

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

*ELECTRONICALLY FILED*

COMMONWEALTH OF KENTUCKY

PLAINTIFF

v.

BROOKS WILLIAM HOUCK

DEFENDANT

**DEFENDANT BROOKS HOUCK’S SUR-REPLY IN OPPOSITION  
TO COMMONWEALTH’S MOTION TO CONSOLIDATE**

The Defendant, Brooks Houck (“Brooks”), by counsel, and in sur-reply to the Commonwealth’s Motion to Consolidate this matter with pending criminal cases involving Stephen Lawson and Joseph Lawson, states as follows:

Under the Government’s ideal scenario, Brooks, S. Lawson and J. Lawson would be tried jointly, and the jury would hear redacted versions of S. Lawson’s 2023 grand jury testimony and jail calls to his mother and now ex-wife, during which he regurgitates the same story he concocted at the behest of law enforcement in hopes of obtaining the immunity he was once promised if he “told the truth.”<sup>1</sup> Neither of the Lawsons would testify, and Brooks would have no ability to cross-examine either of them. Everyone in the courtroom would know that their redacted statements are incriminating Brooks. Critically, as the Government candidly admitted in its brief, “... no matter what type of cautionary instruction is offered by the court, given that

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<sup>1</sup>Some of the most important details in the “confession” S. Lawson gave law enforcement differ significantly from those relayed to his mother during his jail calls, further demonstrating that he has fabricated the entire story of his involvement. For example, in an interview on September 12, 2023, S. Lawson said he dropped off J. Lawson at Bluegrass Feed and Seed to pick up Crystal Rogers’s car. During a jail call with his mother, he said they picked up her car in the Woodlawn subdivision.

the Lawsons are directly discussing the facts of this case, it will be **impossible** for jurors to follow such an admonition.” (Commonwealth’s Brief at 15.) (Emphasis added). In a joint trial, the reality is that the two primary witnesses against Brooks would be S. Lawson, through his prior Grand Jury testimony and jail calls, and J. Lawson, potentially through his prior statements. None of these statements would technically be admissible against Brooks because, assuming neither S. Lawson nor J. Lawson testify, he would not have the opportunity to cross-examine either of them in violation of his Sixth Amendment rights. However, jurors would hear the statements, and even if they are properly redacted, certainly use them against Brooks. As the Government knows and stated, it would be “**impossible**” for a jury to follow any cautionary instruction. (Commonwealth’s Brief at 15.) (Emphasis added). Simply put, Brooks *cannot* possibly receive a fair trial if tried jointly with the Lawsons.

To compound the injustice of a joint trial, the Government seeks to prohibit Brooks from even defending himself at a joint trial. The Government wants the jury to hear the sanitized, final version of S. Lawson’s story, without any context as to how that version came about, which was through countless hours of interviews during which S. Lawson was subjected to threats, promised leniency, and fed information by investigators.<sup>2</sup> In sum, the Government wants to use KRE 410 – which is supposed to be a shield for the Lawsons – as a sword to keep Brooks from exposing how S. Lawson’s and potentially J. Lawson’s statements developed, while being permitted to introduce the fruits of law enforcement’s coercion. Trying Brooks alongside S. Lawson and J. Lawson without Brooks being permitted to demonstrate how their statements

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<sup>2</sup> The Government also wants to introduce recorded jail calls with S. Lawson’s mother and ex-wife after his arrest, which began with the disclaimer that the calls are being recorded and subject to monitoring. S. Lawson knows that the Government is monitoring those calls and it is in his best interest to regurgitate the same story he told investigators in the hopes of convincing the prosecutor he is “telling the truth” and has earned the immunity he was repeatedly offered.

were developed denies Brooks the ability to mount a defense and violates his rights under the Confrontation Clause of the Sixth Amendment. It is hard to envision a more grossly unfair scenario and one that would almost certainly lead to a reversal of any conviction.

**A. Redaction under these circumstances cannot protect Brooks' Sixth Amendment rights.**

S. Lawson and J. Lawson's statements are not admissible against Brooks, as the admission of those statements would violate Brooks' Sixth Amendment right to confront the witnesses against him. Absent a joint trial, jurors in Brooks' trial would never hear the Lawsons' statements unless one or both of them resolved their cases with the Government and agreed to testify against Brooks as a condition of a plea agreement. Under that scenario, Brooks would be able to cross-examine the witnesses against him. In a joint trial, the jury would hear the Lawsons' statements, but Brooks would be denied any opportunity to cross-examine them, *or*, under the Government's proposed scenario, even introduce the fruits of law enforcement's coerced statements and use KRE 410 as a shield to prevent Brooks from exposing how these statements, which so obviously incriminate Brooks, developed.

Redaction of S. Lawson and J. Lawson's statements cannot possibly protect Brooks' Sixth Amendment rights. As the Government correctly noted in its Reply, "no matter what type of cautionary instruction is offered by the court, given that the Lawsons are directly discussing the facts of this case, it will be **impossible** for jurors to follow such an admonition." (Commonwealth's Brief at 15.) (Emphasis added). It is simply fanciful to believe a jury could hear the Lawsons' statements discussing their account of their activities and movements on July 3 and July 4, 2015, which clearly and unequivocally incriminate Brooks, and be able to follow an admonition to use those statements only against the Lawsons. The Government intends to use the Lawsons' statements to tie together its case against Brooks, and – redacted or not – such

statements incriminate Brooks in direct contravention of the Sixth Amendment of the United States Constitution.

By way of one of **many** examples, the Commonwealth will introduce evidence that S. Lawson called Brooks at 12:07 a.m. on July 4, 2015. Brooks gave a voluntary interview to Detective Jon Snow of the Nelson County Sheriff's Office on July 8, 2015. During that interview, Brooks denied remembering who called him at 12:07 a.m. on July 4. Brooks called the number in Detective Snow's presence to assist the investigation. S. Lawson advised Brooks and Detective Snow that he called Brooks regarding a rental property. S. Lawson's story about the purpose of this 12:07 a.m. phone call evolved and changed over time as law enforcement coercion and suggestion intensified. Although S. Lawson's explanation of the phone call remained consistent throughout two interviews with Detective Snow, an interview with the FBI, and a grand jury appearance in 2015, his story suddenly changed after eight years once he was subjected to at least eight hours of coercive interrogation tactics, indicted for tampering with physical evidence, taken into custody, and promised that the prosecutor had a judge standing by to let him go if he cooperated. As a result, when he testified before the Nelson County Grand Jury on June 14, 2023, S. Lawson's new explanation for his 12:07 a.m. phone call to Brooks was that he called to tell Brooks that the job of moving Crystal Roger's car was done.

The Government's position is that it can play Brooks' interview with Detective Snow – including the portion concerning Brooks' call to S. Lawson to ask about the purpose of the 12:07 a.m. phone call on July 4 – and introduce S. Lawson's most recent Nelson County Grand Jury testimony where he testified that the purpose of this 12:07 a.m. call to Brooks was to tell him the job of moving Ms. Rogers' car was done. The Government proposes that it will "protect" Brooks' Sixth Amendment right to confront the witnesses against him by simply substituting

Brooks' name for "another person" when S. Lawson's Nelson County Grand Jury testimony is played or read at trial. Of course, it will be abundantly clear to everyone that "another person" is Brooks. After all, it was the Commonwealth that acknowledged, "... no matter what type of cautionary instruction is offered by the court, given that the Lawsons are directly discussing the facts of this case, it will be **impossible** for jurors to follow such an admonition."

(Commonwealth's Brief at 15.) (Emphasis added).

