



Received: 2025-SC-0326 08/12/2026
Filed: 2025-SC-0326 08/12/2026
M. Katherine Bing, Clerk
Supreme Court of Kentucky

COMMONWEALTH OF KENTUCKY
SUPREME COURT
2025-SC-0326-MR
ELECTRONICALLY FILED

Moises May

Appellant

On Appeal from Jefferson Circuit Court
v. Hon. Eric J. Haner, Judge
Action Nos. 23-CR-1891 & 24-CR-001438

Commonwealth of Kentucky

Appellee

Brief for the Commonwealth of Kentucky

Respectfully submitted,

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Certificate of Service

I certify that on this 12th day of August, 2026, a copy of the Brief for the Commonwealth of Kentucky has been served as follows: via U.S. mail to Hon. Eric J. Haner, Circuit Judge, Jefferson County Judicial Center, 700 West Jefferson Street, Louisville, Kentucky 40202; the Hon. Max Gosman, Assistant Commonwealth's Attorney, 514 West Liberty Street, Louisville, Kentucky 40202; the Hon. Anastasia McKettrick, 719 West Jefferson Street, Louisville, Kentucky 40202; and the Hon. Kayla D. Deatherage, Mill Creek Park, Section 100, Frankfort, Kentucky 40601. The appellate record has been returned to the Clerk of this Court.

/s/ Graham Pilotte

Assistant Solicitor General

INTRODUCTION

Moises May appeals his convictions for harassment with physical contact, kidnapping, intimidating a participant in the legal process, third-degree terroristic threatening, and five counts of human trafficking. Because the trial court did not abuse its discretion in denying May's motions to strike two jurors for cause, and because the trial court did not abuse its discretion in denying May's motion to sever his indictments, this Court should affirm the trial court's judgment.

STATEMENT CONCERNING ORAL ARGUMENT

The Commonwealth requests oral argument to clarify the scope of the trial court's discretion on both issues.

STATEMENT CONCERNING CITATIONS TO THE RECORD

There are two volumes in the written record. The Commonwealth cites the paper record as "TR [page number]" and the video record as "VR [date] at [time]" in conformity with RAP 31(E).

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COUNTERSTATEMENT OF THE CASE

The Commonwealth does not accept May's statement of the case. RAP 32(B).

Around 2015, Moises May and J.W. met through mutual friends. VR 4/29/25 at 2:57:27. They began dating a few years later, moved in together, and had one child. *Id.* at 2:57:48, 2:59:05. J.W. was vulnerable at the time; she had struggled with substance abuse for years.¹ VR 4/29/25 at 2:55:58. May became angry and physically abusive. *Id.* at 3:00:01. He took J.W.'s phone and used her Facebook account to pose as her, to contact men that she did not know, and to arrange for her to have sex with them in exchange for money. *Id.* at 3:18:44. J.W. did not want to do it, but felt forced, and knew May would "get mad" and beat her if she did not do what he said. *Id.* at 3:21:02–3:22:11.

On August 12, 2023, May and J.W. got into a heated argument. *Id.* at 3:30:16–3:34:23. The reason for May's anger was that he had instructed J.W. to grow her hair generally; J.W., wanting to leave him, had removed her pubic hair. *Id.* at 3:33:26–3:34:23. As punishment, May picked up a large machete used to cut wood, held J.W. down, and chopped her waist-length ponytail until he cut it to just below her ears. *Id.* at 3:30:16–3:34:16. After this incident, J.W.

¹ J.W. said she "wanted to get clean" so that her daughter "can be proud of [her]." VR 4/29/25 at 2:56:22. The daughter in question is the child J.W. shares with May, who was adopted by a cousin at some point after the events described in this brief. *Id.*

At the time of trial, J.W. had been clean for seven months. *Id.*

left to stay with a neighbor. *Id.* at 3:34:45–59. She had to leave all her belongings behind. *Id.* at 3:35:15.

