Brooks's request that the remainder of Girdley's testimony be played to the jury. [VR 7/8/25 10:48:15]

9. The jury's verdict and recommended sentence

The jury returned its verdict on July 8, 2025, finding Brooks guilty of murder, principle or accomplice, under instruction 4-C, and guilty of tampering with physical evidence under instruction 5, even though that instruction dealt only with complicity to tampering with physical evidence. [TR 900] On the same date, after further deliberations, the jury recommended a sentence of life imprisonment on the murder, principle or accomplice, charge and five years on the complicity to tampering with physical evidence. [TR 904-06] The jury recommended that the sentences be served consecutively. [*Id.*]

The jury also found Joseph Lawson guilty of conspiracy to commit murder and complicity to tampering with physical evidence, recommending a sentence of 20 years on the conspiracy to commit murder charge and 5 years on the complicity to tampering with physical evidence. In an order entered on September 29, 2025, the court imposed those sentences and ordered that they be served consecutively, for a total sentence of 25 years. Joseph Lawson has appealed his conviction to this Court, where it is currently pending.

10. Brooks's post-trial motion for a judgment of acquittal or, in the alternative, for a new trial

Brooks moved for a judgment of acquittal or, in the alternative, for a new trial, on July 11, 2025. [TR 919-40] In that motion, Brooks argued that the evidence presented at trial was insufficient to submit the case to the jury. [*Id.*]

The court denied Brooks's post-trial motion in its order of final conviction. [TR 1018] In doing so, the court offered no rationale as to why it was denying Brooks's motion.

11. Brooks's sentencing

Brooks appeared for sentencing on September 17, 2025. In the Final Judgment of Conviction entered on September 22, 2025, the court sentenced Brooks to life imprisonment on the charge of murder, principle or accomplice, and five years on the charge of complicity to tampering with physical evidence. [TR 1018-20] A copy of the Final Judgment of Conviction is included in the appendix at tab A.

Brooks timely filed his notice of appeal on October 6, 2025. [TR 1021] Per RAP 2(A)(1), this appeal is directly to this Court.

ARGUMENT

In finding Brooks guilty of murder, principal or accomplice, under instruction 4-

C, the jury admitted that it was "unable to determine from the evidence whether the Defendant committed the crime as Principal under Instruction No. 4-A or as Accomplice under Instruction No. 4-B . . . ." In other words, the jury could not figure out who supposedly killed Crystal Rogers. That is understandable, as there was insufficient evidence that Crystal Rogers was killed at all, as the Commonwealth failed to present sufficient evidence to rule out the very real possibility that Crystal was abducted from the Bluegrass Parkway after having a flat tire. It also is significant, because Brooks's conviction under such a combination instruction can be affirmed only if the Commonwealth presented sufficient evidence for Brooks to be found guilty as both a principal **and** as an accomplice. *Commonwealth v. Roark*, 686 S.W.3d 124, 131 (Ky. 3034) ("If, and only if, both theories are supported by the evidence can a conviction be upheld based on a combination instruction."); *Travis v. Commonwealth*, 327 S.W.2d 456, 459 (Ky. 2010) ("In other words, multiple theories of the same offense can be combined **so long as** there is sufficient evidence of each.") (emphasis in original); *Halverston v. Commonwealth*, 730 S.W.2d 921, 925 (Ky. 1986). As the Commonwealth failed to present sufficient evidence on either theory, this Court should reverse Brooks's conviction and instruct the trial court to enter a judgment of acquittal in Brooks's favor.

The same is true with regard to Brooks's conviction for complicity to tampering with physical evidence. The Commonwealth presented insufficient evidence that Brooks was complicit in the tampering of any physical evidence, meaning that Brooks's conviction for complicity to tampering with physical evidence should likewise be reversed with directions to the trial court to enter a judgment of acquittal on that charge.

Even if Brooks were not entitled to a judgment of acquittal, he is entitled to a new

trial. Prior to trial, the court erred in not recusing himself from the case and further erred in consolidating Brooks' trial with the trial of Joseph Lawson. During trial, the court erred in not striking for cause jurors who had knowledge of Steve Lawson's conviction for conspiracy to commit murder with regard to Crystal Rogers, and improperly allowed the Commonwealth to introduce prejudicial hearsay evidence. Both separately and collectively, these errors call for Brooks to be granted a new trial even if he is not granted the judgment of acquittal to which he is entitled.

I. The trial court erred in denying Brooks's motion for a judgment of acquittal on the charge of murder.[4]

The Commonwealth must prove every element of a crime beyond a reasonable doubt. *Hammond v. Commonwealth*, 504 S.W.3d 44, 52 (Ky. 2016). The Commonwealth's burden is an onerous one. *Carpenter v. Commonwealth*, 681 S.W.3d 36, 43 (Ky. 2023).

That is particularly true here, where the Commonwealth attempted to prove Brooks's guilt entirely through the use of circumstantial evidence. A murder conviction "may be had by circumstantial evidence, but the circumstances shown must be so unequivocal and incriminating in character as to exclude every reasonable hypothesis of the innocence of the accused." *Rose v. Commonwealth*, 385 S.W.2d 202, 204 (Ky. 1964) (internal citations omitted). Circumstantial evidence that creates only a suspicion is insufficient to establish guilt. *Ratliff v. Commonwealth*, 194 S.W.3d 258, 276 (Ky. 2006) (Commonwealth "must do more than just point the finger of suspicion."); *Witt v.*

[4] Brooks preserved this issue for appellate review by filing a motion for directed verdict at the close of the Commonwealth's case [TR 847-54; VR 7/1/25 at 2:00:24] and at the close of all of the evidence [VR 7/3/25 at 2:01:50, 2:08:08], and by filing his motion for judgment notwithstanding the verdict [TR 919]. This statement of preservation applies to each of the specific argument made in this section.

Commonwealth, 202 S.W.2d 612 (Ky. 1947). But that is all the Commonwealth did in this case, creating a suspicion but not proving that Brooks was guilty of any crime. Because the Commonwealth did nothing more than point the finger of suspicion at Brooks, this Court should reverse Brooks's conviction with directions to enter a judgment of acquittal in Brooks's favor.

A. The Commonwealth did not offer sufficient proof of the *corpus delicti* of murder.

A defendant is guilty of murder under KRS 507.020 when "[w]ith intent to cause the death of another person, he causes the death of such person or of a third person[.]" The Commonwealth's burden of proving the *corpus delicti*, literally the "body of the crime," in a homicide case requires proof of (1) a death, and (2) that the death resulted from the criminal agency of someone. *Dolan v. Commonwealth*, 468 S.W.2d 277, 282 (Ky. 1971). *See also Warmke v. Commonwealth*, 180 S.W.2d 872, 873 (Ky. 1944) ("There must be proof of a death and proof that such death was caused by the criminal agency of the accused.").

The Commonwealth failed to prove: (1) that Crystal Rogers is dead; or (2) that, if she is dead, it was the result of some criminal agency. As the Commonwealth had to provide sufficient evidence of both of those elements but failed to provide sufficient evidence of either of them, this Court should reverse Brooks's conviction and direct the trial court to enter a judgment of acquittal.

1. The Commonwealth did not prove that Crystal Rogers is dead.

With no body, no murder weapon, no idea of where the alleged murder occurred or how it allegedly occurred, the Commonwealth presented a case made up entirely of

circumstantial evidence. And while a death may be proven by circumstantial evidence, the circumstantial evidence of death must "prove criminal violence adequate to produce death and which accounts for the disappearance of the body. In short, the body must be found or there must be proof of death which the law deems to be equivalent to direct evidence that it was found." *Warmke*, 180 S.W.2d at 873 (internal quotation marks and citation omitted). The Commonwealth simply did not present the requisite proof of Crystal Rogers's alleged death to support Brooks's conviction on the charge of murder.