This case is one in which redaction would be wholly insufficient to protect a co-defendant's Sixth Amendment rights. Similar circumstances existed in *United States v. Taylor*, 745 F.3d 15, 20 (2d Cir. 2014)<sup>3</sup>, in which four individuals rode together in a car to rob a pharmacy: Taylor, Vasquez, Rosario, and Miller. All but Miller were later charged, and Taylor confessed. *See id.* The Second Circuit found the following redactions to Taylor's confession to be inadequate because the redactions "suggested that Taylor's original statements contained actual names," which, paired with context clues, made it obvious that the redactions referred to Vasquez and Rosario:

- "Luana Miller and two other individuals;"
- "The person waiting with Luana Miller and Taylor;"
- "The robbery was the idea of the person who waited with Luana Miller and Taylor ;"
- "Luana Miller and two other individuals[.]"

*Id.* at 29.

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<sup>3</sup> *See also State v. Brown*, 988 N.E.2d 923, 934–35 (Ohio App. 2013) (finding that a *Bruton* violation had occurred because "the admission of the statement permitted the jury to premise its verdict upon the incriminating, yet potentially unreliable, extrajudicial statement ascribed to [the defendant] without [him] having the opportunity to test [his co-defendant] in the crucible of cross-examination."); *People v. Johnson*, 123 A.D.3d 573 (N.Y. App. Div. 2014) (finding that a co-defendant's extensive references to a defendant – even if such references are not outright incriminating – can still give rise to a *Bruton* violation if that testimony is one of the only pieces of evidences that circumstantially links the defendant to the crime.)

In addressing the inadequacy of the redactions, the court held that it had “explicitly left open . . . ‘the possibility of a neutral-word substitution being so conspicuously awkward’ that the alteration becomes obvious,” and that this case involved obvious redactions that made it likely that the jury inferred the redactions referred to Vasquez and Rosario. *Id.* The court further explained:

Once it becomes obvious that the names had been pruned from the text, the choice of implied identity is narrow. The unnamed persons correspond by the number (two) and by role to the pair of co-defendants. This “obvious redaction confession . . . points directly to the defendant[s], and it accused the defendant[s] in a manner similar to . . . a testifying codefendant’s accusatory finger.”

*Id.* (Internal citations omitted).

The same is true here: given the context clues, the alleged role of Brooks compared with the alleged roles of his two proposed co-defendants, and the number of individuals allegedly involved compared with the number of defendants in a joint trial, introduction of redacted statements of S. Lawson in a joint trial would be no different than S. Lawson testifying at trial and accusing Brooks of murder. Because S. Lawson almost certainly will not testify in his own defense, however, Brooks loses the opportunity to cross-examine him and expose the lies he was coerced into telling law enforcement.

Curiously, the Government cites *Bratcher v. Commonwealth*, 151 S.W.3d 332 (Ky. 2004) to illustrate how a joint trial of these three defendants should play out. *Bratcher* – a case prosecuted by the undersigned counsel over twenty years ago – has almost nothing in common with the facts of this case. Although *Bratcher* and his co-defendant and brother, Philip, were tried jointly, Philip had reached a pretrial agreement with the Commonwealth whereby he waived his Fifth Amendment rights in exchange for significant concessions and agreed he was

available to be called as a witness. Philip did testify at trial and Bratcher did have the opportunity to cross-examine him about his motivations to testify. *Id.* at 343.

As the Government points out, the Confrontation Clause **guarantees** an opportunity for effective cross-examination. (*See Commonwealth Reply*, pg. 17) (quoting (*Delaware v. Fensterer*, 474 U.S. 15, 20 (1985))). Unlike in *Bratcher*, Brooks will **not** have the opportunity for effective cross-examination.

The Government knows that under the facts of this case that it would be “**impossible**” for jurors to follow the Court’s admonition that they cannot use S. Lawson’s and J. Lawson’s statements “directly discussing the facts of this case” against Brooks. The Government also knows that the chances that either S. Lawson or J. Lawson testify are remote. So, the Government will be able to use the Lawsons’ statements to incriminate Brooks without Brooks having the ability to cross-examine either co-defendant. In a joint trial, Brooks’s Sixth Amendment right to confront the witnesses against him will be forfeited, and his chances of conviction will unfairly and unconstitutionally skyrocket notwithstanding the reality that any such conviction will likely be subsequently overturned.

**B. The exclusion of statements made pursuant to KRE 410 supports severance.**

The Government’s tortured arguments in support of joinder are unpersuasive, and illustrate precisely why it is critical that these three defendants remain severed. First, the Government agrees statements made by both S. and J. Lawson to law enforcement beginning in June of 2023 are inadmissible pursuant to Kentucky Rule of Evidence 410 because they were made in the course of plea negotiations.<sup>4</sup> The Government argues that S. Lawson’s grand jury

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<sup>4</sup> The Government accuses Brooks of cherry-picking portions of these interviews that are most favorable to him, and leaving the Court with an “incomplete picture.” That is simply not the case, given that defense counsel tendered *the entirety of the relevant interviews* to the Court before the status conference on March 21, 2024. Similarly, the portions cited in Brooks’s response were included for the sole purpose of showing instances when law enforcement

testimony, however, was not made in the course of plea negotiations, despite admitting in response to S. Lawson's Motion to Dismiss that the testimony "was provided while [S.] Lawson was seeking to negotiate a deal."<sup>5</sup> The Commonwealth seeks to try the three defendants together, and allow the jury to hear redacted versions of (1) S. Lawson and J. Lawson's statements pre-dating June of 2023, (2) S. Lawson's 2023 grand jury testimony, and (3) S. Lawson's recorded calls to his mother and now ex-wife in 2024.

The Government argues at various points throughout its brief that because the Lawsons "did not accept" the immunity deal (i.e. were unable to concoct a story that satisfied the Government's version of "the truth"), that the statements that would be inadmissible pursuant to KRE 410 in a joint trial are irrelevant and that Brooks could not even use the promises law enforcement made repeatedly throughout the interviews to impeach the Lawsons if one or both opted to testify. That argument has no basis and is entirely illogical. Simply because the Lawsons have not "accepted the deal" does not mean that at the time of the interviews at issue, they were not trying to concoct a story to curry favor with the Government. Of course the Government does not want a jury to see the tactics law enforcement employed during their interviews of the Lawsons that ultimately resulted in false confessions, but Brooks must be able to expose those tactics if he is tried jointly with the Lawsons.

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made promises and offers of leniency to the Lawsons. Time stamps were included for the ease of the Court's reference.

<sup>5</sup> See Commonwealth's Response to Defendant's Motion to Dismiss or in the Alternative Suppress Statements, filed on May 16, 2024 in *Commonwealth v. Stephen Lawson*, Nelson Circuit Court Case No. 23-CR-0371 at page 7. The Government cites *United States v. Deantoni*, 171 F. Supp. 3d 477 (E.D. Va. 2016), in support of its position that S. Lawson's 2023 grand jury testimony does not fall within the scope of KRE 410. Its interpretation of *Deantoni* is far too narrow. In reality, the case actually weighs in favor of exclusion of S. Lawson's 2023 grand jury testimony, as the *Deantoni* court noted that if a prosecutor required a defendant to testify before the grand jury "as a prerequisite to continued plea negotiations, it would raise serious concerns about the voluntariness of a defendant's testimony, and may render the testimony before the grand jury coerced." *Id.* at 484. That is exactly what happened here: S. Lawson was required to testify before the Nelson County Grand Jury to obtain the ever-elusive promise of immunity.



Ironically, the Government accuses Brooks of wanting to leave jurors “with an incomplete picture,” despite seeking to introduce only the sanitized statements S. Lawson made, which were nothing more than a by-product of countless hours of coercive interrogation tactics. (Commonwealth’s Brief at 2.) In fact, introducing the final versions of S. Lawson’s “story,” without showing the jury all of the efforts law enforcement went through to extract it leaves jurors with an incomplete picture. The following two examples demonstrate why it is so important that Brooks be able to show the jury the evolution of alleged “bad facts” extracted from S. Lawson.

