

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

COMMONWEALTH OF KENTUCKY

PLAINTIFF

v.

BROOKS HOUCK

DEFENDANT

**KRS 26A.020 AFFIDAVIT IN SUPPORT OF
THE DISQUALIFICATION OF HON. CHARLES SIMMS**

1. The affiants, Brian Butler and Michael Denbow, submit this affidavit in support of this request by Brooks Houck for disqualification of Nelson Circuit Court Judge Charles Simms, based on the court's demonstration of bias toward Mr. Houck.¹

2. Given the gravity of the charges Mr. Houck faces, the importance in moving rapidly to have an unbiased judge in place, the lack of any requirement in KRS 20A.020 to first seek recusal from the trial court, and the objective reasons for seeking the court's disqualification, Mr. Houck has not sought recusal from the trial court before seeking relief under KRS 26A.020. As the Kentucky Supreme Court acknowledged in *Abbott, Inc. v. Guirguis*, 626 S.W.3d 475, 483-84 (Ky. 2021), "Any judge who is faced with a recusal motion based on either partiality or bias, may naturally be loath to acknowledge same."

I hereby certify this to be a true
copy as filed in the office of the
Nelson Circuit Clerk. Witness my
hand and seal this 10/24 2023
DIANE THOMPSON, Clerk
Nelson Circuit & District Courts
By: CP Deputy Clerk

FILED
DIANE THOMPSON, CLERK
2023 OCT 24 AM 11:17
NELSON CIRCUIT COURT

¹ Neither of the affiants have ever requested judicial disqualification in their legal careers. Judge Simms is an experienced judge who treats practicing attorneys with respect. It is important to the affiants to state that this affidavit is not and should not be read as a personal attack against Judge Simms, who is both a likable and capable jurist, but, rather, a clear and unequivocal statement that he should not be the jurist in the matter of *Commonwealth v. Brooks Houck*.

3. Judge Simms's behavior with regard to Mr. Houck is such that his "impartiality might reasonably be questioned from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances." *Id.* at 482.

4. This affidavit pertains to Judge Simms's actions in *Commonwealth v. Brooks Houck*, Criminal Action 23-CR-309 (Nelson Cir. Ct.), as well as comments made in a written order in 2017 in an unrelated custody matter.

5. On September 27, 2023, a Nelson County Grand Jury returned an Indictment against Mr. Houck charging him with murder and tampering with physical evidence. The charges stem from the disappearance of Mr. Houck's then-girlfriend, Crystal Rogers, in July 2015. Judge Simms, presiding over the Nelson County Grand Jury, set a \$10,000,000 full cash bond upon Mr. Houck's indictment.

6. Ms. Rogers's disappearance and the speculation as to what may have happened to her has garnered significant media attention, and has been the subject of podcasts, television news stories, news articles, and documentaries. The sensationalism surrounding this case was fueled, in large part, due to local law enforcement's remarkable decision to release portions of their open investigation, including Mr. Houck's police interview, to the public during an ongoing investigation after naming Mr. Houck as the main suspect. Local law enforcement's decision to name Mr. Houck as *the* suspect in Ms. Rogers's disappearance and to release portions of its investigation to the media served to make Mr. Houck a pariah to many in Nelson County. An environment was intentionally or, at a minimum, recklessly created where any Nelson County elected official, including a judge, faces enormous public and social pressure to be adverse to Mr. Houck. Judge Simms has demonstrated his bias against Mr. Houck.

7. Since Mr. Houck was charged and detained on a \$10,000,000 bond, the affiants have observed or otherwise learned of concerning conduct by Judge Simms, which stems both from his past commentary about Mr. Houck in a previous, unrelated family court matter and his demonstrated bias in this criminal matter thus far.

**Judge Simms's Commentary about Mr. Houck
in a 2017 Family Court Order**

8. Crystal Maupin, Mr. Houck's current and longtime significant other, was involved in a custody dispute six years ago. Although Mr. Houck was not a party and not involved in that custody dispute, Judge Simms's commentary in a written order issued six years ago during that proceeding reasonably calls his impartiality into question.

9. Six years ago—long before Mr. Houck was ever charged in relation to the disappearance of Crystal Rogers—Judge Simms wrote:

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

See Order entered 5/25/2017 in Mark D. Maupin v. Crystal Dawn Maupin, Nelson Circuit Court, Civil Action No. 13-CI-00667, attached as **Exhibit 1** (emphasis added).

10. 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). A judge should be disqualified 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). Based on the contempt for Mr. Houck as expressed in this

family court order written six years *before* Mr. Houck was even charged, it is clear that Judge Simms has prejudged Mr. Houck's guilt and is not and could not possibly be impartial.

11. In 2017, at the time the order was entered, Mr. Houck was a successful business owner without any criminal history other than some construction-related ordinance violations. Six years *before* Mr. Houck was charged with an offense, for which he is supposed to be presumed innocent, Judge Simms chastised a litigant for choosing to be in a relationship with a successful business owner with no criminal history. One might expect citizens without legal training to prejudge a suspect based upon news clips but it is simply inconceivable that a seasoned judge would choose to express his contempt for Mr. Houck so overtly and so unnecessarily in a case in which Mr. Houck was not even a litigant. Truly, how could any reasonable observer read Judge Simms's 2017 Court Order and believe that he has not prejudged this case and is not biased against Mr. Houck?

12. When viewed from the perspective of an objective observer, Judge Simms's 2017 family court order is troubling. *Phillips v. Rosquist*, 628 S.W.3d 41, 54 (Ky. 2021) (the test for whether a judge's impartiality might be questioned is "determined under an objective standard from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances.") His statement creates the clear impression that Judge Simms prejudged Mr. Houck's guilt six years *before* he was charged. Accordingly, based on all the surrounding facts and circumstances, any objective observer would, and should, reasonably question Judge Simms's impartiality. *See Abbott*, 626 S.W.3d at 482.

Mr. Houck's \$10,000,000 Bond

13. If Judge Simms's commentary about Mr. Houck in the 2017 family court order would and should make any reasonable observer question his impartiality, his conduct related to

the grossly excessive \$10,000,000 bond set in this case further bolsters the obvious concerns about his inability to be impartial and demonstrate his continuing bias against Mr. Houck.

14. On October 2, 2023, Mr. Houck moved to reduce the \$10,000,000 bond. (Houck’s Motion for Bond Reduction is attached as **Exhibit 2**.) In that motion, Mr. Houck detailed (1) his significant ties to the community, (2) the fact that he remained in Bardstown throughout the eight-year investigation into Ms. Rogers’s disappearance, during the entirety of which he was named as the suspect; and (3) he surrendered without incident upon his arrest to demonstrate that he is not a flight risk. Mr. Houck also pointed to his lack of meaningful criminal history to support the proposition that he is not a danger to the community if released.

15. Additionally, the bond reduction motion detailed countless bonds in murder cases with defendants who were accused of multiple homicides, retaliating against witnesses, and defendants having been charged after amassing significant criminal history. The motion also referenced bonds for defendants from wealthy and prominent families. All of those defendants’ bonds were a mere fraction of Mr. Houck’s bond.

16. Notably, the Nelson County Pretrial Services Report listed Mr. Houck as a low risk for flight. *See* Nelson County Pretrial Services Report, attached as **Exhibit 3**. The report indicated Mr. Houck has an 87% probability of appearing for scheduled court appearances, categorized him as a low risk to be a danger to the community, and found that he has a 96% probability for remaining arrest-free pending trial. *Id.*

17. On October 5, 2023, a hearing on Mr. Houck’s bond reduction motion was held in Nelson Circuit Court. After the special prosecutor completed his argument in opposition to Mr. Houck’s motion, Judge Simms solicited information relating to “other investigations”—which he

clearly had been privy to since he presided over the grand jury—as a basis to justify an oppressive and unconstitutional bond in this case.

18. At the conclusion of the Commonwealth’s argument, the special prosecutor sat back down. Then, surprisingly, Judge Simms took on the role of advocate when he said, “Certainly one of the things the Court is concerned about in this case is obviously if the bond is reasonable to assure his appearance, but also the safety of any witnesses. Is the Commonwealth wanting to go anywhere with any other investigations that are going on with regard to this matter?” (Video Recording of 10/5/2023, submitted as **Exhibit 4**, at 38:23-38:40.) It was this unsolicited question that led directly to inflammatory—and ultimately irrelevant—claims about Nick Houck, Brooks Houck’s brother.

19. Following the prompting from Judge Simms, the Commonwealth launched into a description of the investigation of Nick Houck, who is apparently suspected by law enforcement of killing Tommy Ballard, Crystal Rogers’s father. The special prosecutor stated that the Commonwealth believes that it possesses the firearm used in the shooting of Tommy Ballard and that Nick Houck allegedly used a fictitious name and sold it to an undercover agent.²

20. Although Judge Simms posed the solicitation of this information about Nick Houck from the special prosecutor as a question, he was not truly seeking information. Judge Simms already knew the answer to his question because he reviewed numerous search warrants and conducted hearings in his role as the presiding Nelson County Grand Jury Judge as stated in

² The firearm in question is currently undergoing testing, and the Commonwealth claimed that testing has already determined the presence of four of the five criteria needed for matching this gun to the one used in Ballard’s killing. It is worth noting that these sensational allegations were announced in open court prior to the affiants having the opportunity to review a single page of discovery. Since then, the affiants have learned that this gun has already been tested once by the Kentucky State Police and twice by the Federal Bureau of Investigations. On each occasion, the tests came back as inconclusive. Regardless, this has nothing to do with Brooks Houck.

his Order overruling Mr. Houck's Motion to Reduce Bond. *See* 10/9/2023 Order, attached as **Exhibit 5**.³ Judge Simms's purpose for asking this "question" appears to have been to elicit sensational information to attempt to justify an unconstitutional bond.