The following cases from this Court show the type of circumstantial evidence upon which a death may be proven in a homicide case:

- *Warmke v. Commonwealth*, 180 S.W.2d 872, 873 (Ky. 1944). Defendant threw her baby off of a railroad trestle into a flooded creek. The baby's cap was found on the bank of the creek but the baby's body was never found. *Id.* However, the defendant confessed that she threw her baby off the railroad trestle because she could not bear the shame of having an illegitimate child. *Id.* And even though she later testified that she accidently dropped the baby from the railroad trestle, there was no dispute that the baby travelled from the railroad trestle to the flooded creek below. As the Court recognized, it was "beyond the bounds of possibility that the baby survived this ordeal . . . ." *Id.*

- *Hale v. Wingo*, 459 S.W.2d 766 (Ky. 1970). This habeas corpus proceeding involved a body being recovered but not conclusively identified as the victim's body. While in a room with sisters Carolyn and Catherine (the alleged victim), the petitioner told Carolyn that he was going to kill Catherine, then shoved Carolyn out of the room, leaving only Catherine and the petitioner in the room. While Catherine and the petitioner remained in that room by themselves, Carolyn heard a gunshot from the room. The petitioner then would not allow Carolyn back into the room and told Carolyn he would kill her if she told anyone what had happened. The court denied petitioner the habeas corpus relief he sought, finding the evidence sufficient to sustain a conviction for murder.

- *Phillips v. Commonwealth*, 2004-SC-0936, 2006 WL 3386575, at *1 (Ky. Nov. 22, 2006).[5] A year after his wife disappeared, the defendant walked

[5] *Phillips* is unpublished and therefore not binding precedent but is cited as an example of facts that would allow a murder conviction to be upheld in the absence of a victim's body.

into a police station in Florida and confessed to her murder, saying he could no longer live with the guilt. After being convicted of his wife's murder, the defendant argued that the trial court erroneously denied his motion for a directed verdict of acquittal because the evidence was insufficient to establish the *corpus delicti* of murder in light of the fact that neither the victim's body nor any other physical evidence of death or injury was ever found. *Id.* at *4. The defendant also argued that his extra-judicial confession, standing alone, was insufficient to establish the substance of the crime of murder. *Id.* at *5. This Court found that evidence that defendant being found five days after the victim's disappearance in Indiana, driving the victim's car with the victim's children's social security card in his possession, registering in hotels using a fake name, unsuccessfully trying to use the victim's debit card at a truck stop in Northern Kentucky, and having a calendar with the date of the victim's disappearance circled, were sufficient to sustain the defendant's conviction. *Id.*

- *Polly v. Commonwealth*, 2023-SC-0125, 2024 WL 3929734 (Ky. Aug. 22, 2024).[6] While the Commonwealth was unable to produce the victim's body or the murder weapon, an eyewitness testified that she observed the defendants beating the victim, and that, under threat of her own execution, she shot the victim. *Id.* at *3. Further, a jailhouse informant testified that one of the defendants confessed to him that the eyewitness's statement was accurate. *Id.* In affirming the convictions of both defendants, this Court found the testimony offered by the person who shot the victim, testimony that was corroborated by another witness, was sufficient to sustain the convictions of both of the defendant brothers.

These cases make clear that that when the Commonwealth is unable to produce the alleged victim's body, it must provide other evidence sufficient to establish that the alleged victim was killed – a confession, an eyewitness to violence toward the alleged victim, a crime scene. Something that proved the death of the alleged victim. Yet the Commonwealth did not provide any evidence of any of the following:

Crystal Rogers's body – Never found and indeed no evidence that Crystal Rogers was ever killed was presented.

A confession – Brooks has never confessed to any criminal activity and instead

[6] *Polly* is unpublished and therefore not binding precedent but is also cited as an example of facts that would allow a murder conviction to be upheld in the absence of a victim's body.

steadfastly maintained his innocence.

An eyewitness of violence toward Crystal Rogers – there was a total absence of evidence that Brooks had ever acted with violence toward Crystal Rogers.

A crime scene – a total lack of evidence concerning where Crystal Rogers was actually killed, with the Special Prosecutor admitting that he had "no idea" where the alleged murder occurred.

A murder weapon – no evidence of any murder weapon, or any evidence of how the alleged murder occurred, was presented.

The lengths to which the Commonwealth tried to find evidence of Crystal Rogers's death were unprecedented. And yet Detective Snow, the lead investigator, admitted "we do not have any information as to the method of death" and "we did not find proof of the crime scene, that is correct." [VR 6/26/25 11:33:18] Jurors could do no more than speculate whether Crystal Rogers was actually killed and, if she was, where she was killed, how she was killed, and by whom she was killed. There was not offered a scintilla of proof of criminal violence adequate to produce death and which accounts for disappearance of the body"

In the absence of any actual evidence of Crystal Rogers's death, the jury was left to speculate as to whether Crystal Rogers is actually dead. The jury's speculation that Crystal Rogers is dead is not a substitute for evidence of her death. Accordingly, Brooks's conviction for murder cannot stand.

2. The Commonwealth did not prove that Crystal Rogers's supposed death was the result of someone's criminal agency.

In cases in which a death has been proven, the second step in the *corpus delecti* analysis is for the court to "look for *clear and cogent* evidence that the death is the result

of some criminal agency." *Tarkaney v. Commonwealth*, 43 S.W.2d 34, 41 (Ky. 1931) (emphasis in original). The Commonwealth was wholly unable to provide clear and cogent evidence that, if Crystal Rogers is dead, her death was the result of some criminal agency. Since Crystal Rogers has never been located, no medical examiner testified as to the cause or manner of her alleged death. There was no evidence of a crime scene, murder weapon, cause or manner of death, or confession.

Detective Snow was clear: "[W]e do not have any information as to the method of death." [VR 6/26/25 11:13:18] With no evidence of Crystal Rogers's supposed cause of death, the Commonwealth was unable to offer any evidence of how Crystal Rogers's death was the result of the criminal agency of someone.

The Commonwealth obviously tried to prove that Crystal Rogers died as a result of the criminal agency of Brooks. But, as discussed below, there is a total lack of evidence tying Crystal Rogers's alleged death to any criminal acts committed by Brooks. For this additional reason, Brooks's conviction of murder cannot stand and should be reversed.

B. The Commonwealth did not provide sufficient evidence that Brooks was guilty of murder.

Even if the Commonwealth had established both essential elements of the *corpus delicti*, the Commonwealth then had to prove that it was the criminal agency of Brooks that caused the death of Crystal Rogers. The Commonwealth failed to do so.

This Court has repeatedly recognized that a conviction under a combination instruction such as instruction 4-C under which Brooks was convicted can stand only if the Commonwealth presented sufficient evidence to support a conviction under both theories. *See Roark, supra; Travis, supra; Halverston, supra.* Otherwise, the

defendant's guarantee of a unanimous verdict in a criminal case[7] would be violated. *Id.* The Commonwealth actually provided sufficient evidence to support a conviction under neither theory.

1. The Commonwealth failed to provide sufficient evidence that Brooks acted as the principal in the alleged murder of Crystal Rogers.

During its closing argument, the Commonwealth admitted that it did not know whether Brooks killed Crystal Rogers. [VR 7/7/25 3:09:40] Consistent with that admission, the Commonwealth failed to offer sufficient evidence that Brooks killed Crystal Rogers to allow Brooks's murder conviction to stand.