**1. S. Lawson’s Claim that he Called Brooks at 12:07 a.m. on July 4, 2015 to tell him “The job is done.”**

If the Government gets its way, the jury will hear that, in 2023, S. Lawson finally admitted that the purpose of his 12:07 a.m. phone call to “another person” on July 4, 2015 was to tell him “the job was done.” Of course, the Government will play Brooks’ July 8, 2015 police interview where he calls S. Lawson regarding the 12:07 a.m. phone call and the Government will introduce the phone records showing S. Lawson called Brooks at 12:07 a.m. The Government will also seek to introduce expert testimony that S. Lawson left Bardstown after this phone call and traveled east in the direction of where Crystal Roger’s car was found on July 5, 2015. Obviously, when viewed in context with the phone records and Brooks’ police interview, it is “impossible” that a cautionary instruction would prevent a jury from using S. Lawson’s statement to incriminate Brooks.

What the jury will not be able to see in a joint trial are the countless hours law enforcement spent strongly suggesting to S. Lawson what this phone call was supposedly about, where it took place, and why he made the call in the first place. Jurors will not see the investigators get so confused by their own fabrications that even they forget what they are

supposed to be telling S. Lawson about his location at the time of the phone call.<sup>6</sup> Jurors will not hear investigators suggesting they take a smoke break so S. Lawson can “jog his memory.” They will not hear the evolving explanation S. Lawson gave of the 12:07 a.m. phone call over the course of many hours of interrogation. S. Lawson started with his original explanation for the call: that he had been calling Brooks to inquire about an apartment for his stepdaughter. Jurors will hear that. What they will not hear are the wide variety of explanations made before investigators were satisfied. Jurors will not know that S. Lawson also said the purpose of the call was to let Brooks know he fixed the lots he had messed up while working with the skid steer, or to tell him he had picked up Joey, or to tell him the car had broken down. Under the Government’s ideal scenario, the jury will only hear that S. Lawson finally admitted that the purpose of his 12:07 a.m. phone call to “another person” on July 4, 2015 was to tell him “the job was done.”

The below portions of S. Lawson’s 2023 law enforcement interviews – which are inadmissible in a joint trial because of KRE 410 – show how S. Lawson’s account developed. These statements – which are critical to Brooks’ ability to mount a defense – would remain hidden from the jury:

**June 8, 2023 KSP Interview**

[02:18:58-02:19:16]

Det. BL: Immediately after that, you call Brooks Houck.

SL: Okay. And I’ve told everybody. That was to tell him I got the job done.

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<sup>6</sup> When he interrupts the first interview of S. Lawson on June 8, 2023, the prosecutor is adamant that the call in question takes place before S. Lawson leads Bardstown and heads east on the Bluegrass Parkway. Later in that same interview, one of the detectives questioning S. Lawson accidentally asks him if the call occurred while he was on the Bluegrass Parkway or once he got back home.

Det. BL: Hey hey hey hey

SL: I'm talkin about, whatever you call it – the skid stuff.

[02:19:48 – 02:20:11]

Det. BL: I am telling you right now you may have something else going on here. that wasn't the conversation you had with Brooks Houck.

SL: What do you mean that wasn't the conversation?

Det. BL: That's not the conversation. Did Joey ask you to call Brooks Houck and tell him something?

SL: Wait a minute. Hold on now. Let me think.

Det. BL: We are going to give your son the same thing we're giving you.  
[*the same thing reference is to immunity*]

[02:21:52 – 02:23:10]

Det. BL: Joey is out on the Parkway by her car. Where her car is.

SL: Well, somewhere in that vicinity.

Det. BL: Right there. Ok. I mean it's right there. Okay. He's out there. He calls you. You call him back. He calls you. You call the man who was last with her right then. Do you see, okay, but this is the problem – listen – we have you, brotha – I got you – I'm not gonna throw you under the bus – I've got you. This is common – okay – put yourself in my – this is common sense. What this phone call is. We need the specifics and the truth. Okay? I mean we have to have it. This is part of it. Alright. This is part of immunity – what you want. This is part of it. I want you to have a good life. I don't want to burn you. I don't want to expose you.

[*Crosstalk*]

SL: Honestly, I don't know if Joey did or not. Told me to call him. I don't know.

[02:23:24]

SL: He [Brooks] told me to call the next day . . . Crystal. Did he not tell me this?

[02:26:55 – 02:28:15]

Det. BL: Here we sit. So, what. You have to be totally honest about what that conversation was. So, look. I don't know if it was Joey had run into a problem here, what it is that Joey has asked you to tell him or whatever it is that you're in the middle of.

SL: I'm telling you, and I know you think I'm crazy, but I know this was some of the conversation –

Det. BL: The conversation was 13 seconds, just to keep you on track here.

SL: – that I needed to rent an apartment or whatever the hell –

Det. BL: No this has already been debunked. That didn't happen.

SL: What do you mean that didn't happen?

Det. TH: Not that conversation.

*[Unintelligible crosstalk]*

Det. TH: The thing is this. We're in the fourth quarter right now. We're so close. To you reaching the completion of your deal to walk out of this room today. We're close. But without this information, I'm telling you, it can't happen.

Det. BL: Lockett hitting SL's arm as he says, "Please please please please."

SL: Can you just give me a second? I appreciate your patience, here, I'll call it. I'm trying to think here exactly everything that I have said.

[02:28:23 – 02:30:02]

SL: What time was that again? **Can you give me that?** That the thing took place?

Det. TH: It was right after Joey called you for a ride.

SL: Okay.

Det. TH: Right after.

SL: Then I called Brooks right after that ?

Det. TH: Yes

SL: I did? Joey didn't?

Det. TH: You did.

SL: I did.

Det. TH: And I know you're wrapped up in this and don't wanna be. I get that. But you're gonna have to come off this conversation. You still have your deal, Steve.

SL: Sir, I know that. I trust you. You've gotta understand that I trust you.

Det. TH: Okay. You've gotta understand that its hinged upon this piece of information.

SL: Y'all have got to let me think for a minute, sir, of exactly what was said and what wasn't said if y'all can do that.

*[Crosstalk about the coffee]*

Det. BL: I know you're in a hard place man.

SL: Not really, sir. Not really in no hard place sir. You think I'm in a hard place. But I'm not. Because I'm gonna tell you right now, and I know I'm gonna get in trouble again when I say what I'm about to say, but I did give you my word. My son put me in this effin' mess evidently. Because now two and two means four to me for what happened at my house, that somebody came to my house and said I got money for fixin up that damn house out there when it got drawed out of her 401K. Now shit – two and two is four to me.

[02:30:17-02:32:45]

SL: I'm trying to – damn it to hell – I'm not sure if that's what was said or not. But I'm gonna tell you what I can recall. Is that fair enough?

Det. TH: We'll start there.

SL: I either says I got him, or the job is done. Now, it don't take long to say that sir.

Det. BL: What did you mean by that?

SL: Well, I'm pretty sure Joseph had called – now don't quote me on that – like I said it's been a long time.

Det. BL: Well, we need to be very specific about that. This has played out in your mind a million times.

SL: No, actually it hasn't.

Det. BL: Because you've been asked this before, you know what I'm sayin? And you've had to come up with a reason. So this has been played out.

SL: I'm thinkin that was exactly the way it was said.

Det. BL: What did that mean to you?

SL: Well, I don't know. When my son asked me to something, most of the time I done it. I don't know what y'all do with y'all's kids.

Det. BL: So Joey asked you to call Brooks and say what? The job is done?

SL: I'm pretty sure. Or "I got it" or whatever.

Det. BL: The gist of it is –

SL: The gist!

Det. TH: Can we think – I mean specifics is important.

SL: I understand that.

Det. TH: To your knowledge, what did you say in that thirteen second conversation? This is important. Not the gist of it. So what did you say to Brooks.