21. Given the "question" Judge Simms posed at the October 5th hearing, it is unsurprising that he declined to reduce Mr. Houck's excessive bond in a written order entered October 9, 2023. *See generally id.* In doing so, Judge Simms made little effort to weigh Kentucky's statutory bond factors, and instead focused upon extrajudicial considerations, with a particular emphasis on the uncharged alleged conduct of Nick Houck, Mr. Houck's brother.

22. After admitting in his written order that the highest bond he has set in twenty years on the bench prior to this case was \$2,000,000—one fifth of the bond set in this case— Judge Simms attempted to justify the patently excessive bond by expressing concern for the safety of potential cooperating witnesses, if any, and he reiterated uncharged alleged misconduct by Nick Houck as grounds to assume Brooks Houck, who has no criminal history or history of violence, is dangerous. *Id.* Judge Simms went on to discuss Nick Houck's former employment as a police officer and notes that he was terminated for allegedly interfering with the investigation, which, of course, has nothing to do with Brooks Houck's anticipated conduct while on bond. *Id.*

23. Noticeably absent from the special prosecutor's comments in the bond hearing was any allegation that Nick Houck purportedly acted at the direction of his brother in the *uncharged* death of Mr. Ballard. Judge Simms appears to believe that Brooks Houck should be kept in jail on an unconstitutional bond based upon the judge's belief that Nick Houck has committed uncharged misconduct. The theory that an unconstitutional, oppressive bond in this

³ Mr. Houck has appealed his bond.

case, in which Brooks Houck has been charged, would somehow deter Nick Houck, who has not been charged and is out of custody, from speculative future misconduct if he were so inclined is not only not a ground for an oppressive bond for Brooks Houck, but is illogical.

24. It appears that Judge Simms solicited inflammatory and irrelevant information about the alleged conduct of Nick Houck so that he could use it as a basis to justify the oppressive, unconstitutional bond affixed in this case due to either his personal bias concerning Mr. Houck, his previously expressed opinion as to the merits, or both. Judge Simms's purported reliance on the uncharged alleged conduct of Mr. Houck's brother, total disregard for the factors to be considered when affixing bond, and the admission that the bond in this case is *five times higher* than any bond he has ever set in two decades on the bench further demonstrates his bias in this matter. This conduct violates Canon 1, Rule 1.2, and Canon 2, Rules 2.2 and 2.11, of the Kentucky Code of Judicial Conduct. *See Ky. Sup. Ct. R. 4.300.*

25. Not only did Judge Simms set the grossly excessive \$10,000,000 bond in this case, he solicited information from the Commonwealth he hoped would bolster his predetermined decision to keep the bond in place. The following actions, viewed together, indicate that Judge Simms simply cannot be impartial in this case: (1) setting the initial bond at five times higher than any bond he has ever set in two decades on the bench; (2) prompting the Commonwealth to disclose information in open court he believed would justify the excessive bond he set; and (3) refusing to reduce the bond despite being presented with countless examples of similar cases involving similar charges in which bonds a mere fraction of this one were set.

26. While it is clear that the \$10,000,000 bond affixed by Judge Simms in this case has no objective basis, it is impossible for the affiants to presume to know the Court's rationale for setting such an excessive bond. As previously stated, however, this case has received an

unprecedented amount of media attention over the course of the past eight years. Mr. Houck has been vilified and treated as a pariah in Nelson County since being named as the main suspect shortly after the investigation began. Judge Simms's decision not to reduce the \$10,000,000.00 bond—and admission that the highest bond it had set in twenty years was five times lower than this one—would cause a reasonable observer to conclude that he has been swayed by “public clamor or fear of criticism” in violation of Canon 2, Rule 2.4. The comment to Rule 2.4 states that “an independent judiciary requires judges to decide cases according to the law and facts, *without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends and family.*” (Emphasis added).

Kentucky Law Favors Disqualification Under these Circumstances

27. Mr. Houck has been charged with murder. The stakes could not be higher. When he goes on trial, he will quite literally be fighting for his life. Disqualification of Judge Simms is appropriate, as “the facts alleged would place a reasonably prudent person in fear of not receiving a fair and impartial trial.” *Taylor v. Carter*, 333 S.W.3d 437, 445 (Ky.App. 2010); *Dean v. Bondurant*, 193 S.W.3d 744, 748 (Ky. 2006).

28. As the Kentucky Supreme Court has previously recognized, the parties are “entitled to a judge who has not prejudged the case.” *Tamme v. Com.*, 973 S.W.2d 13, 23 (Ky. 1998). The test for whether a judge's impartiality might be questioned is “determined under an objective standard from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances.” *Phillips, supra*, 628 S.W.3d at 54

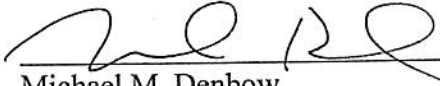
29. Taken objectively, as a whole, Judge Simms's conduct and comments would lead a reasonable observer, informed of all the surrounding facts and circumstances, to conclude that the trial judge's impartiality might reasonably be questioned. A reasonable observer would

conclude that Judge Simms made up his mind about Mr. Houck's criminal liability six years before he was ever charged in relation to the disappearance of Crystal Rogers. Judge Simms took on the role of an advocate, rather than neutral arbiter, to elicit facts from the Commonwealth to attempt to justify maintaining the unconstitutional \$10,000,000 bond in place. Judge Simms has demonstrated, at least to an outward reasonable observer, an appearance of lack of impartiality and antagonism towards Mr. Houck. For these reasons, Judge Simms should be disqualified from this matter pursuant to Kentucky law. *See generally Abbott, Inc.*, 626 S.W.3d 475.

Respectfully submitted,



Brian Butler



Michael M. Denbow

STITES & HARBISON PLLC
400 West Market Street, Suite 1800
Louisville, Kentucky 40202
(502) 587-3400
bbutler@stites.com
mdenbow@stites.com

Counsel for Brooks Houck

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF JEFFERSON)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 24th day of October, 2023, by Brian Butler.

My Commission Expires:

_____ 11/21/2024 _____

_____ Margaret J. Lewis _____
NOTARY PUBLIC

NOTARY ID: _____ KYNP1055 _____

[SEAL]

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF JEFFERSON)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 24th day of October, 2023, by Michael M. Denbow.

My Commission Expires: 1/21/2024

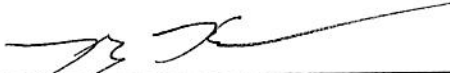
Margaret J Lewis
NOTARY PUBLIC

NOTARY ID: KYNP1055

[SEAL]

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of October, 2023, a copy of the foregoing was filed with the Nelson Circuit Court Clerk, 200 Plaza Drive, Bardstown, KY 40004. A copy of same was served via U.S. Mail, postage prepaid, upon Shane Young, Commonwealth's Attorney Office, 54 Public Square, Elizabethtown, KY 42702.



Counsel for Defendant, Brooks Houck

EXHIBITS TO KRS 26A.020 AFFIDAVIT

Exhibit #	Description
1	5/25/2017 Order in Maupin v. Maupin
2	10/02/2023 Motion for Bond Reduction
3	Nelson County Pretrial Services Report
4	Video Recording of 10/05/2023 Hearing
5	10/09/2023 Order

EXHIBIT 1

NELSON CIRCUIT COURT

CIVIL ACTION NO. 13-CI-00667

DIVISION 1

MARK D. MAUPIN

PETITIONER

VS.

ORDER

CRYSTAL DAWN MAUPIN

RESPONDENT

* * * * *

The petitioner, Mark D. Maupin (hereinafter "Mark"), and the respondent, Crystal Dawn Maupin (hereinafter "Crystal"), are the parents of Preston Dewayne Maupin (hereinafter "Preston"), age 8. On November 18, 2013, Mark and Crystal executed an agreement which specifically contained the following language:

It is agreed by and between the parties hereto that the parties shall have the joint legal custody of said child with Husband being named the primary residential custodian. Wife shall have parenting time upon the mutual agreement of the parties, and in the absence of an agreement, pursuant to the Nelson Circuit Court Local Rules. Holiday and school break parenting time shall also be upon the mutual agreement of the parties, and in the absence of an agreement, pursuant to the Nelson Circuit Court Local Rules. Each parent shall encourage and foster the respect and affection of said child for the other parent.

See Custody and Property Settlement Agreement, November 20, 2013, pp. 2-3.

The parties' agreement further provided that "the parties wish to deviate from the guidelines and agree that neither party shall pay child support to the other. The parties understand that both child support and child custody are modifiable by statute." *Id.*, p. 3. The parties were subsequently ordered to abide by the terms of this agreement in a Decree of Dissolution which was entered herein on January 28, 2014.

The parties thereafter executed an Agreed Order. This Agreed Order was entered on August 23, 2016, and it states the following:

2. The minor child shall have no contact with Respondent Crystal Maupin's significant other, Brooks Houck.

3. Should Respondent Crystal Maupin allow the minor child to have contact with Brooks Houck in violation of this order, Respondent Crystal Maupin shall immediately relinquish all parenting time with the child, and Petitioner Mark Maupin shall be named the child's sole custodian.