In *Kessinger v. Commonwealth*, 2012-SC-0744, 2014 WL 4657568 at *2 (Ky. Sept. 18, 2014),[8] the victim's decomposed body was discovered wrapped in a tarp inside an abandoned van parked outside an apartment complex six days after she was reported missing. Between the time of the victim's disappearance and the discovery of her remains, the defendant went to great lengths to evade law enforcement, even leading police on a chase into southern Indiana. *Id.* During a search of the defendant's residence, police found the victim's blood in various locations in the kitchen, as well as on the brush of a vacuum cleaner that had been used to clean the kitchen floor. *Id.* The victim's phone was found smashed in a grove of trees behind the home. *Id.* This Court affirmed the trial court's denial of the defendant's directed verdict motion, citing the

[7] *See Commonwealth v. Roark*, 686 S.W.3d 124, 127 (Ky. 2024) ("The Kentucky Constitution requires a unanimous verdict in criminal cases."); *Wells v. Commonwealth*, 561 S.W.2d 85, 87 (Ky. 1978) ("Section 7 of the Kentucky Constitution requires a unanimous verdict reached by a jury of twelve persons in all criminal cases."). *See also Ramos v. Louisiana*, 590 U.S. 83 (2020) (Sixth Amendment's guarantee of a unanimous jury verdict in criminal cases applies to states).

[8] *Kessinger* is unpublished and therefore not binding precedent but is cited as an example of facts of the defendant's activities that would allow a murder conviction to be upheld.

presence of the victim's blood in the kitchen, which suggested a struggle or assault occurred there, as well as evidence that the defendant had destroyed the victim's phone, concealed her body, and evaded law enforcement. *Id.* *6.

The facts presented here could not be more different. There is no body. There was no blood or DNA evidence connecting Brooks to Crystal's disappearance. The Commonwealth has failed to produce any physical evidence that the Houck farm – or anywhere else, for that matter – was the scene of Crystal Rogers's alleged murder, the Special Prosecutor admitting that he had no idea where Crystal Rogers was allegedly killed. In the weeks, months, and years following Crystal Rogers's disappearance, Brooks did not flee or evade police, but instead stayed in Bardstown and fully cooperated with the authorities. He voluntarily consented to multiple interviews/interrogations, he voluntarily consented to searches of his home and car, he voluntarily provided the authorities his cell phone and Crystal's cell phone for forensic testing. The contrast between the requisite evidence required to move beyond a directed verdict in *Kessinger* and the lack of corresponding evidence in this case is stark.

This case is more like *Denham v. Commonwealth*, 40 S.W.2d 384 (Ky. 1931), where the Commonwealth primarily relied on the defendant's concealment of a child's death to argue that the defendant was guilty of murder. In reversing the defendant's conviction, the Court stated:

> Motive and opportunity for the defendant to have killed [the deceased child] were amply proved, but there was no evidence that the child was killed and did not die a natural death, or that this defendant had committed the crime of murder.

Id. at 386.

A strikingly similar case is *Ramsammy v. State*, 43 So. 3d 100 (Fla. App. 2010), in which the court reversed the defendant's murder conviction. The alleged victim in *Ramsammy* lived with the defendant and disappeared after the defendant learned that the alleged victim was having an affair with a neighbor. The defendant did not report the alleged victim's disappearance for two months. The court described the same lack of evidence as that presented here:

> No body was found, nor evidence of blood, DNA, or fingerprints linking appellant to the murder of Annette or pointing to any murder at all. There was no testimony from any person who was with or who had seen appellant suffering from injuries, scratches, or any other physical manifestations indicating a struggle consistent with a homicide.

Id. at 105.

The State in *Ramsammy* sought to prove the murder by offering evidence that the defendant admitted to police that he had argued with the alleged victim about her having an affair and in fact had struck the alleged victim during the argument. The State also offered the testimony of the neighbor's Father, who testified that the defendant told him that the defendant was going to kill the alleged victim. There was substantial evidence of the defendant not being truthful about what happened between the defendant and the alleged victim, the court describing that evidence thusly:

> The evidence in this case consists almost exclusively of appellant's own statements. Often, the statements were contradictory, outrageous, and endlessly changing.

Id. The court in *Ramsammy* found that evidence presented by the State, which was substantially more than the Commonwealth offered against Brooks, was insufficient to support a murder conviction:

> The quantum of evidence in this case is insufficient to support the conviction for second degree murder. Here, we are confronted with a case where the victim's body has not been recovered, no evidence of the manner of death was presented, no physical evidence like blood, DNA, or any other type of forensics was found, no confession to homicide was made, and no witnesses to the crime testified. We are left only with appellant's various suspicious statements to family, friends, and law enforcement. Like *Smolka*, there is a "strong suspicion" that appellant murdered the victim. But troubling suspicions about appellant stacked upon one another are insufficient as a matter of law. This court has found that "[c]ircumstantial evidence is insufficient when it requires pyramiding of assumptions or inferences in order to arrive at the conclusion of guilt." *Brown v. State*, 672 So. 2d 648, 650 (Fla. 4th DCA 1996). "Where the evidence creates only a strong suspicion of guilt or simply a probability of guilt, the evidence is insufficient to sustain a conviction." *Id.*

Id. at 108-09.

Similarly, in *People v. McMahan*, 548 N.W.2d 199 (Mich. 1996), a person went missing after being last seen with the defendant. The defendant admitted to killing the missing person but there was little other proof that defendant had killed the victim. The Michigan Supreme Court agreed with the Court of Appeals in reversing defendant's murder conviction based on a lack of evidence to support the murder conviction:

> [T]here is no evidence of her death being caused by a criminal agency. The knife defendant allegedly used to stab her was never recovered, although at least three witnesses testified that defendant carried knives in a pouch on his belt. No human bloodstains were ever found in defendant's house and there were no other articles found with bloodstains on them. The human scents found by the dog in the crawl space and outside the house near the alley do not conclusively prove whose scents the dog was tracking and we note that this occurred approximately 4–1/2 years after Carolyn's disappearance. A police officer did find an area in the basement where it appeared that a hole had been dug and filled back in, but there was no way to determine when this occurred. Further, there was no evidence that defendant

> ever hit or acted violently toward Carolyn during their relationship. No evidence of a possible motive was ever established at trial. There was no witness to any part of the killing or disposal of the body.

Id. at 202-03.

Those cases are persuasive authorities that the evidence upon which the Commonwealth presented against Brooks was insufficient to establish a submissible case of murder. Brooks's statement concerning his activities on July 3, which the Commonwealth called into question with the testimony of other witnesses, was far less evidence of guilt than the "contradictory, outrageous, and endlessly changing" statements discussed in *Ramsammy*. The best the Commonwealth could do to try to place Steve Lawson on the Bluegrass Parkway on the evening of July 3 was to offer the opinion of someone who testified it was "somewhat possible." The Commonwealth tried to make a point about a white Buick perhaps being seen on the Houck farm on July 3, but the Commonwealth could not connect Brooks to the car being there, or, for that matter, connect the car to any criminal activity. And the evidence of a dog whose training was not be proved tracking human remains to the car years later did not prove that the dog was tracking the scent of Crystal Rogers. *See McMahan, supra*, 548 N.W.2d at 202.

While the Court must view the evidence in the light most favorable to the Commonwealth, a case cannot be proven by asking the jury make a series of inferences one upon the other. *See Southworth v. Commonwealth*, 435 S.W.3d 32, 45 (Ky. 2014) ("[I]nferences cannot be drawn from other inferences *ad infinitum*."). Inferences "may not be substituted for facts." *Warnell v. Commonwealth*, 246 S.W.2d 144, 147 (Ky. 1952). And that is what is missing from the Commonwealth's case against Brooks – sufficient **facts** upon which a murder conviction could be sustained.

As the Commonwealth was unable to present sufficient evidence of the essential elements of murder, the case should not have been submitted to the jury. Brooks is entitled to a reversal of his conviction of murder with directions that a judgment of acquittal be entered with regard to the charge of murder.

2. The Commonwealth failed to provide sufficient evidence that Brooks was an accomplice in the alleged murder of Crystal Rogers.