SL: That he said that he's got it. I'm pretty sure that's what I said! When I said he, I was talkin' about Joey.

Det. TH: Joey. Has got what?

SL: That's what I was told to say, to the best of my memory. That he's got this. I didn't ask what did you got – what did you have? Because this is hearsay, so I don't know whether to say it or not, I heard Brooks was dealing dope at one time. Whether he was or not ain't none of my damn business. So how do I know my son wasn't runnin' dope for the mother effer?

[02:33:19 – 02:33:44]

Det. TH: Shane was in here, and he told you, I think his words were “balls ass truth,” right?

SL: Somethin like that.

Det. TH: That’s not a term I usually say, but . . . he’s a man of his word and I trust him with my life. What I’m tryin’ to tell you – with the situation you’re in today –

SL: I understand what you’re tryin’ to tell me.

[02:34:26 – 02:35:40]

Det. TH: Where I think we’re struggling – now this is just a small piece, but we just need to clean it up. Just listen listen listen. That conversation. Joey. Joey calls you. You don’t answer. You call him. He doesn’t answer. He calls you back and you guys have a conversation, okay? Alright? Joey then – what you’re saying is Joey asked you – to the best of your memory that Joey asked you to call Brooks Houck. Is that correct?

SL: Well, he said Houck, or Brooks, or whatever.

Det. TH: And you know Brooks. Right?

SL: Well, I don’t know him like that, but I know him, yes.

Det. TH: So you pick up the phone. You have your phone and you call Brooks. When Brooks answers the phone, to your best memory, what were the exact words that Joey asked you to say?

SL: I’m tellin you, I think that was it. That I’ve got the job done!

Det. TH: Ok. So the exact words are: he’s got the job done. And then at that point, what do you remember Brooks saying?

SL: I don’t.

[05:26:43-5:28:35]

Det. BL: You get a phone call from Joey. You missed the phone call. Looks like you call him back. What does Joey say?

SL: Come and get him! I told you that!

Det. BL: What else?

SL: Told me where he was at!

Det. BL: At any other phone call or any other point does he say something else – to call somebody else?

SL: Not at that point and time, no.

Det. BL: When does he say to call – because around that time, there's a call from you to Brooks.

SL: That's after I get down there [referring to the Bluegrass Parkway]

Det. BL: No.

SL: What do you mean, no? Had to be, sir.

Det. BL: No.

SL: It had to be!

Det. BL: No.

SL: Well see, now I'm confused, because –

Prosecutor: [bursts into room] That's bullshit!

SL: No, no sir – I'm trying to tell you!

Prosecutor: I've got the fucking phone records, okay? I've got your phone moving, okay?

SL: That's fine, sir

Prosecutor: You weren't down there when you called Brooks, okay?

SL: Well, where was I then? Cause I – I'm not tryin' to be a smartass!

Prosecutor: No man, I can't – **I can't give you answers.** Here's what – listen to me, listen to me. I can tell you timing, okay? I can tell you that Joey called you. There was a missed call. Then you end up talkin' to Joey. You immediately call Brooks. Then, at that point, you begin to move.

SL: Okay.



Prosecutor: **And you go down the Bluegrass.**

SL: Well, maybe that was the first phone call. Sir, I'm not for sure.

Prosecutor: **That's why I'm helping you, okay?**

SL: Thank you!

Prosecutor: But you have – man, this is a significant event, okay? You have played this through your mind thousands of times.

[05:31:07 – 5:32:22]

Prosecutor: So at this point, you've already called Brooks. Right? Before you left the house, you called Brooks.

SL: I guess –

Prosecutor: Steve, be honest.

SL: I'm trying to be honest, sir. I am trying to think of the events.

Prosecutor: Why did you call Brooks?

SL: To tell him I was gonna pick up Joey, I guess!

Prosecutor: No, not "I guess." Why did you call Brooks?

SL: That's why! Okay! Does that? Does that –

Prosecutor: Okay, so why would you call Brooks?

Det. BL: To tell him you were gonna pick up Joey?

Prosecutor: To tell him you were gonna pick up Joey? Why would you call Brooks to tell him –

Det. BL: Be honest, man.

Prosecutor: Just be honest, man.

SL: I – I – I'm sittin' here tryin' to tell you sir.

Prosecutor: Okay.

SL: Thank you. Like you said, why did I call Brooks? I called Brooks because I knew- and I knew – now don't look at me like that shaking your head –

Prosecutor: Okay. Say it. Say it.

SL: They was tryin' to involve me in this mess – of course you already know that.

Prosecutor: I do know that.

SL: Okay.

Prosecutor: But we need you to tell us how they were involving you in this mess. That's what's important.

SL: Okay. That's like the car deal, alright, I knew my son was pretty much gonna take the fuckin' car, but I thought he was gonna steal it. And that's a fact. So, you know, I call Brooks, you know, the job is done!

#### June 14, 2023 KSP Interview

[01:27:17-01:27:40]

*[In reference to what occurred after he supposedly picked up J. Lawson from Crystal Rogers's car on the side of the Bluegrass Parkway]*

SL: . . . I'm not for sure if I called Brooks right after that or not. I'm not totally sure. "The job is done" or what the hell else ever. I'm not for sure. I'm just bein' honest with you – by that time I was a nervous motherfuckin' wreck. How's that? Does that make any sense to y'all?

[01:50:30-01:51:23]

SL: "Tell Brooks its done!" I done just that. Maybe he had to tell Brooks its done to make it so, or what the hell ever. That one, I truly ain't got no answer for. And I'm sorry.

Det. TH: Let's talk about that phone call real quick.

SL: Okay.

Det. TH: You call Brooks.

SL: Okay.

Det. TH: What are the exact words you tell Brooks on that phone call?

SL: It is what I just told you. "The job is done!"

Det. TH: Okay. And what is Brooks' response?

SL: I'm thinkin' it was, "OK!"

Det. TH: Nothin' other than –

SL: No! Not "fuck you," none of that crapola. But I mean, I don't know if that's helpful to you or not. I don't know.

**August 22, 2023 KSP Interview**

[01:04:55- 01:05:12]

Det. BL: You just need to think and come clean. **Do you need a smoke break?**

SL: We can smoke if you want to. That's fine. That's fine, yeah.

Det. BL: Cause you really need to think here. **I want you to jog your memory** and think. Like I said, total honesty.

[01:05:12-01:29:05]

**UNRECORDED SMOKE BREAK**

[01:47:29 – 01:48:53]

Det. BL: So then some point around there, you call Brooks.

SL: I call Brooks? Maybe I did. I just don't – Maybe I told him, "I got the car moved. It's done." I'm not gonna say I did or didn't cause I don't remember callin' him. But if I did call him, I can tell ya that's exactly what I woulda told him. I know at one time I called him and I told ya that I called him.

Det. BL: What did you tell him?

SL: That's when I called him at the police station.

Det. BL: To talk about that conversation that evening.

SL: I told him, I was like “need an apartment.” And he was like “wait a minute, wait a minute, or whatever he said.” I don’t know exactly how he said it.

Det. BL: And that conversation was staged.

SL: And we all know that. I done that – or admitted to that, or whatever you wanna call it.

Det. BL: Okay. Alright. So at some point you call Brooks on your way to say what?

SL: I don’t remember if I told him “the job is done,” “the vehicle’s broke down” I don’t know. But that’s gonna be my guess on either one of them.

*[Crosstalk]*

SL: What transpired. Does that work?

[01:51:31 – 01:51:52]

Det. BL: When do you call Brooks that evening?

SL: I don’t know.

Det. BL: Was it shortly after? Was it on the way on the parkway or right when y’all get home? It’s within that time frame.

SL: Well, I mean, I don’t know. It could have been going up the parkway, it could have been as soon as I was gettin’ off the parkway. I mean I can’t say exactly when I picked up the phone to call somebody, I’m sorry.