On February 28, 2017, Crystal filed the following motions: (1) to set aside the Order which restrained Brooks Houck from having contact with Preston, and (2) to set a specific and equal time sharing schedule. In response, Mark filed a motion for child support. On May 10, 2017, this Court conducted an evidentiary hearing in regard to these motions. At the conclusion of the hearing, the Court took this matter under submission. This Court is now prepared to address and adjudicate the pending motions.

By way of background, Mark still resides at the marital residence which is situated at 629 Borders Lane; Bardstown, Kentucky. Mark testified that two other adults occupy this residence; namely, Mark Jones and a woman identified as "Patty." When questioned about Patty's identity, Mark was unable to provide her last name. Mark is presently employed by Buck's Bobcat, LLC which is situated in Springfield, Kentucky.

In contrast, Crystal presently resides at 113 Glenview Drive, Bardstown, Kentucky, with her boyfriend, Brooks Houck (hereinafter "Brooks"). Brooks was previously in a relationship with a woman named Crystal Ballard Rogers (hereinafter "Ballard"). Ballard went missing in the summer of 2015, and local authorities have identified Brooks as the primary suspect in her disappearance. In addition, Ballard's family certainly believes that Brooks was involved with

Ballard's disappearance. To further complicate matters, Ballard's father, Tommy Ballard (hereinafter "Tommy"), was suspiciously shot and killed while hunting this past fall. Many people in the Nelson County community believe that Brooks is also connected to Tommy's death. Crystal is presently unemployed because her employer, American Rentals, was receiving threats due to Crystal's relationship with Brooks.

In this case, the Court believes it is appropriate to consider all factors contained in KRS 403.270. As grounds, this Court would note the following: (1) the parties enjoy the joint custody of their son, and (2) Crystal is requesting a specific and equal time-sharing arrangement. *See Pennington vs. Marcum*, 266 S.W.3d 759 (Ky. 2008) (a visitation/time-sharing modification occurs "whenever modification would serve the best interests of the child . . ."). As a result, this Court will now address the KRS 403.270 factors.

First, trial courts are required to consider the wishes of the child's parents. KRS 403.270(2)(a). In this case, Mark has no objection to Crystal having substantial contact with Preston so long as Brooks is restrained from having any contact with Preston. In contrast, Crystal wants an equal time-sharing arrangement. In addition, she has requested that Brooks now be allowed to have contact with Preston.

Second, trial courts are required to consider the wishes of the parties' child. KRS 403.270(2)(b). In this case, neither party requested an *in chambers* interview with the child.

Third, trial courts are required to consider "[t]he interaction and interrelationship of the child with his . . . parents, his siblings, and any other person who may significantly affect the child's best interests." KRS 403.270(2)(c). Throughout the hearing, neither party claimed that the other party had an inappropriate relationship with Preston.

While at his father's residence, Preston will have contact with the other occupants, Mark Jones and the woman identified as "Patty." Although the Court heard no testimony about either of these individuals having an inappropriate relationship with Preston, this Court is obviously concerned because Mark has utilized "Patty" as a caregiver. From the evidence, it is quite apparent that Mark knows very little about "Patty."

In addition, Mark was recently involved in a relationship with Crystal Holt (hereinafter "Holt"). Although Mark knew that Holt previously served time in prison, he never inquired about her crime. In addition, Mark admitted that Holt spent approximately one week in a substance abuse rehabilitation center in Elizabethtown. However, Holt will not be having any further contact with Preston because she recently committed suicide.

While at his mother's residence, Crystal wants Preston to have contact with her boyfriend, Brooks. In response, Mark objects because he is worried that the Ballards or others will attempt to harm Brooks. As grounds, Mark claims that Crystal has admitted to the following: (1) that some of Brooks' cattle have been shot, (2) that on an occasion, Brooks' lug nuts were missing from his truck, and (3) that people ride by giving them the finger.

Brooks and Ballard are the parents of one child; namely, Eli, age 4. Brooks presently has custody of Eli. As a result, Preston will likely have substantial contact with Eli whenever he is in the care of his mother. However, the Court heard no negative testimony about Eli.

Fourth, trial courts are required to consider the child's "adjustment to home, school, and community." KRS 403.270(2)(d). In this case, Preston should be well-adjusted to Mark's home due to his consistent history of residing there. In contrast, this Court finds that Crystal has bounced from one residence to another following the parties' separation. As grounds, Crystal admitted to the following living arrangements: (1) that upon separating from Mark in October of

2013, she lived with her mother for a "few months," (2) that in 2014, she married Eddie Nichols and resided at his residence, (3) that once that marriage failed, she relocated to her sister's cabin in the Cox's Creek, Kentucky, area, (4) that she later spent a couple of months in an apartment on Wilble Boulevard in Bardstown, (5) that in the winter of 2015, she returned to Mark's residence until May or June of 2016, and (6) that she then started renting from Brooks.

In regard to school, Preston attends Foster Heights Elementary. Although Mark attends some school events, it appears that Crystal has taken a more active role with Preston's schooling.

In regard to community, the Court heard no testimony about Preston being involved with any extracurricular activities.

Fifth, trial courts are required to consider "[t]he mental and physical health of all individuals involved." KRS 403.270(2)(e). In this case, it was established that Crystal has been the parent who primarily schedules Preston's medical appointments and then takes him to visit with his physicians. The Court heard no testimony about Crystal or Preston suffering from any mental or physical problems. In contrast, Mark testified to having a couple of prescriptions, including one for Gabapentin.

Sixth, trial courts are required to consider evidence of domestic violence. KRS 403.270(2)(f). In this case, Crystal testified that Mark has a long-history of controlling behavior. For instance, Crystal claimed that Mark had her sign papers while pregnant with Preston. The papers gave him joint custody without any child support obligation. More recently, Crystal testified that Mark wanted her BMW out of his name. According to Crystal, Mark said "if Brooks loves you so much, he can take care of it." After Crystal returned the vehicle, Mark sent her a photograph which depicted the BMW burned and sitting on the side of the road.

Another relevant factor for the Court to consider is the parties' time-sharing arrangement following the dissolution of their marriage. Although Mark claims that Preston has always spent the night at his residence, this Court believes that Preston spent approximately one-half of the time with his mother prior to her involvement with Brooks. However, once Crystal began dating Brooks, it appears that Preston has always spent the night at his father's home.

Another relevant factor for the Court to consider is the timing of the Agreed Order. At that time, Crystal's relationship with Brooks was in the early stages and she was under considerable stress. Her stress was based on the following: (1) that law enforcement had just conducted a search of Brooks' property, and (2) that people were learning of their relationship and posting negative comments about them on social media. In fact, Crystal admitted that when her relationship with Brooks began there was so much harassment that it was not in Preston's best interests to be exposed to that chaotic situation. Finally, Crystal claims that Mark threatened to use his financial resources to take Preston from her. In response, Mark denied exerting any threats, and claims to only be worried about Preston's safety.

Another relevant factor for the Court to consider is Mark's testimony that Crystal informed him that Brooks had injured the arm of Ballard's daughter. However, Crystal denied this testimony. Without any testimony from either Brooks or Ballard's daughter, there is obviously insufficient evidence for this Court to determine whether any assault occurred.

Another relevant factor for the Court to consider is Mark's history of allowing Preston to operate a jeep and an ATV on his farm property. According to Crystal, the jeep is "pretty high off the ground," and it does not have doors or seatbelts. In addition, Preston has previously wrecked the ATV, and the accident left a large bruise on his face.

Another relevant factor for the Court to consider is Mark's recent decision to withhold Preston from his mother. As grounds, it is Mark's contention that Crystal allowed Preston to have contact with Brooks. As a result, Preston has not seen his mother during the month of May.

After considering all of the evidence presented, this Court is troubled by both parties. For instance, the Court has considered the following in regard to Mark: (1) that he was in a relationship with Holt, a convicted felon, who apparently suffered from substance abuse addiction and mental health issues, (2) that he has allowed Preston to stay with a woman that he does not even know her last name, and (3) that he has permitted Preston to operate an ATV and a jeep with no driver's door. In contrast, Crystal is now in a relationship with Brooks who is apparently the prime suspect in the disappearance and suspected death of his previous girlfriend. In addition, Crystal has been unable to maintain any long-term housing, and her employment was terminated due to her relationship with Brooks.

This Court finds that it is in Preston's best interests for his father to remain as his primary residential caretaker. As grounds, Mark appears to be much more stable with his housing and his employment. In contrast, Crystal is simply one fight away from being homeless and destitute. Finally, this Court is simply astonished that Crystal would want a relationship with a man who is the prime suspect in the disappearance and presumed death of his previous girlfriend. If Brooks is ever charged with crimes related to Ballard's disappearance and death, Crystal should think about the possible ramifications for Preston and herself.

This Court next finds that Crystal shall enjoy time-sharing with Preston pursuant to the following schedule: (1) on every Tuesday and Thursday from after school until 8:00 p.m., (2) on alternate weekends from after school on Friday until Sunday at 6:00 p.m., and (3) on school breaks and holidays in accordance with the Local Rules for the Tenth Judicial Circuit.

However, this Court will set aside the Agreed Order of August 23, 2016. As grounds, Crystal and Brooks have now been in a relationship for about one year. Crystal lives at Brooks' residence, and it has been difficult for her to exercise meaningful time-sharing with this restriction in place. In addition, the Court heard no evidence of Brooks ever harming any child. Finally, Mark has expressed his concern for his son's safety based upon his belief that the Ballards might seek revenge against Brooks. However, Eli presently lives with his father, and this Court could not imagine the Ballards ever committing any act which would endanger Eli.