Even if the evidence was sufficient to prove that Brooks murdered Crystal Rogers, which clearly it did not, the evidence also had to be sufficient to prove that Brooks was as an accomplice in the alleged murder of Crystal Rogers. But there was a total lack of evidence that Brooks acted as an accomplice in the alleged killing of Crystal Rogers.

Kentucky's complicity statute, KRS 502.020, describes two distinct theories under which a person may be found guilty of complicity: (1) under KRS 502.020(1), when the principal's conduct constitutes the criminal offense; or (2) under KRS 520.020(2), when it is the result of the principal's conduct that constitutes the criminal offense. *Smith v. Commonwealth*, 370 S.W.3d 871, 876 (Ky. 2012). The key difference between the two subsections is that the defendant must have the same intent as the principal under subsection (1) but does not have the same intent as the defendant under subsection (b). *Id.*

The difference between the two subsections is not relevant here because the Commonwealth has only alleged intentional conduct on Brooks's part. Rather, the important issue here is that to affirm a conviction based on Brooks acting as an accomplice, the Commonwealth had to prove that someone other than Brooks killed

Crystal. *See Futrell v. Commonwealth*, 471 S.W.3d 258, 280 (Ky. 2015) ("Futrell could not be complicit in his own killing of the child."); *Harper v. Commonwealth*, 43 S.W.3d 261, 267 (Ky. 2001) (complicity to second-degree manslaughter "would require proof: (1) that another (presumably Burden) killed Phillips . . . ."). Here, there is no evidence that anyone killed Crystal Rogers, be it Brooks or anyone else.

If the Commonwealth proved that someone other than Brooks killed Crystal Rogers, the Commonwealth would also be required to show how Brooks assisted that person in killing Crystal Rogers in order to prove a submissible case of complicity against Brooks. Again, the Commonwealth totally failed to do so. The Commonwealth submitted no evidence that Brooks assisted anyone else with the alleged killing of Crystal Rogers. Neither Steve Lawson nor Joseph Lawson was either charged with or convicted of murdering Crystal Rogers, so who did Brooks allegedly assist? This is not a situation in which multiple defendants have all been found guilty under a combination instruction, such as when all the defendants acted jointly but it is impossible to tell whose actions actually killed the victim. *See, e.g.*, *Robinson v. Commonwealth*, 325 S.W.3d 368, 370 (Ky. 2010) (murder conviction affirmed even though it was not clear which of the two people beating up the victim landed the fatal blow). Rather, there was no evidence of Crystal Rogers being dead and, if so, who killed her. Absent such evidence, there was insufficient evidence to sustain Brooks being found guilty as an accomplice.

This case is impossible to distinguish from *Bowling v. Commonwealth*, 2006–SC–0167, 2007 WL 1159621 (Ky. April 19, 2007). Although *Bowling* is unpublished and therefore not binding precedent, it is an opinion from this Court less than ten years old indicating that Brooks's conviction for murder cannot be upheld.

As the victim's body was discovered in *Bowling*, it involved more compelling evidence than the evidence presented here. Otherwise, it is similar in that the Commonwealth focused on evidence relating to the disposal of the body. There was eyewitness testimony concerning the defendants' disposal of the body:

> At trial, [Christine] Gibson testified that she and her husband had seen Brock Bowling and the Finley brothers at about three o'clock in the morning on the day Mills' body was found. The three were in a red pickup truck near the entrance to Double Creek Park. The Gibsons followed them just inside the park's entrance, where they stopped so Christine could use the restroom. When she got out of her own vehicle, Christine stated she got a closer look at the truck and saw that there was an area rug rolled up in the back of the truck, and that something appeared to be inside the rug. J.C. Gibson corroborated this testimony.

Id. * 5.

In reversing the conviction of Timothy Finley, this Court held that something more than even a compelling inference of guilt is necessary to sustain a conviction under a combination instruction:

> Timothy's participation in the disposal of Mills' body created a very compelling inference of his guilt. However, the Commonwealth presented absolutely no other evidence linking him to the actual commission of the crime. Moreover, if the jury was to believe Timothy participated as an accomplice, the Commonwealth offered no evidence to prove in what manner he assisted or aided the principal in committing the crime, or that a common plan between him and Brock or Shannon existed, or even that two perpetrators were present at the crime scene. In fact, in its closing argument, the Commonwealth argued that one person fired all three shots at Mills. Absent some other evidence or circumstance linking Timothy to Mills' murder, the weapon, or even the scene of the crime, there was simply no basis to convict Timothy as either the principal or accomplice. For this reason, the trial court erred in failing to direct a verdict of acquittal.

Id. at 6.

In arriving at that result, this Court cited and relied on *People v. Galbo,* 112 N.E. 1041 (N.Y. 1916), in which Judge Cardozo acknowledged that the circumstantial evidence created a strong presumption of guilt. *Id.* at 1041. However, that was insufficient to sustain a conviction for the homicide as an accomplice:

> Even then, incriminating inferences remain possible; but unless other circumstances are shown, there is no principle of selection, aside from the presumption of innocence, to guide the choice between them. The guilty possessor of the body, though he did not use the weapon, may still have aided and abetted; but unless there are tokens that several joined in the affray, the likelihood of his presence is no greater than the likelihood of his absence.

Id. at 1041.

Of course, the evidence here was far less compelling than in either *Bowling* or *Galbo,* both of which involved evidence of the disposal of the victim's body. The evidence here did not deal with the disposal of the alleged victim's body but rather the alleged attempted movement of the alleged victim's car. And there was no evidence that Brooks was involved in those alleged activities. The Commonwealth was required to prove the essential elements of the crime, not create a suspicion that Brooks was somehow involved in the disappearance of Crystal Rogers. *Hollin v. Commonwealth,* 307 S.W.2d 910, 911 (Ky. 1957) ("The presumption of innocence must be overcome, not be mere possibilities, conjectures or suspicious circumstances, but by satisfactory evidence."). The lack of sufficient evidence to support Brooks being convicted of murder as an accomplice likewise means that Brooks's conviction for murder cannot stand.

C. The proper remedy is to remand the case with directions to enter a judgment of acquittal.

While some of the cases discussed herein have reversed convictions and granted the defendant a new trial, the proper remedy here is for Brooks's conviction for murder to

be reversed with directions that a judgment of acquittal be entered. Once the reviewing court has found the evidence to be legally insufficient, the Double Jeopardy Clause precludes a second trial. *Commonwealth v. Davidson*, 277 S.W.3d 232, 235 (Ky. 2009), quoting *Burks v. United Sates*, 437 U.S. 1, 18 (1978). The Commonwealth had its opportunity to present its case against Brooks and did not present sufficient evidence to prove that Brooks was guilty of murder as either a principal or an accomplice. Having failed to do so, the Commonwealth does not get a second chance to prove its case. Accordingly, Brooks's conviction for murder should be reversed and the trial court directed to enter a judgment of acquittal.

II. The Commonwealth did not offer sufficient proof of the essential elements of complicity to tamper with physical evidence.[9]

As the Commonwealth likewise failed to present sufficient evidence of Brooks being involved in allegedly moving Crystal's car, this Court should reverse Brooks's conviction relating to tampering with physical evidence.

The verdict form signed by the jury, which states that it found Brooks guilty of tampering with physical evidence, is inconsistent with the instruction given by the court, which was limited to complicity to tamper with physical evidence.[10] Finding Brooks guilty of tampering with physical evidence is not supported by the evidence and, if that was the jury's finding, Brooks's conviction should be reversed. There was a total lack of evidence presented that Brooks did anything regarding Crystal's car. Accordingly, if the jury in fact found Brooks guilty of tampering with physical evidence, his conviction

[9] Brooks preserved this issue for appellate review by filing a motion for directed verdict at the close of the Commonwealth's case [TR 847-54; VR 7/1/25 at 2:00:24] and at the close of all of the evidence [VR 7/3/25 2:01:50, 2:08:31], and by filing his motion for judgment notwithstanding the verdict. [(TR 919]

[10] Apparently no one caught this inconsistency at the time the instructions were given.

should be reversed with directions that a judgment of acquittal be entered. *See, e.g., Mullins v. Commonwealth*, 350 S.W.3d 434, 443 (Ky. 2011).