[02:12:06 – 03:15:37]

## **UNRECORDED SMOKE BREAK**

[03:17:06 – 03:17:14]

Det. BL: It should be noted that outside, that we weren’t really talking about specifics, we were talkin’ about not omitting stuff.

[03:30:32 – 03:31:07]

SL: I'm not for sure exactly when the phone call took place, I'm not gonna say on the BG, off the BG, I'm not gonna say. Cause I'd be lyin' either direction. Job done. Well, however you wanna phrase it.

Det. BL: You call who?

SL: That's Brooks.

Det. BL: Was it your idea to call, or who?

SL: I think Joey asked me . . . [unintelligible] but I mean regardless, either way he got a call – whether it was me or Joey or whoever – that said that we got the damn car.

### September 12, 2023 KSP Interview

[01:19:24 – 01:20:00]

Det. BL to Det. TH: You wanna continue on or take a smoke break?

Det. TH to SL: You wanna smoke?

SL: That's fine with me sir.

[01:20:01 – 02:21:59]

## **UNRECORDED SMOKE BREAK**

[02:22:06 – 02:22:42]

Det. BL: **Out there**, we were kinda talkin' about the phone conversation. Just in a chronological order is how we like to do things . . .

*[Unintelligible crosstalk]*

Det. BL: About shortly after midnight, you make a phone call to Brooks.

SL: To say the job was done.

Det. BL: Okay.

SL: I got an okay, or whatever, you know, I'm not for sure exactly. That – that was pretty much the end of that conversation, you know.

Obviously, S. Lawson's statement that he called Brooks at 12:07 a.m. to tell him the job is done is extremely important evidence for the Government as evidenced by the investigators' conduct. It contradicts Brooks' interview with police where Detective Snow was told that the purpose of the call was about rental property. Brooks' inability to expose the tactics and promises of immunity that caused S. Lawson to change his story would unquestionably deny Brooks due process.

**2. S. Lawson's Claim that Brooks Solicited him for the Murder of Crystal Rogers**

In a joint trial as the Government proposes, the jury will hear that, after years of denying any involvement, S. Lawson "came clean" to law enforcement and told them that in the days leading up to the disappearance of Crystal Rogers, "another person" solicited him to carry out her murder. Jurors will hear that on September 20, 2023, S. Lawson appeared before the Nelson County Grand Jury and testified that "another person" told him that he "wanted his wife gone." Jurors will hear S. Lawson's testimony that he responded by telling "another person" that he's "looking at the wrong person." They will hear him say that "another person" then asked him to "point him in the direction" of someone who could kill Crystal Rogers.<sup>7</sup>

What jurors will not be able to hear, of course, are S. Lawson's initial repeated denials to detectives during his initial interview, or the hours of suggestion, coercion, and convincing that led to S. Lawson's Nelson County Grand Jury testimony, which was the final product. Jurors will never know that, miraculously, S. Lawson gave the "clearest" account of the alleged

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<sup>7</sup> S. Lawson testified that this conversation happened in "Valley View" or "Pleasant View" or "something like that." Later in his testimony, the prosecutor clarifies and it becomes evident that S. Lawson was referring to "Glenview," meaning Glenview Drive, the street on which Brooks lives. In his interviews with investigators, S. Lawson said the conversation took place in the Woodlawn subdivision. The Government would seek to hide this inconsistency from jurors by using KRE 410 as a shield.

solicitation after taking an unrecorded, *sixty-four minute* smoke break with the two detectives who were actively interrogating him.

The below portions of S. Lawson's 2023 law enforcement interviews – which are inadmissible in a joint trial because of KRE 410 – show how S. Lawson's account developed. These statements – which are critical to Brooks' ability to mount a defense – would remain hidden from the jury:

**August 22, 2023 Interview with Kentucky State Police**

[00:00:04]

S. Lawson asks for a smoke break before they start, and says, "whatever you need to tell me, you can tell me out there, is that fair enough?"

[00:00:09-00:13:45]

**UNRECORDED SMOKE BREAK**

[00:29:36-00:30:00]

Det. BL: There was a point when you got out of his [Brooks'] truck.  
Okay?

SL looks puzzled and says, "Are you sure about this?"

Det. BL: Yes.

SL: I don't remember –

Det. BL: I'm trying to help.

SL: I know you're trying to help, but I don't remember getting out of the man's truck. And that's a fact.

[00:30:03-00:31:59]

Det. BL: Stacey asked you – ok – what was he [Brooks] talking to you about.

SL: Now run that by me one more time.

Det. BL: Stacey asked you what you were talkin' to Brooks about.

SL: I don't even remember Stacey bein' there.

Det. BL: Okay. Stacey asked you what you were talkin' to Brooks about. Okay. She says you say, "I have to take care of a woman with five kids whose hooked on meth.<sup>8</sup>" Okay. And Brooks might have led you to believe to kind of minimize – you know what I'm sayin' – what's goin' on. Because if you think, okay, I'm helpin' because the kids are better off

SL: I understand what you're –

Det. BL: Do you know what I'm sayin'?

SL: I understand where you're goin. If somebody's on dope, the kids are better off bein' without such and such . . .

Det. BL: Yeah, so you're helpin' with just the car part, okay, but I want to make sure we're all in the clear and you're telling the complete truth.

SL: Well, I'm tryin' to think because I . . .

Det. BL: This is important. Very important. Because it wasn't Red that we're talking about. Red has two kids. This was a woman with five kids and this was reported immediately. And, like I said, unfortunately – well, I can't go into details.

SL: I don't – I never asked you to. You know I didn't.

Det. BL: But, but this -

Det. TH: This is where you're at the crossroads, Steve. This is where you're gonna have to come clean with this –

SL: Well, I'm tryin' to think if I said that or not. You don't want me to say I said that if I didn't?

Det. TH: No. Correct. I want you to tell the truth.

Det. BL: But I don't want –

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<sup>8</sup> A witness reported seeing S. Lawson talking to Brooks Houck in his work truck outside of a house in the Woodlawn subdivision around the time Crystal Rogers disappeared. She said after S. Lawson got out of the truck, she asked what they were talking about, and he responded by saying he had to take care of a woman with five kids who was addicted to methamphetamines. The detectives' line of questioning stems solely from that tip. At previous points in this interview, S. Lawson explains that he must have been talking about a previous girlfriend of J. Lawson's, who he called "Red." He claims that "Red" was a methamphetamine addict and had a number of children he helped support financially.



SL: You don't want me to minimize it, but you don't want me to say yeah I said it if I didn't, neither. Cause then, that's just –

Det. BL: Correct. But remember, we know more than . . .

[00:32:10-00:32:16]

Det. BL: This has to be straight up between all of us. I mean you've got to come totally clean.

SL: I'm just tryin' to remember if I did say that –

Det. BL: We're trying to save your ass.

[00:32:25- 00:34:05]

Det. TH: And maybe you remember this conversation going at a different location.

SL: That's where – me and you are on the same page there.

Det. TH: Where do you remember this conversation happening?

SL: The bar.

Det. TH: With who? Brooks?

SL: No, I never seen Brooks at no bars. I never even knew that he went to bars.

Det. TH: What I'm sayin' is, Steve, at some point, you're with Brooks, you – Stacey asked you- after your conversation with Brooks – what that conversation was, and your answer was, "I've got to take care of a woman who is addicted to meth and has five kids."

SL: That's what I'm tellin' you. I think that was said at the bar. I swear I do.

Det. BL: Where did the conversation between you and Brooks take place at? Where this was mentioned? . . . Where did Brooks tell you this at?

SL: The only place that his truck woulda been that I woulda ever been woulda been at that house right here [indicating].

Det. BL: At that house?

SL: There's the house here, the lot here, and then they're buildin' this house up here." [Indicating]

Det. TH: We have to quit talkin' in hypotheticals here.