This Court must next calculate Crystal's child support obligation. Mark's 2016 W-2 from Buck's Bobcat, LLC reveals income of \$37,614.00. *See* Respondent's Exhibit 1. As a result, Mark has gross earnings of \$3,134.50 per month (\$37,614.00 divided by 12 months). In addition, Mark has been paying \$50.00 per week for an after school program. With school being in session for approximately thirty-eight (38) weeks per year, this Court finds that Mark is incurring a child care cost of \$158.33 per month. This amount has been calculated as follows: \$50.00 per week multiplied by 38 weeks and then divided by 12 months.

Crystal testified that she earned \$32,000.00 per year, plus commissions while employed at American Rental. However, Crystal claims that American Rental terminated her employment at the Bardstown location due to threats, but offered to transfer her to another business location. Instead of accepting a transfer, Crystal chose to draw unemployment. Her 2016 taxes reflect earnings of \$22,994.00 from American Rentals, plus \$5,848.00 in unemployment compensation. *See* Petitioner's Exhibit 2. Crystal testified that she is now assisting Brooks with his rental properties. Although she does not receive any wages, Crystal admitted that Brooks provided her with a vehicle and cellular telephone. However, there was no testimony as to the amount being

paid for these fringe benefits. Regardless, this Court finds that based upon Crystal's employment history, she is capable of earning at least \$32,000.00 per year, or \$2,666.67 per month.

The Court has calculated child support in Exhibit "A" attached hereto. Pursuant to that chart, Crystal shall be required to pay child support in the amount of \$419.21 per month.

NOW, THEREFORE, THE PREMISES CONSIDERED, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. That the motion of the respondent, Crystal Dawn Maupin, to set aside the Agreed Order of August 23, 2016, is hereby granted.
2. That the motion of the respondent, Crystal Dawn Maupin, for a specific time-sharing schedule is hereby granted.
3. That as a result, the respondent, Crystal Dawn Maupin, shall enjoy time-sharing in accordance with the terms contained herein.
4. That the motion of the respondent, Crystal Dawn Maupin, for an equal time-sharing schedule is hereby denied.
5. That the motion of the petitioner, Mark D. Maupin, to establish the child support obligation of the respondent, Crystal Dawn Maupin, is hereby granted.
6. That the respondent, Crystal Dawn Maupin, shall pay child support in the amount of \$419.21 per month through the Nelson County Friend of the Court, retroactive to April 1, 2017.
7. That counsel for the petitioner, Mark D. Maupin, shall tender a Friend of the Court Order in accordance with the Local Rules for the Tenth Judicial Circuit.
8. That any child support arrearage shall be paid at the rate of \$50.00 per month.
9. That this Judgment is final and appealable with no just reason for delay.

DATED 5-25-17

[Handwritten Signature]

JUDGE, NELSON CIRCUIT COURT

DISTRIBUTION LIST:

Phyllis K. Lonneman

Jason P. Floyd

Clerk *[Handwritten Signature: Diane Thompson]*

Date 5-25-17

ENTERED
DIANE THOMPSON, CLERK
MAY 25 2017
NELSON CO. CIRCUIT/DISTRICT COURT
BY: *[Handwritten Signature]* D.C.

EXHIBIT 2

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

Electronically Filed

COMMONWEALTH OF KENTUCKY

PLAINTIFF

v.

BROOKS WILLIAM HOUCK

DEFENDANT

NOTICE

Notice is hereby given that the following Motion shall be heard before this Court as an emergency motion on Thursday, October 5, 2023, at 1:00 p.m.

MOTION TO REDUCE BOND

The Defendant, Brooks Houck, by counsel, moves this Court pursuant to Kentucky Rule of Criminal Procedure (“RCr”) 4.40 to reduce the current bond of \$10,000,000 full cash to \$500,000 full cash with the special condition of electronic GPS monitoring with work release, if such bond is posted. In support of this Motion, the undersigned states as follows:

Background

Mr. Houck has been charged with murder and tampering with evidence stemming from the disappearance of Crystal Rogers, his former girlfriend, who went missing in July of 2015. Shortly after Ms. Rogers’ disappearance, law enforcement myopically named Mr. Houck as the person of interest in Ms. Rogers’ disappearance.

Nonetheless, Mr. Houck cooperated with law enforcement by submitting to an interview with the Nelson County Sheriff’s Office, during which he denied any involvement in Ms. Rogers’ disappearance. Mr. Houck submitted to this police interrogation without the assistance

850172B0-6A52-47EB-B534-C67BC3055A8B : 000001 of 000016

RB : 000001 of 000014

of counsel. Law enforcement also requested that Mr. Houck submit to a polygraph examination. Without requesting a lawyer, Mr. Houck took law enforcement's polygraph, the results of which **did not show deception** when he denied wrongdoing relating to Ms. Rogers' disappearance.¹ Mr. Houck even agreed to media interviews concerning Ms. Rogers' disappearance. He repeatedly denied any wrongdoing.

Inexplicably, someone in local law enforcement made the decision to release portions of the police investigation into Ms. Rogers' disappearance to media outlets. Mr. Houck's police interview has literally been played on national television because of the decision of someone in local law enforcement to release portions of an ongoing criminal investigation.² The result did nothing but fuel media sensationalism. Mr. Houck became a pariah to some in his community for this reason, not because he has a lengthy history of criminal convictions. In fact, he has **no criminal convictions**.³ He has been unfairly subjected to character assassination by press conference, podcast, and countless media stories, as a result of local law enforcement's decision to release the contents of their investigation to the media.

The sensationalism has continued nearly unabated for eight (8) years. Many Nelson County residents display yard signs concerning this matter. A billboard next to the Nelson County Judicial Center displays Ms. Rogers' photograph. At some point, the Kentucky State Police took over the investigation from local law enforcement. Subsequently, the Federal Bureau of Investigation and other federal agencies offered assistance in the investigation, which

¹ It has been widely-reported that the results were inconclusive. It is well known that the vast majority of criminal suspects, whether guilty or not, fail polygraphs administered by law enforcement.

² It goes without saying that law enforcement agencies almost always maintain the integrity of their investigations by keeping the details and findings of their investigations confidential. This was not the case with Brooks Houck.

³ Mr. Houck has pled guilty to ordinance violations which do not involve criminal conduct, but rather concern violations of a city building code.

led to multiple search warrants at Mr. Houck's home, at the properties owned by Mr. Houck or his family, and even led to digging in a Nelson County subdivision. Each of these searches garnered national media attention. This investigation has never been dormant and it has never been a secret to anyone.

Despite this situation, Mr. Houck has continued to run a very successful business employing many Nelson County residents. He has continued to be a loving father and family man. He is surrounded by his mother, grandmother, his sister, his brother, many aunts and uncles and numerous cousins in Nelson County. When asked why he had not moved, given the hostility from some in the community and the endless suspicion, Mr. Houck always maintained that Nelson County was where his family lived, and he refused to leave his home, his business, and his family's long and deep Nelson County roots. And, Mr. Houck has **always** maintained his innocence. He has **never** run away, but instead has tried to be the best father, son, sibling, and business owner he could be in the face of it all.

Despite as strong of ties to a community as a person could have, and despite an absence of any criminal convictions, Mr. Houck's bond was set at an astounding \$10,000,000 full cash when the indictment was returned by the Nelson County Grand Jury. A \$10,000,000 bond is excessive, punitive, and serves no purpose other than to punish Mr. Houck by keeping him incarcerated while this matter is pending.

Of course, Mr. Houck's continued incarceration with a punitive bond likely ensures that his business fails **before** a jury makes a decision whether the Government can prove beyond a reasonable doubt that he committed a murder. His continued incarceration with a punitive bond maximizes the trauma to Mr. Houck's son **before** a jury makes a decision whether the Government can prove beyond a reasonable doubt that Mr. Houck committed a murder. Mr.

Houck's continued incarceration with a punitive bond negatively impacts his ability to properly assist his attorneys in his defense. A \$10,000,000 bond simply ignores Mr. Houck's constitutional right to the presumption of innocence.

Simply put, a \$10,000,000 bond is not only contrary to Kentucky law and precedent, but, more importantly, is unconstitutional, as it violates the Eighth Amendment of the United States Constitution and Section 17 of Kentucky's Constitution. For the reasons set forth below, Mr. Houck respectfully requests a reduction of his bond to \$500,000 full cash with the special condition of electronic GPS monitoring with work release, if such bond is posted.

Applicable Legal Standards

The Eighth Amendment of the United States Constitution and Section 17 of Kentucky's Constitution both provide that "excessive bail shall not be required." Bail is "excessive" in violation of the Eighth Amendment when it is set at a figure higher than an amount reasonably calculated to ensure the asserted governmental interest. *Stack v. Boyle*, 342 U.S. 1, 5 (1951). In *Boyle*, the United States Supreme Court stated,

The practice of admission to bail, as it has evolved in Anglo-American law, is not a device for keeping persons in jail upon mere accusation until it is found convenient to give them a trial. On the contrary, the spirit of the procedure is to enable them to stay out of jail until a trial has found them guilty. Without this conditional privilege, even those wrongly accused are punished by a period of imprisonment while awaiting trial and are handicapped in consulting counsel, searching for evidence and witnesses and preparing a defense.

Boyle, 342 U.S. at 7-8. The United States Constitution and the Kentucky Constitution prohibit excessive bail.