The same is true if the jury meant to find Brooks guilty of complicity to tampering with physical evidence. The Commonwealth offered no evidence that Brooks had anything to do with somebody else moving Crystal's car. While there was testimony suggesting that Steve and Joseph Lawson were paid to move the car, there was no evidence that Brooks paid them to move the car. There was no evidence of any discussions involving Brooks about Crystal's car being moved. The Commonwealth argued that there was some plan about moving Crystal's car but admitted there was no evidence as to what that plan was.

As with his conviction for murder, Brooks's conviction relating to the tampering with physical evidence was based on suspicion but not evidence. And as with his conviction for murder, Brooks's conviction for tampering with physical evidence should be reversed with directions that a judgment of acquittal on that charge be entered.

III. If not entitled to a judgment of acquittal, Brooks is entitled to a new trial.

If Brooks is not entitled to a reversal of his convictions with directions that the court enter a judgment of acquittal, Brooks is entitled to a new trial based on several errors made both pre-trial and during trial.

A. The trial court erred in failing to strike for cause members of the jury panel who knew of Steve Lawson's conviction.[11]

The trial court's pretrial rulings and unilateral logistical missteps created the perfect storm of rampant, comprehensive publicity in Warren County in the run-up to Brooks's trial. When the trial court consolidated Brooks's trial with that of Joseph Lawson, the court unilaterally opted to give Steve Lawson – who had just obtained new counsel a few months prior – Brooks's previously agreed-upon February 2025 trial date. Neither Brooks nor the Commonwealth had moved for a continuance of his February trial date. When Steve Lawson's attorneys were understandably and predictably not prepared for trial in February 2025, the trial court set Steve Lawson's trial to begin on May 27, 2025 in Warren County. Steve Lawson was convicted of conspiracy to commit murder and tampering with physical evidence by a Warren County jury on May 30, 2025, less than a month before Brooks's trial began. Realistically, under the Commonwealth's theory of the case (that Brooks paid the Lawsons to dispose of Crystal's vehicle), Steve Lawson could not have been guilty unless Brooks was also guilty. It is difficult to imagine a more prejudicial backdrop for Brooks's trial, further compounded by the trial court's failure to strike for cause members of the jury panel who had knowledge of Steve Lawson's recent conviction.

The prejudicial effect on Brooks was quickly manifested when multiple jurors, including jurors 16, 48, 77, and 100, indicated that they knew that Steve Lawson had recently been tried and found guilty. [VR 6/24/25 12:16:36; 11:31:32; 12:18:02; and

[11] Houck preserved this issue for appellate review by moving to strike jurors 16, 48, 77, and 100 [VR 6/24/25 at 12:16:36; 11:31:32; 12:18:02; and 12:28:20] and by indicating on his strike sheets that he would have stricken jurors 50 and 4 if jurors 16, 48, 77, and 100 had been stricken for cause. [TR 895] A copy of the strike sheets is included in the Appendix at tab D.

12:28:20] The trial court's denial of Brooks's motion to strike those jurors for cause was error, with the prejudice caused by that error being presumed.

In *Ordway v. Commonwealth*, 391 S.W.3d 762, 780 (Ky. 2013), this Court made clear that when there is any uncertainty about whether a prospective juror should be stricken for cause, the prospective juror should be stricken: "We reiterate that trial courts should tend toward exclusion of a conflicted juror rather than inclusion, and where questions about the impartiality of a juror cannot be resolved with certainty, or in marginal cases, the questionable juror should be excused."

Jurors 16, 48, 77, and 100 should have been stricken for cause. The court's error in failing to do so resulted in the defense not being able to use its peremptory strikes on jurors they otherwise would have struck, with two of those jurors ending up on the jury which found Brooks guilty and recommended a sentence of life imprisonment. As the court erred in failing to strike the four tainted jurors for cause, Brooks is entitled to a new trial even if he were not entitled to a judgment of acquittal.

1. Houck satisfied the *Gabbard* requirement.

In *Gabbard v. Commonwealth*, 297 S.W.3d 844, 854 (Ky. 2009), this Court adopted the requirement that "in order to complain on appeal that he was denied a peremptory challenge by a trial judge's erroneous failure to grant a for cause strike, the defendant must identify on his strike sheet any additional jurors he would have struck." Brooks did exactly that; in addition to moving for jurors 16, 48, 77, and 100 to be struck for cause, he indicated on his strike sheet that he would have struck jurors 4 and 50 if jurors 16, 48, 77, and 100 had been struck for cause. Thus, Brooks fully complied with the *Gabbard* requirement for preserving for appellate review the trial court's erroneous

failure to strike jurors 16, 48, 77, and 100 for cause.

2. The trial court erred in not striking the four tainted jurors for cause.

The court abused its discretion in not striking jurors 16, 48, 77, and 100 for cause. Jurors with actual knowledge that Steve Lawson had been convicted of conspiracy to commit murder with regard to the disappearance of Crystal Rogers, should not be allowed to sit on a jury in the trial of Brooks and Joseph Lawson, Steve Lawson's alleged co-conspirators.

RCr 9.36(1) provides in pertinent part: "When there is reasonable ground to believe that a prospective juror cannot render a fair and impartial verdict on the evidence, that juror **shall** be excused as not qualified." (emphasis added). A juror's knowledge of extra-judicial information, if it causes a jury to not be impartial, constitutes a structural error which automatically taints a jury and requires that a new trial be granted. *Lawless v. Commonwealth*, 724 S.W.3d 679, 685 (Ky. 2025).

Generally, the impartiality of a juror manifests itself as a state of mind, and not simply through the juror's responses to questioning, although that possibility certainly exists. *United States v. Wood*, 299 U.S. 123 (1936); *Pennington v. Commonwealth*, 316 S.W.2d 221 (Ky. 1958). "There is no 'magic question' that can rehabilitate a juror as impartiality is not a technical question but a state of mind." *Shane v. Commonwealth*, 243 S.W.3d 336, 338 (Ky. 2007) (internal citations omitted); *Gould v. Charlton Co., Inc.*, 929 S.W.2d 734, 740 (Ky. 1996) (court cannot rely "on a predictable response to a so-called 'magic question' . . . ."). Here, the trial court relied on prospective jurors' assurances of impartiality rather than granting Brooks's motions to strike members of the jury panel who had clearly been tainted by media coverage of Steve Lawson's trial and

conviction.

3. The trial court's error in not striking the four tainted jurors for cause is presumed to be prejudicial, entitling Brooks to a new trial.

By erroneously failing to strike jurors 16, 48, 77, and 100 for cause, the trial court effectively deprived Brooks of the same number of peremptory strikes held by the Commonwealth. *Thomas v. Commonwealth*, 864 S.W.3d 252, 259 (Ky. 1993). As this Court explained:

> Kentucky law has always been that prejudice is presumed and the defendant is entitled to a reversal in those cases where a defendant is forced to exhaust his peremptory challenges against prospective jurors who should have been excused for cause.

Id.

In *Shane v. Commonwealth*, *supra*, this Court reaffirmed the rule that an erroneous failure to strike a juror for cause cannot be considered harmless error, stating, "the issue is actually simple: Can a trial be called fair and the jury impartial if the method of arriving at a qualified jury is not?" " *Shane, supra*, 243 S.W.3d at 338.[12] In answering that question in the negative, this Court properly recognized that a defendant comes into trial expecting to be able to use their peremptory strikes for any reason (other than in violation of *Batson v. Kentucky*), and that depriving a defendant of that right "so taints the equity of the proceedings that *no* jury selected from that venire could result in a fair trial. No jury so obtained can be presumed to be a fair one." *Id.* (emphasis in original).