SL: I'm not talkin' hypotheticals. He asked me where the truck was. The truck was here. [Indicating]

Det. TH: So you were in the truck with Brooks there?

SL: That's the only place I could have been! That's the only place the truck was!

[00:34:07-00:35:33]

Det. TH: So what was this conversation? Talk to us. Tell us.

SL: I don't really remember. That's what y'all don't understand!

Det. BL: Okay, well do you remember telling that? Do you remember saying that to someone?

SL: I'm still sayin' I said that at the bar!

Det. BL: Okay, so was this like the night before, the day of . . . what?

SL: I'm gonna say the night before.

Det. BL: The night before.

SL: This is what I'm gonna say.

Det. BL: Okay. So you're sayin' the night before. But don't say – I mean, what do you recall?

SL: And that's what I'm tryin' to say, when y'all said that I got out of the vehicle and said that, I never recall sayin' anything like that.

Det. BL: Okay, when did you say it?

SL: And I coulda swore it was at the bar.

Det. BL: Okay, so did she ask you there what you all were talkin' about while you were on the job site? Or how did this go?

SL: I'm tryin to think back. That's been a long time ago. And I still don't remember her bein' at the bar.

[00:36:10-00:36:38]

SL: Somebody had asked me . . . who in the hell had asked me where I was goin' or what I was doin' or what the hell I was talkin' about – I can't

remember who the hell it was . . . but it seems like to me that – and this may sound stupid to y'all – but I'm thinkin' it was a man. I don't think it was a woman. I swear I don't.

[00:37:12]

Det. BL: . . . this is a very important event. It has to come to you.

[S. Lawson again says he is trying to remember, etc.]

[00:37:34 – 00:38:05]

Det. BL: The more stuff you say, the more truth you give, the more freedom. . . The more truth and totally wiping the slate clean, the more your slate is wiped clean. This is a gift like I ain't ever seen.

SL: I understand that but I can't remember if I said that to Charlie – because, like I said, Charlie was there at one time. Or if somebody else walked up on me.

[00:38:24 – 00:39:23]

Det. BL: Do you remember saying it?

SL: Yes, I already told you that.

Det. BL: And were you talking about Crystal? From – is that where you got that from – Brooks?

SL: Yeah. Let me say this, **this way it don't seem like y'all are leading me through nothin' here.**

Det. BL: Okay.

SL: I did say, I said I got to take care of a woman – maybe young lady – I don't know how I phrased it – that's got five children. I said that.

Det. BL: Because the person who says it – in their statement – okay, says that they understood it that that person was going to be dead, and that you were doing the world a favor because they were hooked on meth. Did Brooks ever mention the fact that she was hooked on meth?

SL: Not that I could ever recall. That he ever said she was hooked on meth.

[00:39:25-00:40:15]

Det. TH: What was your conversation with Brooks? What prompted you to make this statement to someone else based upon your conversation with Brooks? What was that conversation?

SL: Well, let me think before I spout my mouth off and say something wrong. [Muttering to himself while "trying to think"] . . . Let's see. . . Brooks asked us to move the car . . . I'm thinkin' that was all the same day. Don't quote me on that, but I'm thinkin' it was.

[00:40:48-00:41:42]

Det. TH: Listen, you had a conversation with Brooks –

SL: Okay.

Det. TH: We know that. By your own admission you had a conversation with Brooks. From that conversation, you felt the need to tell someone that you had to take care of a woman who was addicted to meth and had five kids. Listen. Stop. Shh. This is where you're at a crossroads. This is the stuff that's hard for you to hear come of your own mouth. Okay? I get it. But this- listen – you can't tell me – I'm not calling you a liar or nothin,' okay, but you can't tell me that you remember tellin' somebody about the conversation, but yet you don't remember the conversation. That doesn't work for me. Okay? So, so what I'm sayin' is, if you need to think – whatever it is – that's fine, but we need the details of this conversation.

SL: Sure.

Det. TH: This is important.

[00:42:12-00:43:02]

Det. TH: What was the conversation between you and Brooks?

SL: I don't – and this is facts now – I don't never remember him ever sayin' nothin' about meth. Maybe I threw that in there. I don't know. Now that's a fact.

Det. TH: Tell us about the conversation. You were there. You know. What was the conversation?

**SL: Well, like I said, we was sittin' in the truck, we've got to that point, and if you will give me a second, I need to think, because I don't want to tell you somethin' that ain't so and then you be pissed off.**

Det. TH: Correct.

Det. BL: Tell us exactly what happened. One thousand percent honest. You've got to be. All the way.

SL: I need to see exactly how he said whatever he said.

[00:43:38-00:45:11]

SL: [Appears to be thinking out loud.] What did he ask me? I think the conversation started out, and don't quote me on any of this – What would you do if you had what I'm gonna call womanly issues – that maybe isn't what he called it, but that's how I'm gonna phrase it. A womanly issue that you don't know how to handle. I'm like, "Well, I don't know what you mean by a womanly issue." That could be a hundred different – a million different things. Evidently they – the whole county evidently knew they didn't get along. The whole county.

Det. BL: Yep. It was no secret.

SL: It was no secret to nobody. And that's what I just about asked him. "Y'all cannot get along, is that what you're telling me? Y'all are always fighting with one another?" And, I knew it was a fact. Everybody did. And he said, "Yeah." Personally. Me? I would leave my wife and be done with it, you know?

Det. BL: Mmmhmm. There's a time for that. Especially with the kids around.

*[Unintelligible crosstalk]*

[00:45:16 – 00:46:00]

SL: And I think – now don't quote me on this – his exact words were, "Well, I'd just like her gone." Well, to me, gone means . . . gone. That don't mean, you know, I'm gonna divorce you and you're gonna go your way and I'm gonna go my way. Gone means . . . gone.

Det. BL: Yes.

SL: And I'm pretty sure it means the same thing to y'all, correct?

Det. TH: Are you sayin' dead?

SL: Well, he didn't say dead, he said gone.

Det. TH: But that's what you're –

SL: That's what I'm insinuating –

Det. TH: Let's just talk.

SL: Yeah.

Det. TH: Let's quit – let's just talk.

Det. BL: He wants her . . .

SL: Out of the picture. That's the best word I can use.

[00:46:15 – 00:47:53]

SL: And I'm like, I ain't – I don't really know how to help you with that. I ain't got those kind of connections. I ain't got that kind of reach. I know y'all [gesturing to detectives] know I don't.

Det. TH: Did – okay – so I'm gonna stop you there.

SL: Yeah, go ahead.

Det. TH: What did he ask of you?

SL: Basically again, "Could you move a car if I need you to move a car?" So that means – it ain't what he said, it's just my opinion – that basically he was . . . I don't know if he – personally – was gonna do something that he needed the car moved.

*[Unintelligible crosstalk]*

Det. TH: But you just said that you didn't have that kind of reach or have that kind of connection. So why would you say that? What did he say that would prompt you to say you don't have that kind of reach?

SL: Well, when you tell me you want her gone, I mean, why are you telling me this? Why are you telling me, because I ain't got that kind of reach to make something like that happen. Or maybe he was just – how do I say it? Maybe he thought I was trustworthy. Or maybe he thought this is a good man to set up with this whole fuckin' deal.

Det. BL: Correct.

[00:47:55-00:48:38]

Det. BL: Why do you think he thought you were the most trustworthy [unintelligible]?

SL: He might not have thought that. I said maybe.

Det. BL: Obviously, he come to you –

SL: I thought – and again, maybe he thought I was the stupidest one to get set up.

Det. BL: That don't make sense, Steve. I think he thought you were the right man for the job.

*[Unintelligible crosstalk]*

Det. BL: Let me ask you this. Did he ever think you were associated with any motorcycle gangs or anything at that time?