Kentucky has numerous statutes instructing courts across the Commonwealth what to consider when affixing bond. Kentucky Revised Statute 431.066 reflects a strong preference for

releasing defendants on their own recognizance. KRS 431.066(3) states, “If a verified and eligible defendant poses low risk of flight, is likely to appear for trial, and is not likely to be a danger to others, the court shall order the defendant released on unsecured bond or on the defendant’s own recognizance subject to such other conditions as the court may order.” Under any fair assessment, Mr. Houck poses a low risk of flight and is not likely to be a danger to others.⁴ Under Kentucky law, any defendant posing a low risk should be released on his own recognizance.

Even if a defendant poses a moderate risk of flight, has a moderate risk of not appearing for trial, or poses a moderate risk of danger to others, the court shall release the defendant on a unsecured bond or his own recognizance but shall consider ordering the defendant to participate in global positioning system monitoring, controlled substance testing, increased supervision or such other conditions as the court may order. KRS 431.066(4).

KRS 431.520 states, “Any person charged with an offense shall be ordered released by a court of competent jurisdiction pending trial on his personal recognizance or upon the execution of an unsecured bail bond in an amount set by the court..., unless the court determines in the exercise of its discretion that such a release will not reasonably assure the appearance of the person as required, or the court determines the person is a flight risk or a danger to others.” If the Court makes the determination that a personal recognizance or unsecured bond will not reasonably assure the appearance of the person required, the Court may require the execution of a bail bond. KRS 431.520(3).

⁴ The Pretrial Services Report has not been yet been made available to the undersigned but given Mr. Houck’s ties to the community and lack of criminal history he certainly should be deemed a low risk.

KRS 431.525(1) delineates the criteria for the Court to utilize in setting an appropriate bail bond if the Court determines that a bail bond should be required, the amount of which shall be:

1. Sufficient to insure compliance with the conditions of release set by the Court;
2. Not oppressive;
3. Commensurate with the nature of the offense charged;
4. Considerate of the past criminal acts and reasonably anticipated conduct of the defendant if released; and
5. Considerate of the financial ability of the defendant.

These criteria shall be considered by the Court if the Court determines that the defendant is not a low or moderate risk and bond is necessary to ensure a defendant's compliance.

Applying the aforementioned criteria, it is clear that Mr. Houck's bail is unreasonable and oppressive, and as a result, must be significantly reduced.

Argument

The bond coming out of the Nelson County Grand Jury is *per se* unreasonable and oppressive. As an experienced and well-respected attorney, the special prosecutor certainly knows the bond is unreasonable despite what he may say in Court, and every experienced practitioner in the Commonwealth would undoubtedly agree. The current bond is unconstitutional and, if it stands, can only send a clear message that our laws and years of precedent can be disregarded if the defendant is sufficiently vilified before ever being charged.

If the Court determines that a bond is necessary despite Mr. Houck being a low risk of flight and a low risk of danger to the community based upon his lack of criminal history and his substantial ties to the community, he respectfully submits that a \$500,000 bond with a special

condition of GPS monitoring, with work release, is sufficient, but not greater than necessary, to insure compliance with the purposes of bond.

A. A \$10,000,000 bond is oppressive.

The undersigned has practiced for nearly three decades, both as a prosecutor and a criminal defense attorney, and has never seen or even heard of a bond anywhere close to this one. In an effort to highlight the true oppressiveness of the current bond, the following is a synopsis of bonds in murder cases from various Kentucky counties, including those comprising the judicial region in which Nelson County sits, Hardin County (the home jurisdiction of the special prosecutor) and Jefferson County, which is home to the most notorious violent criminals in the Commonwealth.

Nelson County

- Joseph Lawson, Case No. 23-CR-239, charged with conspiracy to commit murder and tampering with physical evidence in relation to the disappearance of Crystal Rogers. Mr. Lawson has two prior felony convictions - \$500,000 bond.
- Richard Gray, Case No. 21-CR-92, charged with shooting his children's mother and fleeing to Illinois - \$1,000,000 bond.⁵
- Andrew Toogood, Case No. 21-CR-334, charged with murder - \$1,000,000 bond.
- Alexander Roberts, Case No. 15-CR-334, charged with murder and tampering with physical evidence - \$500,000 bond which was subsequently lowered to \$50,000. Ultimately, he was found not guilty of murder and convicted of the lesser charge of manslaughter in the second degree.
- John Wimsett, Case No. 21-CR-18, charged with murder - original property bond of \$500,000. That bond was converted to a \$213,375 cash bond. Mr. Wimsett posted bond and has been released, without incident, for nearly three years.

⁵ Jamie Mayes, *Trial Begins for Man arrested for the Murder of a Bardstown Mother*, WLKY (Sept. 25, 2023, 6:10 PM), <https://www.wlky.com/article/tabitha-murray-murder-trial-richard-gray-bardstown/45308578#>.

Larue County

- William Burden, Case No. 21-CR-226, alleged to have shot and killed his wife and disposed of her corpse in a sinkhole, not to be found for three days. He was charged with murder/domestic violence, abuse of a corpse, two counts of tampering with physical evidence, as well as being a persistent felony offender and a convicted felon in possession of a handgun - \$2,000,000 bond.⁶ Mr. Burden as prior felony convictions for assault in the second degree and cultivation of marijuana and a prior domestic violence misdemeanor conviction.
- Joshua Wolford, Case No. 22-CR-103, was charged with murder/domestic violence, arson, fetal homicide in the first degree, abuse of a corpse, and tampering with physical evidence after allegedly killing his pregnant wife and setting the house on fire. Of course, this is a potential death penalty case because of the alleged aggravating factor - \$1,000,000 bond. Mr. Wolford has a prior felony conviction and also was previously convicted of violating an emergency protection order.

Hart County

- Dennis Wells, Case No. 23-CR-5, charged with murder - \$500,000 bond later reduced to \$250,000.
- Jessica Hayes, Case No. 23-CR-46 charged with murder - \$50,000 bond later reduced to \$25,000, which was posted. It appears that Ms. Hayes has been released on bond without incident.

Hardin County

- Rodshad Bowser-Highsmith, Case No. 23-CR-595, charged with **two counts of murder**, one count of attempted murder, as well as robbery - \$500,000 bond.
- Taynandree Reed, Case No. 20-CR-434, charged with **two counts of murder**, assault, as well as being a convicted felon in possession of a handgun and being a persistent felony offender in the second degree. Mr. Reed has previously been convicted of burglary in the third degree (2 counts), receiving stolen property, trafficking in marijuana. In a separate case, he was convicted of robbery in the first degree - \$2,000,000 bond.
- Jacob Lugmayer, Case No. 20-CR-515, charged with murder, robbery in the first degree, tampering with physical evidence, and abuse of a corpse - \$1,000,000 bond.
- Jordan Henning, Case No. 23-CR-522, charged with murder/domestic violence - \$1,000,000 bond.

⁶KSP: *Husband Charged with Murder After Remains of Missing Kentucky Woman Found*, WLKY (Nov. 11, 2021, 11:13 PM), [KSP: Husband charged with murder after remains of missing Kentucky woman found \(wlky.com\)](https://www.wlky.com/news/local/husband-charged-with-murder-after-remains-of-missing-kentucky-woman-found)

- Jalen Cooley, Case No. 21-CR-572, charged with murder, robbery, abuse of a corpse, tampering with physical evidence, and receiving stolen property - \$500,000 bond.

Kenton County

- Dillon Brewster, Case No. 22-CR-1, charged with murder/domestic violence, kidnapping, and being a persistent felony offender and being a convicted felon in possession of a firearm - \$1,000,000 bond.

Warren County

- David Proffitt, Case No. 23-F-851, was charged with murder and theft of a vehicle - \$500,000 bond.

Fayette County

- Shane Ragland, Case No. 00-CR-865, was charged with murder after several years of investigation for allegedly executing a University of Kentucky student - \$1,000,000 bond. Mr. Ragland came from an extremely wealthy family. He posted bond and complied with conditions placed on his release. He was convicted as charged and subsequently his conviction was overturned on appeal. While awaiting a second trial, he was released before finally pleading guilty to manslaughter.

Jefferson County

- Ricky Kelly, Case No. 10-CR-1999, was alleged by law enforcement to be one of the most notorious killers in Louisville history. He was allegedly recorded boasting to a fellow inmate about killing as many as ten men and mutilating a body of one of his victims after shooting him more than thirty times in the face, and was described by the former Louisville Metro Police Chief Robert White as showing a “total disregard for life.”⁷ Kelly was charged with **eight counts of murder**, trafficking cocaine, robbery, assault, and being a persistent felony offender in the first degree - \$1,000,000 bond.⁸ Mr. Kelly ultimately pled guilty to only one count of manslaughter in the first degree.
- Kevon Lawless, Case No. 20-CR-1499, charged with **two counts of murder**, one count of burglary, and one count of being a convicted felon in possession of a handgun in

⁷ Andrew Wolfson, *He's One of Louisville's Most Notorious Accused Killers. Now, His Own Life is on the Line*, COURIER JOURNAL (Nov. 24, 2017, 6:49 AM), <https://www.courier-journal.com/story/news/2017/11/24/louisville-killer-ricky-kelly-death-penalty/880305001/>.