[12] In *Morgan v. Commonwealth*, 189 S.W.3d 99 (Ky. 2006), overruled by, *Shane v. Commonwealth*, 243 S.W.3d 336 (Ky. 2007), the Court suggested that an erroneous failure to strike a juror for cause could be reviewed for harmless error. This Court expressly overruled *Morgan* in *Shane* and held that an erroneous failure to strike a juror for cause cannot be considered harmless error.

The importance of granting a new trial when a trial court erroneously fails to strike a juror for cause was emphasized by this Court:

> An error affecting the fundamental right of an unbiased proceeding goes to the integrity of the entire trial process. [P]rior Kentucky law has determined that it is a substantial right when a defendant uses all his peremptory strikes and was forced to use one of them on a juror who should have been struck for cause. To do anything less is to make a mockery of the very rules and procedures created by this Court . . . .

Id.

In *Marshall v. United States*, 360 U.S. 310 (1959), the defendant was convicted of dispensing and misbranding of drugs. Seven of the jurors admitted that they had at least scanned newspaper articles about the defendant's wife being convicted on related charges and defendant's prior conviction for forgery. Each juror stated that they would not be influenced by the articles, could decide the case only on the evidence of record, and would not be prejudiced against defendant. Based on these answers, the trial judge denied a motion for a mistrial.

The Supreme Court in *Marshall* reversed. After acknowledging the trial court's discretion in such matters, the Court said: "We have here the exposure of jurors to information of a character which the trial judge ruled was so prejudicial it could not be directly offered as evidence. The prejudice to the defendant is almost certain to be as great when that evidence reaches the jury through news accounts as when it is a part of the prosecution's evidence. . . . It may indeed be greater for it is then not tempered by protective procedures." *Id.* at 312–13. That is precisely the situation here.

As in *Shane,* Brooks "did not get the trial he was entitled to get." 243 S.W.3d at 341. And as in *Shane,* that entitles Brooks to a new trial, in the event the Court does not

reverse with directions to enter a judgment of acquittal.

B. The trial judge erred in refusing to recuse.[13]

This Court's review of a trial court's denial to recuse itself is *de novo*. *Abbott, Inc. v. Guirguis*, 626 S.W.3d 475, 484 (Ky. 2021).

A judge should recuse from any proceeding "[w]here he has a personal bias or prejudice concerning a party" and where—as here—he "has expressed an opinion concerning the merits of the proceeding." KRS 26A.015(2)(a). In addition, Canon 3E of the Judicial Code of Ethics, codified in Supreme Court Rule ("SCR") 4.300, provides that "[a] judge **shall** disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances [where] the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding[.]" (emphasis added). Thus, under both the statute and the Canon, "recusal is proper if a judge determines that his impartiality might reasonably be questioned[.]" *Petzold v. Kessler Homes, Inc.*, 303 S.W.3d 467, 471 (Ky. 2010) (internal citations and quotations omitted.).

While a "judge's critical, disapproving, or even hostile comments directed to a litigant during a trial 'ordinarily do not support a bias or partiality challenge' to disqualify the judge," such comments "may do so if they reveal an opinion that derives from an extrajudicial source; and they will do so if they reveal such a high degree of favoritism or antagonism as to make a fair judgment impossible." *Marchese v. Aebersold*, 530 S.W.3d 441, 445–46 (Ky. 2017). The test for whether a judge's impartiality might be questioned

[13] Brooks preserved this issue for appellate review by seeking Judge Simms's recusal pre-trial. [TR 163-221]

is "determined under an objective standard from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances." *Phillips v. Rosquist*, 628 S.W.3d 41, 54 (Ky. 2021).

When viewed from the perspective of an objective observer, Judge Simms's 2017 family court order called for his recusal. Long before Brooks was ever charged with a crime, Brooks had lost the presumption of innocence in Judge Simms's eyes. Accordingly, based on the surrounding facts and circumstances, any objective observer would, and should, reasonably question Judge Simms's impartiality, meaning he should have recused himself from Brooks's case. *See Abbott*, *supra*, 626 S.W.3d at 482.

Litigants are "entitled to a judge who has not prejudged the case." *Tamme v. Commonwealth*, 973 S.W.2d 13, 23 (Ky. 1998). Taken objectively and as a whole, Judge Simms's comment would lead a reasonable observer, informed of all the surrounding facts and circumstances, to conclude that his impartiality might reasonably be questioned. Accordingly, Judge Simms failure to recuse himself was error, entitling Brooks to a new trial if not granted a judgment of acquittal.

C. The trial court erred in consolidating Brooks's trial with the trial of Joseph Lawson.[14]

A trial court's decision to try co-defendants together is reviewed under an abuse of discretion standard. *Ratliff v. Commonwealth*, 194 S.W.3d 258, 264 (Ky. 2006). Reversal of a conviction is called for if the trial court's decision was "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.3d 941, 945 (Ky. 1999).

[14] Brooks preserved this issue for appellate review by objecting to the Commonwealth's motion seeking to consolidate the separate cases against Brooks, Joseph Lawson, and Stephen Lawson. [TR 303]

The trial court abused its discretion by trying Brooks's case with Joseph Lawson's case. As outlined below, the most prejudicial evidence presented at trial related to the charges against Joseph Lawson and not Brooks, and Brooks was prejudiced by being tried in a trial in which such testimony and evidence was admitted.

1. Rebecca Greer's testimony[15]

The admission of Rebecca Greer's testimony at trial – over Brooks's objection – is one of many examples of the prejudice flowing from the court's erroneous consolidation of Brooks's trial with Joseph Lawson's. Greer testified:

- She overheard a conversation during which Joseph Lawson told her daughter, Elizabeth Chesser, about moving a car for $50,000 and warned Chesser not to repeat what he'd said. [VR 7/1/25 12:49:35]
- She subsequently asked Joseph about the conversation she allegedly overheard. Greer testified that he acknowledged telling Chesser he and his father got $50,000 for moving the car but that if she wanted to know the details she needed to ask Steve Lawson. [VR 7/1/25 12:50:32]

Following the conclusion of the Greer cross-examination, the Special Prosecutor approached the bench and advised the court that he forgot to ask Greer about a comment Joseph Lawson allegedly made during a physical fight between he and his father, and requested permission to ask Greer about this alleged event. [VR 7/1/25 12:54:51] Defense counsel objected on the basis that the proposed line of questioning was outside of the scope of proper redirect examination. [VR 7/1/25 12:55:18] The trial court

[15] Brooks moved in limine to exclude Greer's testimony from his trial [TR 826], thereby preserving the introduction of her testimony as grounds for reversal, in addition to it establishing prejudice as a result of the court consolidating the trials of Brooks and Joseph Lawson.

overruled the objection and let the Commonwealth delve into even more unreliable alleged statements against interest as admitted against Brooks. [TR 7/1/25 12:55:35]

Following the trial court's ruling allowing this improper redirect examination, Greer testified that she observed a fight between Steve and Joseph Lawson during which Joseph Lawson was threatening his father, allegedly saying, "If you keep on, I'll let everyone know about this car and all your involvement!" [VR 7/1/25 12:58:15]

None of this testimony should have come into evidence at Brooks's trial. All of Greer's statements were hearsay unrelated to Brooks. None of the statements were made in furtherance of any alleged conspiracy. While the trial court deemed these statements as being admissible as statements against Joseph Lawson's interest, statements against interest require indicia of reliability. Joseph Lawson supposedly made those statements while using drugs heavily, and there is absolutely no corroborating proof of any of the statements. Greer's testimony was particularly damaging to Brooks, because if the jury believed the Lawsons moved Ms. Rogers's vehicle, they would – and did – undoubtedly conclude that they did so at Brooks's behest.