S. Lawson: Well, I always rolled with motorcycle gangs. Everybody knows that. That ain't no secret.

Det. BL: Well, do you think that's why –

S. Lawson: It may be. Everybody has seen me ride with – [unintelligible]

[02:11:00]

Det. BL told S. Lawson he is missing some “major steps” in his alleged account of the days leading up to the disappearance of Crystal Rogers.

[02:11:35-03:15:35] (64 minutes)

## UNRECORDED SMOKE BREAK

[03:16:45]

Det. TH: I think we've gotta clear it all up. We've been all over the place.

[03:19:35-03:23:01]

SL: **Just like I told you outside there a minute ago . . .** [referencing smoke break] . . . Joey had been working for Mr. Brooks . . .

S. Lawson said that Joey told him Brooks needed some Bobcat work done. He explained that he met with Brooks the following day to discuss the job.

**“I don't remember if it was that day or the next day, you told me 2 or 3 days – I can say that – that we walked over to the house . . . oh wait . . . I'm sorry I screwed up. . .”**

Referring to a house under construction in Woodlawn, S. Lawson says, “There was a hole in the attic. Somebody fell through it. It was me, Joey, and Brook [sic], and he wasn't worried about the hole or nothin' else, he asked plain and simple, “Would y'all help me move a car?”

SL: Brooks's truck is all the way parked up at this house [indicating a spot on the table in front of him] by this time. Most of the time it stayed parked wherever he was fram'in' at" [in the Woodlawn subdivision]. Have a conversation with him. "You know I don't like the bitch. We don't get along." He never called her a whore but that's what I'm gonna use. "I want her gone." Plain and simple. That's what he said. "I want her gone." "Ok - you want her gone." I did tell him straight up - "I will help you with the automobile." I did tell him that. He said, "Will you help guide -" **I may be gettin' something wrong here - is that a good way to phrase it?**

Det. BL: He wanted you to help guide him in the direction of . . . getting a homicide done.

SL: Yeah.

**September 12, 2023 KSP Interview**

[00:37:47]

SL: Let's see . . . how did he phrase? I want to try to get it perfect here.

[00:37:54-00:39:03]

SL: Like I said, I think I was just [unintelligible] up there by his truck and he said, "hey man, let me talk to you." I said, "Oh, okay. What's goin' on?" I'm pretty sure he said sit down, but I'm not for sure about that. I'm like, "What do you need?" He said, "You know me and Crystal, we're not gettin' along," or "We've had words," or whatever he called it there. I mean, it's all the same thing. They're not gettin' along. I said, "[Unintelligible] I hate that you and your ol' lady aren't gettin' along. Cuz I don't get along with my ol' lady so I wish somebody would say that to me." "Well, that's not what I mean." I'm like, "Well, what do you mean?" He said, "Basically, I hate her?" **How's that?** I said, "Well, okay, that's not a good thing." And he said, "I'd like . . . I'd like to see her gone." I think that's the way it was phrased. "I'd like to see her gone." I think that's exactly the way it was phrased.

[00:39:05]

SL: I said, "You'd like to see her gone?" And he said, "Yeah, gone." [gesturing with arm].

[00:39:10]

SL: I think he done that [gesturing with arm]. Gone.



[00:39:16]

SL: To me, in that instance, that's the way I interpreted it, just like you just said [meaning the detectives] – that he wants her deceased. Dead. However you wanna say it there.

[00:39:28]

SL: I'm like, "No, no, you've got the wrong motherfucker here," you know. I ain't no killer. I don't kill people. I don't kidnap people and I don't kill people, and I don't hurt children. That's somethin' I do not do.

Jurors will not know that the clearest version of this account came about after S. Lawson took an unrecorded smoke break with investigators for *over an hour*, nor will they hear him reference what he spoke with investigators about outside, which clearly shows that the interrogation did not cease once S. Lawson and the detectives left the interview room. Jurors will be entirely unaware that his accounts of the location and timing of the conversations he supposedly had with Brooks about moving the car and about Brooks wanting Ms. Rogers "gone" are inconsistent in each re-telling, and that, at various points, the order of events switches back and forth.<sup>9</sup>

Jurors will not know that even the finished product of law enforcement's efforts – his testimony recounting the alleged solicitation before the Nelson County Grand Jury – contains details inconsistent with his final version of events as told to investigators one week prior to appearing before the Nelson County Grand Jury. For example, on September 12, S. Lawson told investigators this conversation occurred in the Woodlawn subdivision. At the grand jury, he said it took place on Glenview, which would mean he had this discussion outside of the residence Brooks shared with Crystal Rogers. Jurors will not be able to visualize S. Lawson as this

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<sup>9</sup> Whether Brooks asked J. Lawson and S. Lawson to move Crystal Rogers's car before or after he allegedly told S. Lawson he "wanted her gone" in a private conversation differs widely throughout S. Lawson's accounts to investigators.

fabrication is extracted during hours of interviews to see his obvious fear of getting the facts “wrong” and efforts to come up with the right version of events to appease the investigators. Most importantly, jurors will not see investigators literally feed S. Lawson what they wanted him to say. Jurors would only hear the final product that investigators fed to S. Lawson.

Although the Government has accused Brooks of trying to hide the “complete picture” from the jury, what will actually be hidden from the jury are the unsavory tactics law enforcement employed during their interviews of the Lawsons that ultimately resulted in false confessions, but Brooks must be able to expose those tactics if he is tried jointly with the Lawsons. Brooks does not want to hide the “complete picture.” He simply wants due process and the opportunity to mount a defense. *See Perry v. Commonwealth*, 390 S.W.3d 122, 128 (Ky. 2012) (quoting *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006)) (“In any criminal case, important constitutional rights are at stake, including the right to confrontation and due process, and the defendant’s continued liberty is at issue. In all criminal cases, the defendant has the right to make a complete defense.”).

If Brooks were to be tried alone, both he and the Government agree that none of the statements either Lawson has given to law enforcement would be admissible. As a result, he would have no need to question the veracity of such statements at trial. Avoiding the obvious evidentiary issues with the Lawsons’ statements is precisely why Brooks is requesting that these defendants remain severed. At a joint trial, the Court is faced with the insurmountable obstacle of admitting either:

- (1) All of the Lawsons’ statements in violation of KRE 410, *or*

(2) Only their statements predating 2023 along with S. Lawson's 2023 grand jury testimony<sup>10</sup> and/or his 2024 jail calls in violation of Brooks' Fifth Amendment right to Due Process and his Sixth Amendment right to confront the witnesses against him.

If the Court joins this case over our objection, the Court must make this Hobson's choice of either preventing Brooks from effectively attacking the veracity of the Lawsons' statements in violation of his constitutional rights, or allowing Brooks to mount a defense which includes introducing the Lawsons' statements which are protected by KRE 410.<sup>11</sup> Either choice will lead to the near certain reversal of any conviction of the aggrieved party. Of course, the obvious way to avoid the Due Process and Confrontational Clause violations at issue is to deny the Government's motion to join these defendants. Simply put, this case must be severed.

**C. The underpinnings of KRE 403 further support severance.**

It is undisputed that S. Lawson's and J. Lawson's statements cannot be used to incriminate Brooks without Brooks having an opportunity to cross-examine them. It is further undisputed that given the intertwined evidence and "that the Lawsons are directly discussing the

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<sup>10</sup> As explained previously, it is Brooks's position that this testimony also falls within the purview of KRE 410 law enforcement required S. Lawson to testify before the Nelson County Grand Jury "as a prerequisite to continued plea negotiations" in order to solidify the prosecutor's offer of immunity. *See Deantoni*, 171 F. Supp. 3d at 484.