⁸ *Id.*

relation to the murder of a man and his three-year-old daughter - \$1,000,000 bond later reduced to to \$300,000.⁹

- Kenneth Parker, Case No. 02-CR-1558, an alleged leader of Louisville's Victory Park Crips gang,¹⁰ was charged with a slew of violent crimes including engaging in organized crime, **three counts of murder**, assault in the first degree, robbery in the first degree, retaliating against a witness, intimidating a witness, two counts of tampering with physical evidence, drug trafficking, and being a persistent felony offender in the first degree. The Commonwealth sought the death penalty against Parker. Mr. Parker's bond was set at \$3,000,000, which is less than one-third of the bond imposed on Mr. Houck in this case.
- John "Hot Boy" Jones, Case No. 05-CR-2270, was charged murder, assault in the first degree and tampering with physical evidence - \$100,000 bond.
- Joseph Banis, Case No. 10-CR-1867, charged with murder, robbery, burglary, tampering with physical evidence, along with several other crimes related to his allegedly killing a man and burying him in the basement of his home.¹¹ Mr. Banis was reported to be a member of a prominent Louisville family - \$1,000,000 bond.
- James Mallory, Case No. 12-CR-1317, charged with murder and burglary in the first degree for allegedly murdering a teenager during a home invasion while released on shock probation. Mr. Mallory had previously been convicted of two counts of robbery in the second degree and in a separate case previously convicted of sodomy in the first degree. The Commonwealth sought the death penalty - \$1,000,000 bond. Mr. Mallory subsequently pled guilty to the reduced charges of manslaughter and burglary in the second degree.
- Lloyd Hammond, Case No. 16-CR-1169, charged with **two counts of murder**, burglary in the first degree, unlawful imprisonment in the first degree, and retaliating against a participant in the legal process - \$500,000 bond.
- Steven Pettway, Case No. 11-CR-3052, charged with murder, retaliating against a participant in the legal process, and intimidating a participant in the legal process after

⁹ Christie Battista, *Kevon Lawless Sentenced to Life in Prison for Killing Louisville Man, His 3-Year-Old Daughter*, WDRB (Nov. 3, 2022), https://www.wdrb.com/news/crime-reports/kevon-lawless-sentenced-to-life-in-prison-for-killing-louisville-man-his-3-year-old/article_75e656ea-5b8b-11ed-b75f-e3c14bdc55ec.html.

¹⁰ James Zambroski, *Life Without Parole for 25 Years for Convicted Murder, Suspected Gang Leader*, WAVE (Sept. 20, 2005, 2:51 PM), <https://www.wave3.com/story/3873244/life-without-parole-for-25-years-for-convicted-murderer-suspected-gang-leader/>.

¹¹ *Joseph Banis Sentenced to Life in Prison, Parole Possible*, WAVE (June 12, 2013, 5:46 PM), <https://www.wave3.com/story/22572501/joseph-banis-sentenced-to-life-in-prison-parole-possible/>.

allegedly assassinating a witness set to testify against another person in broad daylight and in front of her niece - \$1,000,000 bond.¹²

- Brice Rhodes, Case No. 16-CR-00189, charged with **three counts of murder**, tampering with physical evidence, two counts of abuse of a corpse, and receiving stolen property. Mr. Rhodes has prior domestic violence convictions and is alleged to have threatened a sitting judge in open court - \$1,000,000 bond.
- Chrishawn Philpot, Case No. 23-CR-1508, charged with murder, assault, and being a convicted felon in possession of a handgun stemming from a shooting on the Jefferson Community and Technical College campus - \$500,000 bond.¹³
- Quintez Brown, Case No. 22-CR-599, charged with attempted murder and four counts of wanton endangerment in the first degree. Mr. Brown was accused of attempting to assassinate then mayoral candidate and now Louisville Mayor Craig Greenberg in a political murder - \$100,000 bond.

As evidenced by the above examples of notorious and well-known murder cases and one example of the most egregious alleged attempted murder in recent history, a bond far less than \$10,000,000 has always been found to be appropriate regardless of the particular defendant's criminal record, his family's financial circumstances, his connections or lack thereof to the community, his public notoriety, or the alleged heinousness of crimes.

Given the numerous aforementioned examples from within and outside of the Nelson Circuit Court, a \$500,000 bond with GPS monitoring, with work release, is an appropriately significant bond for the offenses with which Mr. Houck has been charged.

B. A \$500,000 bond is appropriate and significant under these circumstances.

A \$500,000 bond is a significant amount of money, the payment of which would ensure Mr. Houck's appearance at trial and compliance with the conditions of his release. Further and

¹² *Steven Pettway Found Guilty of Killing Troya Sheckles*, WDRB (May 15, 2013), https://www.wdrb.com/news/steven-pettway-found-guilty-of-killing-troya-sheckles/article_554648a5-fbd4-5739-9ba9-e899a7cf2b59.html.

¹³ *Louisville Man Charged in Deadly Shooting at JCTC Campus*, WAVE (Aug. 8, 2023, 8:26 AM), <https://www.wave3.com/2023/08/08/louisville-man-charged-deadly-shooting-jctc-campus/>

as previously delineated, \$500,000 is commensurate with the gravity of the offenses charged here. The purpose of bond is to ensure that the prospect of forfeiting that bond would have a sufficient deterrent effect and cause the defendant to comply with the Court's terms and conditions of release if such bond is posted. *Long v. Hamilton*, 467 S.W.2d 139, 141–142 (Ky. 1971). A \$500,000 bond would serve that purpose.

A \$500,000 cash bond is a substantial amount of money which could be forfeited. Though Mr. Houck is gainfully employed, the forfeiture of \$500,000 would be extremely detrimental. Moreover, if he were released on a \$500,000 bond, he would certainly be returned to custody if there were a significant bond violation. This reality is a massive deterrent because continued incarceration is extremely detrimental to Mr. Houck's son, family, business, and ability to assist in his own defense. As such, the prospect of forfeiting \$500,000 should he fail to appear at trial or comply with his conditions of release is a significant deterrent.

C. Mr. Houck's reasonably anticipated conduct supports a drastically reduced bond.

Mr. Houck is not a flight risk or a danger to the community. An inordinately high bond is simply not appropriate. Should the Commonwealth argue its evidence or the potential penalty justifies a higher bond, the Kentucky Supreme Court has stated that these factors are to be considered "only to the extent that the court feels those circumstances increase the probabilities that the defendant will not comply with the terms of the bond." *Long v. Hamilton*, 467 S.W.2d 139, 141 (Ky. 1971).

It would be hard to imagine any criminal defendant who has more effectively demonstrated that he is not a flight risk. Mr. Houck has been a suspect in this alleged murder for eight years. He has endured numerous search warrants and been the subject of countless media stories. He has driven around his hometown staring at signs calling for "justice" in Ms. Rogers'

disappearance knowing that many of those signs were placed by people who have come to believe he is guilty because of countless segments on local television, in local papers or on social media. Despite it all, Mr. Houck remained in Nelson County.

His family is in Nelson County and has been for generations. The business that he built is in Nelson County. Everything he knows and loves is in Nelson County. Mr. Houck will stay no matter how much or how little collateral is on the line. He will stay because Bardstown is his home and he has stated from the very beginning that he is not responsible for Ms. Rogers' disappearance.

Moreover, other than the charges leveled eight years after Ms. Roger's disappearance there is no objective support for the proposition that Mr. Houck is a danger to the community. He has no criminal history. He has no substance abuse issues which may cloud his judgment. According to the FBI's press release, Mr. Houck was arrested "without incident." There is simply nothing other than rank speculation supporting the proposition that Mr. Houck is a danger to community.

Conclusion

Mr. Houck is a low risk defendant. He has substantial ties to the community. He has proven he will not flee even in the face of being named *the* suspect, subjected to years of search warrants, suffering character assassination in the media, and, most recently, learning that a Nelson County Grand Jury indicted Mr. Lawson a month ago for allegedly conspiring to murder Ms. Rogers. Mr. Houck has no criminal history to support the proposition that he is a danger to the community.

Surely, our constitutional presumption of innocence means more than throwing a longtime resident and business owner in jail with an oppressive bond which guarantees he loses

everything he has worked for regardless of the outcome of the trial. An oppressive bond is unconstitutional and certainly not necessary to reasonably ensure compliance with purposes of Kentucky's bond statutes. Maintaining a \$10,000,000 bond would be and could only be seen as punitive.

WHEREFORE, Brooks Houck respectfully requests this Court reduce the bond set by the Nelson County Grand Jury to \$500,000 full cash, with the special condition of electronic GPS monitoring, with work release, if such bond is posted.

Respectfully submitted,

/s/ Brian Butler

Brian Butler
Michael M. Denbow
Jennifer Henry Jackson
STITES & HARBISON PLLC
400 West Market Street, Suite 1800
Louisville, KY 40202-3352
Telephone: (502) 587-3400
bbutler@stites.com
mdenbow@stites.com
jjackson@stites.com

Counsel for Defendant, Brooks Houck

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October, 2023, 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

Brian Butler

1589669

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

COMMONWEALTH OF KENTUCKY

PLAINTIFF

v.

ORDER

BROOKS WILLIAM HOUCK

DEFENDANT

Motion having been made, and the Court being otherwise sufficiently advised;

IT IS HEREBY ORDERED that Defendant, Brooks Houck's Motion for Bond Reduction be, and hereby is, GRANTED.

IT IS FURTHER ORDERED that the defendant's bond be reduced to \$500,000 full cash with the special conditions of electronic GPS monitoring with work release, if such bond is posted.