The court compounded its error relating to Greer by denying Brooks's request for a limiting instruction that her testimony could not be used against Brooks. The failure of the court to give such an admonition was clear error, as the testimony did not fit into any hearsay exception as to Brooks.

The impact of Greer's testimony did not end there. The Commonwealth's cell phone analysis expert, Detective Tim O'Daniel, testified on direct examination that it was "somewhat possible" that Steve Lawson was on the Bluegrass Parkway following his 12:07 a.m. call to Brooks. [VR 6/27/25 11:30:31] Subsequently, Detective O'Daniel

opined that Steve Lawson was on the Bluegrass Parkway near the location where Crystal's vehicle was later recovered in the relevant time frame based upon the phone data **and** his review of the case file. [VR 6/27/25 at 01:11:18]. In his closing argument, the Special Prosecutor stated that it was Greer's testimony that Detective O'Daniel considered in rendering an opinion that Steve Lawson was in fact on the Bluegrass Parkway. [VR 7/7/25 4:44:20]. Thus, Greer's testimony enabled Detective O'Daniel to reach an opinion he could not and would not have reached absent her testimony, which was inadmissible as to Brooks.

2. Heather Snellen's testimony[16]

Heather Snellen testified concerning supposedly overhearing a conversation between Steve and Joseph Lawson about moving a body on the Houck farm [VR 6/27/25 9:13:58], made years after Ms. Rogers's disappearance while she was high on methamphetamines and listening from the other room over the sound of the washer and dryer, which were running. [VR 6/27/25 09:13:58] Snellen's testimony was hearsay, and did as statements against interest pursuant to KRE 804(b)(3), since they lack the corroborating evidence of trustworthiness to make them reliable. *See* KRE 804(b)(3) "A statement tending to expose the declarant to criminal liability is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.").

Snellen's testimony lacked any indicia of trustworthiness, and was not corroborated by any evidence in the case that was properly admitted against Brooks. There was no evidence admitted at trial that Steve or Joseph Lawson were ever at the

[16] Brooks moved in limine to exclude Snellen's testimony from his trial [TR 826], thereby preserving the introduction of her testimony as grounds for reversal, in addition to it establishing prejudice as a result of the court consolidating the trials of Brooks and Joseph Lawson.

Houck farm, before or after Crystal's disappearance. Snellen admitted to being under the influence of methamphetamine when she allegedly overheard the conversation between Stave and Joey Lawson. She could have easily misheard the conversation in light of her drug use and the noise of the washing machine and dryer. Furthermore, this disclosure was made during an extremely coercive interview with the KSP. Most importantly, after her interview, Snellen wrote a letter to the KSP in which she denied any knowledge related to Ms. Rogers's disappearance and claimed that she was pressured into making the statement. In light of the totality of the circumstances, Snellen's testimony was clearly unreliable.

Brooks objected to this testimony before Snellen took the stand, and asked the court to issue an admonition that it was not to be considered against him. [VR 6/27/25 08:55:24] The court reserved ruling until after it was able to hear the testimony. [VR 6/27/25 08:56:18] After hearing the testimony, the court declined to give an admonition but invited the parties to submit written memorandums on the issue. [VR 6/27/25 11:00:26] Brooks did so, and the court eventually agreed to give the jury an admonition that the jury could not consider Snellen's testimony in connection with the charges against Brooks. [VR 7/1/25 01:59:52] However, the court did not actually issue the admonition until the day of closing arguments [VR 7/7/25 9:18:24], ten days after jurors heard Snellen's prejudicial, inflammatory testimony that would have never been admissible at trial if Brooks was tried alone. That belated admonition was of little use.

While it is generally (but questionably) presumed that a jury will follow an admonition, that presumption is overcome when there is an overwhelming likelihood that the jury will be incapable of following the admonition and the impermissible testimony

would be devastating to the appellant. *St. Clair v. Commonwealth*, 55 S.W.3d 869, 892 (Ky. 2015). In fact, the court giving such an admonition ten days after Snellen had testified was of no help and did not eliminate the prejudice suffered by Brooks.

3. Barbara Coulter's testimony[17]

Barbara Coulter, Steve Lawson's mother, testified at trial that Joseph Lawson told her that Steve Lawson killed Crystal Rogers. [VR 7/1/25 12:42:36; 12:43:21] Again, this is classic hearsay testimony that did not fit into any exception applicable to Brooks, and would not have ever been admitted against Brooks if he were tried alone.

The court admonished the jury that Barbara Coulter's testimony could not be used against Brooks. But the need to give such an admonition underscores the error committed by the court in trying Brooks and Joseph Lawson in a single trial.

Brooks was entitled to a trial free from prejudicial hearsay testimony. Because of the court's erroneous consolidation of Brooks's trial with Joseph Lawson's, mountains of prejudicial evidence that was inadmissible as to Brooks was introduced. An admonition is of little use when the court allows an extensive amount of evidence to be introduced in a case where such evidence should not have been admitted. Having been deprived of such a trial, Brooks Houck's conviction should be set aside.

D. Several additional errors call for Brooks to be granted a new trial.

The court's errors relating to the testimony of Rebecca Greer, Heather Snellen, and Barbara Coulter are discussed above in connection with the prejudice Brooks suffered due to being tried with Joseph Lawson. Allowing the introduction of such

[17] Brooks moved in limine to exclude Coulter's testimony from his trial [TR 826], thereby preserving the introduction of her testimony as grounds for reversal, in addition to it establishing prejudice as a result of the court consolidating the trials of Brooks and Joseph Lawson.

testimony in Brooks's trial is independent error. Several additional errors call for Brooks to be granted a new trial.

Importantly, this is not a case in which evidence of a defendant's guilt is overwhelming, with the improper admission of some evidence being harmless error in light of the mountain of evidence that otherwise exists. Rather, evidence of Crystal Rogers's death is totally absent. Evidence of Brooks's involvement in Crystal Rogers's disappearance, let alone her alleged murder, is scant (in fact, it is non-existent). In these circumstances, the improper admission of any evidence that might influence the jury calls for a defendant's conviction to be reversed.

1. The trial court erred in allowing Stacie Cranmer to testify.[18]

Stacie Cranmer testified that at some point prior to the disappearance of Crystal Rogers, she heard Steve Lawson talking about a "girl who he had to take care of" who was "on meth" and "wasn't doing very well" and had five kids. [VR 7/1/25 at 1:06:18-1:07:07] The statement was allegedly made after Steve Lawson got out of Brooks's truck. [*Id.*] There was no evidence admitted at trial that Ms. Rogers was using meth or any other drug at the time she disappeared.

Cranmer's testimony that Steve Lawson told her he had to "take care of a woman with five kids who is on meth" or words to that effect was inadmissible as a statement against interest. In the case of statements against penal interest specifically, the rule states that "[a] statement tending to expose the declarant to criminal liability is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement." The burden of establishing the requirements under the rule rests with the

[18] Brooks moved in limine to exclude Cranmer's testimony from his trial [TR 809, 826], thereby preserving the introduction of her testimony as grounds for reversal.

proponent of the statement. *Fugett v. Commonwealth*, 250 S.W.3d 604 (Ky. 2008). The Commonwealth fell far short of meeting its burden justifying admission of Cranmer's statements against Brooks.

Most importantly, the statement "take care of" was ambiguous. Steve Lawson certainly did not tell Cranmer he was going to assist in a murder plot. Moreover, it defies logic to think Steve Lawson would tell a mere work acquaintance that he intended to do so. Steve Lawson allegedly made this statement in passing on a work site. This context certainly does not support the sinister spin the Commonwealth asserted.