<sup>11</sup> All rules of evidence must be construed in a manner that does not contravene a defendant's constitutional rights. In many cases, the United States Supreme Court has held that a defendant's constitutional right to present a meaningful defense trumped an evidentiary rule. *See, e.g., Chambers v. Mississippi*, 410 U.S. 284 (1973) (rules precluding hearsay and impeachment of one's own witness, invoked to exclude three out-of-court admissions by a witness that he, and not the defendant, had committed the murder); *Davis v. Alaska*, 415 U.S. 308 (rule protecting the confidentiality of juvenile offense records, invoked to exclude the fact that key prosecution witness may have been biased in favor of the prosecution because he was on juvenile probation); *Delaware v. Van Arsdall*, 475 U.S. 673 (1986) (rule excluding evidence more prejudicial than probative, invoked to exclude the fact that in exchange for his cooperation a prosecution witness in a murder case had had a criminal charge dismissed); *Crane v. Kentucky*, 476 U.S. 683 (1986) (although not specified, apparently the rule excluding irrelevant testimony, implicitly invoked to exclude defendant's testimony describing the physical and psychological circumstances in which his confession was obtained); *Rock v. Arkansas*, 483 U.S. 44 (1987) (per se rule excluding all hypnotically refreshed testimony, invoked to exclude crucial portions of manslaughter defendant's own testimony regarding defective gun misfiring); *Olden v. Kentucky*, 488 U.S. 227 (1988) (rule excluding evidence more prejudicial than probative, invoked to exclude the fact that prosecuting witness in a rape case was in an interracial relationship where defendant wished to argue that protecting that relationship gave the witness a motive to fabricate her rape allegations); *Holmes v. South Carolina*, 547 U.S. 319 (2006) (rule limiting a defendant's ability to introduce evidence of a third-party perpetrator where there is strong forensic evidence of defendant's guilt, invoked to exclude evidence of a third-party who could have committed crimes).

facts of this case, it will be impossible for jurors to follow such an admonition.”

(Commonwealth’s Brief at 15). In a joint trial, Brooks would have no choice but to delve into impeaching S. Lawson’s and J. Lawson’s statements subject to the aforementioned Hobson’s choice the Court will have in choosing between S. Lawson’s and J. Lawson’s rights pursuant to KRE 410 and Brooks’ constitutional rights under the Fifth and Sixth Amendments to the United States Constitution. What is crystal clear is that all of this serves to confuse the issues, mislead the jury and cause undue delay as prohibited by KRE 403.

In a separate trial of Brooks Houck, none of S. Lawson’s or J. Lawson’s statements are admissible. In a separate trial, Brooks will not be forced to delve into the **numerous** inconsistent statements of S. Lawson or J. Lawson. Brooks will not need to expose law enforcement’s coercive interrogation tactics against S. Lawson and J. Lawson. Those realities only matter when Brooks is forced to defend against these coerced statements in a joint trial where he will not have the opportunity to cross-examine S. Lawson or J. Lawson. In sum, a joint trial absolutely confuses the issues about what evidence is admissible against whom, misleads the jury about what it can properly consider as evidence of guilt, and will inevitably make this trial substantially longer than a trial of only Brooks would need to be.

Severance puts the Government in exactly the position it should be. It can plead or dismiss S. Lawson’s and/or J. Lawson’s case and use one or both of them as witnesses against Brooks. Then, Brooks would have the opportunity to cross-examine S. Lawson and/or J. Lawson with **all** of their statements, including those made as part of their plea negotiations. Instead, the Government wants to try Brooks jointly in violation of his Confrontation Clause rights by using the Lawsons’ statements to incriminate him without the benefit of cross-examination, all the

while knowing it would be “**impossible**” for a jury to follow a cautionary instruction under these circumstances.

Finally, it is worth noting that Brooks did not create this situation. The Government did. The Government promised immunity to S. Lawson and J. Lawson and used the carrot of immunity to coerce these statements. Yet, the Government reneged on its promise of immunity and indicted and jailed S. Lawson and J. Lawson. The Government made an already unmanageable *Bruton* issue impossible and unsolvable absent severance when the prosecutor inserted himself directly into the police interrogations of the Lawsons, which triggered KRE 410. Brooks was fully prepared to cross-examine S. Lawson and expose his lies but the Government indicted S. Lawson to prevent that from happening. Due Process does not allow the Government to introduce these statements in a joint trial and hide the tactics that led to them.

The interplay of *Bruton* and KRE 410 distinguish this case from nearly all other cases in which *Bruton* issues arise. The Government turned what would have already been an incredibly complex *Bruton* case into an unsolvable evidentiary and constitutional quandary. The only way to solve the problem the Government created is for these cases to remain severed.

**D. If the Court would otherwise grant the Government’s motion to consolidate, in the alternative, Brooks will agree to waive his Confrontational Clause rights as it relates to S. Lawson and J. Lawson in order to preserve his Due Process rights in a separate trial.**

As made clear in his multiple pleadings, Brooks objects to the Government’s motion to consolidate and nothing stated herein should be interpreted as a waiver of that objection. However, if the Court would otherwise grant the Government’s motion to consolidate over Brooks’ objection, and despite the clear constitutional and evidentiary issues at play, Brooks will be left with no choice but to reluctantly take the Government up on its offer to try him separately

first in exchange for his agreement to waive his Confrontation Clause rights.<sup>12</sup> A criminal defendant in the United States of America should never be forced to forfeit one constitutional protection in hopes of preserving another, which is exactly what Brooks would be forced to do if Brooks would otherwise be joined in trial with S. Lawson and J. Lawson. Brooks cannot mount a meaningful defense in a joint trial where he is prohibited from exposing how the Lawsons' incriminating statements were coerced by investigators dangling a promise of immunity.

The only possible way for him to mount a meaningful defense at trial would be to take the Commonwealth up on its offer agree to trade his Sixth Amendment right to confront S. Lawson and J. Lawson and agree to the admission of all of their statements in order to preserve at some level his Fifth Amendment right to Due Process of law.<sup>13</sup> Brooks would not have to make this inconceivable choice – to the extent it is a choice at all – if the Court denies the Government's motion and Brooks' case remains severed. But, Brooks would prefer a separate trial, even if it means waiving his right to confront S. Lawson and J. Lawson, to a joint trial where S. Lawson's and J. Lawson's sanitized statements are admissible but he is prohibited from mounting a defense to expose how those incriminating statements were manufactured.

### CONCLUSION

There is no way for the Government to introduce evidence against Brooks, S. Lawson and J. Lawson at a joint trial without violating the Kentucky Rules of Evidence, Brooks' Fifth and Sixth Amendment rights, or both. For these reasons, the Government's motion to consolidate must be denied and Brooks' case should remain severed.

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<sup>12</sup> In its brief, the Government states, "If Houck wishes to waive his Confrontation rights and agree to allow the Commonwealth to play as much of the interview as is necessary to provide context including the parts that incriminate Houck, the Commonwealth will agree to sever Houck and try him first." (Commonwealth's Brief at 7, n. 6.)

<sup>13</sup> The reality is, of course, that a criminal defendant cannot receive a fair trial without the ability to exercise all of his constitutional rights.

In the alternative, if the Court is inclined to grant the Government's motion to consolidate despite the aforementioned issues, Brooks would have no choice but to agree to waive his constitutional right to confront S. Lawson and J. Lawson and agree to the admission of all of their statements in a separate trial in order to attempt to preserve some semblance of his constitutional right to Due Process by allowing him to expose S. Lawson's and J. Lawson's lies by cross-examining law enforcement about **all** of their statements.<sup>14</sup>

/s/ Brian Butler

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<sup>14</sup> Brooks is specifically preserving his objection to the Government's motion to consolidate and would only agree to waive his Confrontation Clause rights as detailed above if the Court would otherwise grant the Government's motion to consolidate. Brooks specifically preserves his objection to being forced to waive one constitutional right in an attempt to preserve the other constitutional right.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of June, 2024, a copy of the foregoing was electronically filed with the CM/ECF filing system which will serve notice upon all parties of record.

*/s/ Brian Butler*

**Counsel for Defendant, Brooks Houck**