JUDGE

DATE

850172B0-6A52-47EB-B534-C67BC3055A8B : 000015 of 000016

TD : 000001 of 000002

Tendered by:

/s/ Brian Butler

Brian Butler

Michael M. Denbow

Jennifer Henry Jackson

STITES & HARBISON PLLC

400 West Market Street, Suite 1800

Louisville, KY 40202-3352

Counsel for Defendant, Brooks Houck

850172B0-6A52-47EB-B534-C67BC3055A8B : 000016 of 000016

TD : 000002 of 000002

EXHIBIT 3

Pretrial Services History Report

HOUCK, BROOKS WILLIAM

2978315

IN-CUSTODY

Case Number: 23-CR-00309

DOB: 10/12/1981 **Age:** 41

Unsupervised Probation / Parole: NO

Supervised Probation / Parole: NO

Holding County: HARDIN

Interview Status: ACCEPTED

Interview Date: 09/27/2023

Veteran: NO

Recommendation

Risk Level:

FTA Risk(0-7): LOW(1)

NCA Risk(0-13): LOW(0)

NVCA(0-7): 2

Appearance Probability: 87.00%

Arrest-free pending trial Probability:96.0

Recommendation: JUDICIAL DISCRETION WITH PRETRIAL SUPERVISION

NOT TO VIOLATE ANY LOCAL, STATE, OR FEDERAL LAWS

MAKE ALL SCHEDULED COURT APPEARANCES

Comment

BCE

Case/Charges

NELSON

09/27/2023

23-CR-00309

**** Indictment ****

0091505 COMPLICITY MURDER

0502305 COMPLICITY TAMPERING WITH PHYSICAL EVIDENCE

Citation

Class

Level

Count

A

F

1

D

F

1

Current Bond Information

Bail Credit : NO

Reason Ineligible : Judicial Discretion

Bond set by SIMMS, CHARLES C III **on** 10/10/2023 **11:45 AM** **in the amount of** \$10,000,000.00 - CASH

NELSON County Case Number **23-CR-00309**

- * MAKE ALL SCHEDULED COURT APPEARANCES
- * NO ILLEGAL USE OF ALCOHOL OR CONTROLLED SUBSTANCES
- * NOT TO CONSUME ANY ALCOHOL OR ILLEGAL DRUGS
- * NOT TO VIOLATE ANY LOCAL, STATE, OR FEDERAL LAWS
- * OTHER

NO CONTACT WITH THE FAMILY OF CRYSTAL ROGERS. NO CONTACT WITH ANY WITNESSES AGAINST HIM. NO VIOLATIONS OF THE LAW. NO USE OF DRUGS OR ALCOHOL. DUSK TO DAWN CURFEW. TO REMAIN IN THE COMMONWEALTH OF KENTUCKY.

Case/Court Dates

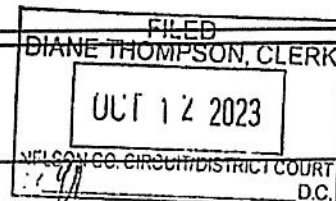
NO FUTURE COURT DATE

County Case Number

Upcoming Events

NO UPCOMING EVENT

County Case Number



Address

PRESENT address is **113 GLENVIEW DR, BARDSTOWN, KY, 40004** for **13 Yrs 0 Mos 0 Wks 0 Dys**. Lives **SIGNIFICANT OTHER**

Primary Phone : (502) 349-2789

Secondary Phone : n/s

Case/Bond History

Bail Credit Eligible : **NO**

Reason Ineligible : **Judicial Discretion**

Bond set by **SIMMS, CHARLES C III** on **10/10/2023 11:45 AM** in the amount of **\$10,000,000.00 - CASH**

NELSON County Case Number **23-CR-00309**

- * NOT TO VIOLATE ANY LOCAL, STATE, OR FEDERAL LAWS
- * NOT TO CONSUME ANY ALCOHOL OR ILLEGAL DRUGS
- * OTHER
- * NO ILLEGAL USE OF ALCOHOL OR CONTROLLED SUBSTANCES
- * MAKE ALL SCHEDULED COURT APPEARANCES

NO CONTACT WITH THE FAMILY OF CRYSTAL ROGERS. NO CONTACT WITH ANY WITNESSES AGAINST HIM. NO VIOLATIONS OF THE LAW. NO USE OF DRUGS OR ALCOHOL. DUSK TO DAWN CURFEW. TO REMAIN IN THE COMMONWEALTH OF KENTUCKY.

Bail Credit Eligible : **NO**

Reason Ineligible : **Judicial Discretion**

Bond set by **SIMMS, CHARLES C III** on **09/28/2023 08:43 AM** in the amount of **\$10,000,000.00 - CASH**

NELSON County Case Number **23-CR-00309**

Case/Court Dates History

CIRCUIT COURT in **NELSON** on **10/05/2023** with status **PENDING** and outcome **N/A** for case number **23-CR-00309**

NELSON County Case Number **23-CR-00309**

Case/Event History

ATTEMPT TO INTERVIEW on **09/27/2023** with status **INACCESSIBLE** and outcome **N/A**

County Case Number

- * Defendant in custody with FBI and relocated. Location at this time is confidential.

ATTEMPT TO INTERVIEW on **09/27/2023** with status **INACCESSIBLE** and outcome **N/A**

County Case Number

- * NO ANSWER AT THE JAIL

ATTEMPT TO INTERVIEW on **09/27/2023** with status **INACCESSIBLE** and outcome **N/A**

County Case Number

- * BOOKING ASKED TO CALL BACK

ATTEMPT TO INTERVIEW on **09/27/2023** with status **INACCESSIBLE** and outcome **N/A**

County Case Number

- * SHIFT SUPERVISOR REPORTED DEF IS INACCESSIBLE FOR INTERVIEW AT THIS TIME

ATTEMPT TO INTERVIEW on **09/27/2023** with status **COMPLETED** and outcome **N/A**

County Case Number

Interview Memo

9/27/2023 12:00:33P NO OUT OF STATE RECORD FOUND

10/1/2023 5:10:11PI TRANSFERRED FROM NELSON 09/27/2023 12:04

Release Comments: TEMP OUT TO HARDIN COUNTY DETENTION CENTER
COURTESY HOLDER

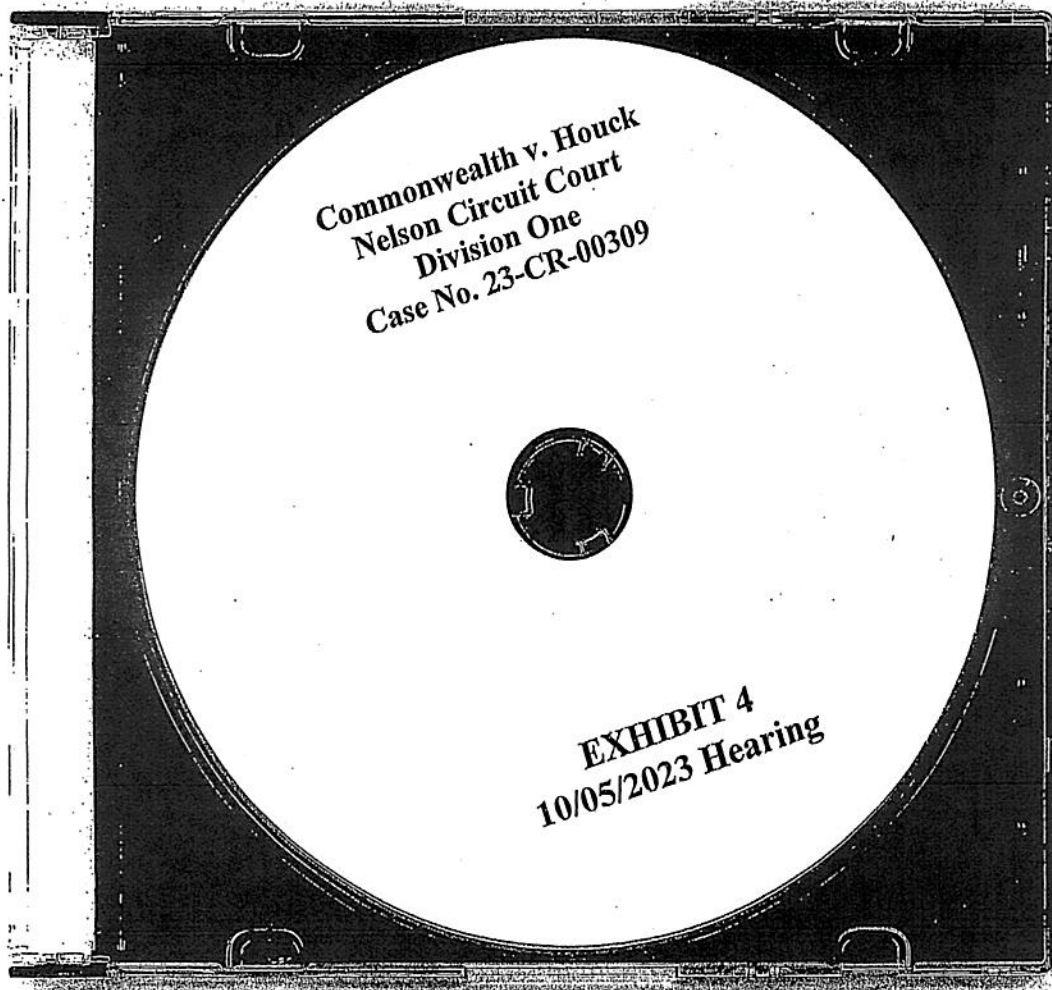
Risk Assessment Factor	<u>Response</u>	<u>FTA Risk Points</u>	<u>NCA Risk Points</u>	<u>ERV Risk Points</u>	
Is the Current Charge Violent?	Yes	0	0	2	
If Current Charge is Violent is the defendant under 21 years old at the time of the alleged criminal activity?	No	0	0	0	
Age at current arrest:	23 or older	0	0	0	
Is the defendant charged with a new offense while there is a pending case?	No	0	0	0	
<u>Source</u> COURTNET	<u>Case Number</u>	<u>Verify Date</u> 09/27/2023	<u>Filed Date</u>	<u>Convicted Date</u>	<u>FTA Date</u>
Does the defendant have at least one prior misdemeanor conviction?	No	0	0	0	
<u>Source</u> COURTNET	<u>Case Number</u>	<u>Verify Date</u> 09/27/2023	<u>Filed Date</u>	<u>Convicted Date</u>	<u>FTA Date</u>
Does the defendant have at least one prior felony conviction?	No	0	0	0	
<u>Source</u> COURTNET	<u>Case Number</u>	<u>Verify Date</u> 09/27/2023	<u>Filed Date</u>	<u>Convicted Date</u>	<u>FTA Date</u>
Number of failure to appears in the past two years?	0	0	0	0	
<u>Source</u> COURTNET	<u>Case Number</u>	<u>Verify Date</u> 09/27/2023	<u>Filed Date</u>	<u>Convicted Date</u>	<u>FTA Date</u>
Does the defendant have any failure to appears older than 2 years?	Yes	1	0	0	
<u>Source</u> COURTNET	<u>Case Number</u> 12-t-874	<u>Verify Date</u> 09/27/2023	<u>Filed Date</u>	<u>Convicted Date</u>	<u>FTA Date</u> 7/24/2012
<u>Memo</u> NELSON					
Number of prior violent offense convictions?	0	0	0	0	
<u>Source</u> COURTNET	<u>Case Number</u>	<u>Verify Date</u> 09/27/2023	<u>Filed Date</u>	<u>Convicted Date</u>	<u>FTA Date</u>
Does the defendant have at least one sentence to incarceration?	No	0	0	0	
<u>Source</u> COURTNET	<u>Case Number</u>	<u>Verify Date</u> 09/27/2023	<u>Filed Date</u>	<u>Convicted Date</u>	<u>FTA Date</u>
Does the defendant have three or more alcohol/substance abuse arres within the past five years?	No	0	0	0	
<u>Source</u> COURTNET	<u>Case Number</u>	<u>Verify Date</u> 09/27/2023	<u>Filed Date</u>	<u>Convicted Date</u>	<u>FTA Date</u>
Score Totals :		1	0	2	