Additionally, Cranmer gave conflicting testimony about when the statement was made. She first said it was the week of July 3, 2015. [VR 7/1/25 1:03:15] On cross-examination, she admitted that she'd previously said the statement was made three weeks before Crystal Rogers disappeared. [VR 7/1/25 1:18-08] On re-direct, she testified that the statement was made the week before the disappearance. [VR 7/1/25 1:22:54]

Lastly, when Cranmer questioned Steve Lawson about this statement years later while wearing a wire for the FBI, he told her he was probably referring to Joseph Lawson's girlfriend "Red" when he was referencing a woman on meth. [VR 7/1/25 1:20:43] In light of such contradictory evidence, Steve Lawson's ambiguous statement should not have admitted as it lacks indicia of trustworthiness to satisfy KRE 804(b)(3).

Cranmer's testimony is similarly inadmissible as evidence of Steve Lawson's state of mind under KRE 803(3). Because Steve Lawson's alleged statement about which Cranmer testified was so ambiguous and contained no reference to Crystal Rogers, it only could possibly be relevant evidence of his state of mind if you interpret the statement as one against his penal interest pursuant to KRE 804(b)(3). Given the ambiguity of the

statement, the statement was not relevant, and, to the extent there was any relevance, its probative value was substantially outweighed by the prejudicial impact pursuant to KRE 403.

Cranmer's testimony concerning what she believed she heard Steve Lawson say was classic hearsay testimony to be excluded from evidence under KRE 802. And as to Brooks, no exception to the hearsay rule applied; it was not a statement allegedly made in furtherance of the alleged conspiracy and, as it was not a statement made by Brooks, it was hearsay for which there was no exception. Because Brooks's conviction was tainted by the admission of evidence that should not have been admitted in Brooks's trial, reversal of his conviction is required.

2. The court erred in failing to give an admonition concerning Charles Gridley's testimony replayed during the jury's deliberations. [19]

The court erred when it denied Brooks's request for an admonition concerning Charles Girdley's testimony being played during the jury's deliberations, which included the jury viewing Girdley's testimony up to the point where he testified about what Brooks's Mother supposedly said about Crystal being gone. [VR 7/8/25 10:46:43] By not giving the requested admonition, the court allowed the jury to believe it was proper to consider Girdley's untested testimony that Brooks's Mother said that they were better off without Crystal. The court then compounded its error by not requiring the jury to listen to the remainder of Girdley's testimony. [VR 7/8/25 10:48:15] Not only did the jury hear his inflammatory, inadmissible hearsay testimony twice, but the fact that it was the

[19] Brooks preserved this issue for appellate review by requesting that the court give an admonition and play the remaining portion of Girdley's testimony. [VR 7/8/25 10:46:43, 10:48:15]

last portion of testimony they heard, during its deliberations, amplified its prejudicial effect.

3. Detective O'Daniel improperly bolstered the statements contained in the law enforcement file.[20]

As previously explained, Detective O'Daniel opined that Steve Lawson was on the Bluegrass Parkway near the location where Ms. Rogers's vehicle was later recovered in the relevant time frame based upon the phone data and his review of the case file. [VR 6/27/25 01:11:18]

In *Moss v. Commonwealth*, 949 S.W.2d 579 (Ky. 1997), this Court held that a witness could not express an opinion about the truthfulness of another witness. *See also Stephens v. Commonwealth*, 680 S.W.3d 887, 900 (Ky. 2023); *Hoff v. Commonwealth*, 394 S.W.3d 368, 376 (Ky. 2011).

In testifying that he relied on the phone data and his review of the case file, Detective O'Daniel improperly bolstered the significance of those materials. He explained away problems with obvious scientific conclusions by relying on witness statements, which had the effect of bolstering the witness statements contained in the law enforcement files. This is particularly problematic because the vast majority of witness statements upon which Detective O'Daniel could have relied would have been inadmissible if Brooks were tried alone.

E. Even if no single issue entitles Brooks to a new trial, the cumulative effect of the court's errors calls for Brooks being granted a new trial.

Any one of the errors set forth above calls for the reversal of Brooks's conviction.

[20] Brooks did not contemporaneously object to Detective O'Daniel's testimony. Accordingly, Brooks asks for palpable review of this issue. In addition, this improper testimony from Detective O'Daniel can be considered in evaluating whether the cumulative effect of the numerous errors calls for Brooks to be granted a new trial.

But even if no single issue called for reversal of his conviction, the combination of the several errors certainly calls for reversal of his conviction. *See Brown v. Commonwealth*, 313 S.W.3d 577, 631 (Ky. 2010) ("[M]ultiple errors, although harmless individually may be deemed reversible if their cumulative effect is to render the trial fundamentally unfair.").

This is not a case in which evidence of a defendant's guilt is overwhelming, with the improper admission of some evidence being harmless error in light of the mountain of evidence that otherwise exists. Rather, evidence of Crystal Rogers's death is totally absent. Evidence of Brooks Houck's involvement in Crystal Rogers's disappearance, let alone her alleged murder, is scant (in fact, it is non-existent). In these circumstances, the improper admission of any evidence that might influence the jury calls for a defendant's conviction to be reversed.

This Court has often found that the cumulative effect of the improper introduction of several different types of character evidence constituted reversible error. In *Stephens v. Commonwealth*, 680 S.W.3d 887, 907 (Ky. 2923), the combination of improper hearsay testimony, vouching testimony, and victim impact evidence led this Court to conclude that "a picture emerges of a very unfair trial." In *Alford v. Commonwealth*, 338 S.W.3d 240, 248 (Ky. 2011), the cumulative effect of hearsay and bolstering testimony led this Court to reverse the defendant's conviction. The same combination of hearsay and vouching testimony constituted manifest injustice in *Hoff v. Commonwealth*, 394 S.W.3d 368, 379 (Ky. 2011). In *Chavies v. Commonwealth*, 374 S.W.3d 313, 323 (Ky. 2012), this Court could not ignore the sheer volume of the improper evidence "meant to prejudice the jury against the Appellant based on her character and not evidence of the

crimes."

The cumulative effect of the inadmissible, prejudicial evidence allowed in this case far exceeds the improper evidence introduced in any of those cases. This Court should not ignore the reality that the cumulative effect of so much improper evidence and argument resulted in a fatally flawed trial. Brooks is entitled to a new trial as a result, even if he is not granted the judgment of acquittal to which he is entitled.

CONCLUSION

It is "the duty of the courts to ensure that the State is held to its burden of proof when someone is charged with a serious crime and liberty and life are at risk." *Ballard v. State*, 923 So. 2d 475, 485 (Fla. 2006). The trial court failed in its duty to hold the Commonwealth to its burden of proof in submitting this case to the jury.

For the multiple reasons discussed herein, Brooks Houck's convictions for both murder and tampering with physical evidence should be reversed, the only question being whether the reversal should be with directions for the entry of a judgment of acquittal or whether it should be for a new trial. Because the Commonwealth did not present to the jury sufficient evidence to sustain Brooks's conviction for murder as either a principal or an accomplice and further did not preset sufficient evidence to sustain Brooks's conviction for tampering with physical evidence, the reversal should be with directions that a judgment of acquittal be entered. But if the Court does not direct that a judgment of acquittal be entered, the Court should order that a new trial be held, as the errors made by the trial court deprived Brooks of the fair and impartial trial to which he was entitled.

Respectfully submitted,

/s/ Michael D. Risley
Michael D. Risley
Jennifer Henry Jackson
Jordan Butler
STITES & HARBISON, PLLC
400 West Market Street, Suite 1800
Louisville, KY 40202-3352
Telephone: (502) 587-3400
Facsimile: (502) 587-6391
mrisley@stites.com
jjackson@stites.com
jbutler@stites.com

Counsel for Appellant Brooks William Houck

WORD COUNT CERTIFICATION

This Brief complies with the word limit of RAP 31(G)(3)(a) because, excluding the parts of the Brief exempted by RAP 15(D) and RAP 31(G)(5), this Brief contains 17,340 words.

/s/ Michael D. Risley
Michael D. Risley