CAGE Assessment

NO We have resources available for individuals experiencing problems with substance use. Would you be interested in accessing any of these resources?

Domestic Violence Questions

Video Recording of 10/05/23 Hearing



*Per Attorney Stites and Harbison's office they will have a copy of this disc delivered to Kentucky Supreme Court today (10-24-23).

EXHIBIT 5

COMMONWEALTH OF KENTUCKY
NELSON CIRCUIT COURT
INDICTMENT NO. 23-CR-00309
DIVISION 1

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS.

ORDER

BROOKS WILLIAM HOUCK

DEFENDANT

* * * * *

The Nelson County Grand Jury has charged the defendant, Brooks William Houck (hereinafter "Brooks"), with murdering Crystal Rogers (hereinafter "Crystal") and tampering with physical evidence. At the recommendation of the Special Prosecutor and the Nelson County Grand Jury, this Court fixed a \$10,000,000.00 bond for Brooks. In doing so, this Court was well-aware of most of the information described below based upon its prior review of affidavits for search warrants and from hearings related to the grand jury.

On October 2, 2023, Brooks, through counsel, filed a motion to reduce his bond. At arraignment, the defense vigorously asserted that the bond is unreasonable, punitive, and oppressive. This Court will now address and adjudicate this pending motion. In doing so, this Court is mindful that Brooks is entitled to the presumption of innocence.

By way of background, Crystal disappeared on or about July 3, 2015. Her family and law enforcement suspected that her boyfriend, Brooks, was responsible for her disappearance. At that time, Brooks' brother, Nick Houck (hereinafter "Nick"), was employed as a Bardstown City Police Officer. However, Nick's employment was subsequently terminated for allegedly interfering with law enforcement's investigation.

The Commonwealth Attorney subpoenaed five Houck family members to testify before the Nelson County Grand Jury. The Commonwealth has seized evidence which indicates that

these Houck family members secretly recorded their grand jury testimonies. The Special Prosecutor has proffered a recording supposedly taken by Brooks' sister, Rhonda McIlvoy (hereinafter "Rhonda"), along with an FBI transcript of same.

On that recording, there is a conversation between a male and a female. The male starts the equipment and states that "Nicholas can find it." While the female is waiting to testify, she expresses concern as to whether the device would start beeping. The male then reassures her by stating "it's got brand new batteries in it." The concerned female later states "you're keeping it. Keep it out here." The male responds "no, we need to hear it." The Commonwealth contends that the male voice on this recording belongs to Brooks.

In November of 2016, Crystal's father, Tommy Ballard (hereinafter "Tommy"), was shot and killed while hunting. The Commonwealth believes that it possesses the firearm used in that shooting. The Prosecutor contends that Nick sold this rifle while using a fictitious name. This firearm is the same caliber as the one used to kill Tommy. This rifle is currently undergoing testing, and the Commonwealth claims that testing has already determined the presence of four of the five criteria needed for matching this gun to the one used in Tommy's killing.

When fixing bond, this Court must comply with RCr 4.16. This criminal rule specifically contains the following language:

The amount of bail shall be sufficient to insure compliance with the conditions of release set by the court. It shall not be oppressive and shall be commensurate with the gravity of the offense charged. In determining such amount the court shall consider the defendant's past criminal acts, if any, the defendant's reasonably anticipated conduct if released and the defendant's financial ability to give bail.

See also KRS 431.525; and *Abraham vs. Commonwealth*, 565 S.W.2d 152 (Ky. App. 1977).

Defense counsel's well-researched memorandum clearly establishes that bonds in murder cases in central Kentucky usually range between \$500,000.00 to \$2,000,000.00. In fact, this judge has presided over thousands of felony cases over the past twenty years. Prior to this action, this judge had never set a bond higher than \$2,000,000.00. In addition, Brooks' criminal record is rather miniscule (traffic and ordinance charges). However, for the reasons set forth below, this judge believes that the \$10,000,000.00 bond is reasonable to assure Brooks' appearance, to adequately protect cooperating witness(es) and other individuals associated with this case, and to better assure the integrity of this proceeding.

First, this Court believes that Brooks has access to substantial financial resources. The records from the Kentucky Secretary of State indicate that he is the sole member of three business entities; namely, Houck Rentals, LLC, Select Quality Homes, LLC, and Central Kentucky Real Estate Rentals, LLC. The Commonwealth has proffered documentation which indicates that these entities own 83 properties in Nelson County, with most being rental properties. The tax assessments for 66 of these properties totaled approximately \$8,500,000.00. This judge is also familiar with Nelson County real estate transactions, with the resulting sale prices often exceeding the tax assessments.

Second, this Court has considered the gravity of the murder charge while recognizing that Brooks' pretrial assessment indicates that he is a low risk for flight and a low risk to reoffend. Although this Court routinely relies on pretrial assessments for lower level felonies, it certainly believes that most healthy defendants are a flight risk when they are facing severe penalties like twenty (20) to fifty (50) years, or life, in prison. In addition, parole eligibility is much harsher if a defendant is convicted of murder.

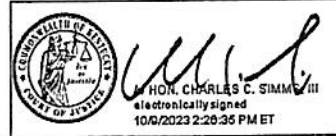
Third, there is reason to believe that the Commonwealth may have one or more cooperating witnesses, and this Court is gravely concerned for the safety of any such witness(es) and any other individuals connected to this case. As grounds, it appears that the Commonwealth may have obtained from Nick the firearm that was used to kill another person associated with this case. Although the defense contends that Brooks is not responsible for Nick's behavior, it is apparent that Nick has provided ongoing assistance to his brother. First, Nick's employment was terminated for interfering with this criminal investigation. Second, Nick apparently recorded his grand jury testimony in violation of RCr 5.24. Third, when Rhonda expressed concern with using the recording device, the male voice responds "no, we need to hear it." With this conversation supposedly being between siblings, it is reasonable to assume that "we" refers to Nick, especially since the male voice previously stated that "Nicholas can find it." Although this Court will not speculate about a motive for killing Tommy, it is extremely alarming as to why Nick may have been selling the same caliber firearm that matches four of the five criteria for being used in Tommy's shooting.

Fourth, this judge simply wants both sides to receive a fair and impartial trial. However, the integrity of the entire proceeding is at stake when someone deliberately violates the rules of criminal procedure. In this case, the Houck family intentionally engaged in misconduct when they secretly recorded the grand jury proceeding. In fact, Rhonda even expressed second thoughts about using the recording device, but the male voice responded with "no, we need to hear it." In addition, any former police officer in Nick's position should have known that it is inappropriate for him and his family to secretly record any grand jury testimony.

The Court being sufficiently advised;

IT IS HEREBY ORDERED AS FOLLOWS:

1. That the defendant's motion to reduce bond is hereby DENIED.
2. That the Nelson Circuit Clerk shall seal the audio recording and the FBI transcript of the alleged conversation between the defendant and his sister, Rhonda McIlvoy.



JUDGE, NELSON CIRCUIT COURT

DISTRIBUTION LIST:

___ Shane Young

___ Brian Butler

Clerk _____

Date _____

1C33A891-2965-40E1-AB37-EEBC1C6CA380 : 000005 of 000005

OO : 000005 of 000005