A few days later, J.W. saw May while out walking. *Id.* He stopped her, apologized to her, and asked her to return. *Id.* at 3:35:55–3:36:20. She accepted the apology and came back to the house they shared. *Id.*

As she did, she noticed that May had “a new lock” on the door. *Id.* at 3:36:20–3:36:50. When the two were inside, May dragged J.W. to an upstairs bedroom. *Id.* at 3:36:51. May had prepared for her return by bolting a short metal chain to the floor. *Id.* He locked the chain around J.W.’s neck with a padlock. *Id.* at 3:37:26–3:37:58. May told J.W. he was leaving and that he would kill her when he returned. *Id.* at 3:38:15, 3:38:40. He took her phone and the key to the padlock. *Id.* at 3:39:38.

May then left the house. *Id.* at 3:38:22. Without May, J.W. was alone, with no air conditioning, food, or water. *Id.* at 3:40:40. She estimated that the room was over 90 degrees. *Id.* She thought she was going to die. *Id.* at 3:40:34.

Terrified, J.W. tried and failed to pull or break the chain. *Id.* at 3:40:53. She next tried pulling a shoe toward her and throwing it toward a window. *Id.* The shoe went through the window, and J.W. began screaming for help. *Id.* at 3:51:15–43. The noise caught the attention of a neighbor, who called 911. *Id.*

In that call,² J.W. identified May as the person who chained her. VR 4/30/25 at 10:26:49–59.

When police arrived, they were unable to get into the house via the modified doors. *Id.* at 9:41:30. But by climbing a ladder to the second-story window, police managed to get inside. *Id.* at 9:42:22.

Police found an axe behind the door of the room where J.W. was chained. VR 4/29/25 at 3:41:25. They used it to free the bolt from the floor, and escorted J.W. to the lower floor. VR 4/30/25 at 9:42:35. But the barred doors still prevented them from leaving. *Id.* When they called the fire department, firefighters managed to break through the front door with a battering ram. *Id.* at 9:43:00. Emergency Medical Services used a bolt cutter to cut the chain from J.W.’s neck. *Id.* at 9:43:14.

May was arrested two days later. *Id.* at 10:33:07. He proposed three competing explanations: that J.W. had actually *agreed* to be chained to the floor until she could get help for her addiction, that she thought he was cheating, and that he had refused to give her money for drugs. *Id.* at 10:36:35–10:39:40. He also insisted that he cut her hair because it belonged to him, and she had “lost a bet.” *Id.* at 10:40:27.

One of multiple phones taken by police contained multiple videos of J.W. performing sex acts on or with other men, which had been filmed through a

² Based on May’s objections, the 911 call was only partially played for the jury.

hole in the ceiling. *Id.* at 11:33:31, 11:37:19. J.W. later testified that she was initially not aware May had been filming, but that he later showed her the videos so that she “wouldn’t take nothing” from the money exchanged. VR 4/29/25 at 3:25:37–3:26:34.

Ultimately, the jury found May guilty of harassment with physical contact, kidnapping, intimidating a participant in the legal process, third-degree terroristic threatening, and five counts of human trafficking. TR 23-CR-1891 II at 223–26, TR 24-CR-1538 at 116–19. The jury recommended that May’s 23-CR-1891 charges run consecutively for a total of 25 years, recommended that May’s 24-CR-1438 human trafficking charges run concurrent for a total of 10 years, and that the two cases run consecutively to each other for a total of 35 years in prison. *Id.* The trial court instead ordered that the charges for both cases run concurrent for a total of 20 years and 10 years, but consecutively to each other for a total sentence of 30 years. *Id.* The trial court also ordered May to pay a victims’ service fee of \$10,000 to the Human Trafficking Victim Fund. *Id.*

May now appeals as a matter of right.

ARGUMENT

May raises two arguments on appeal. First, he argues that the trial court erred in refusing to strike two jurors for cause. Second, he argues that the trial court erred in denying severance of his two indictments. Both of May’s arguments lack merit, and this Court should affirm.

I. The trial court did not err in refusing to strike either juror.

May alleges that his convictions should be reversed because the trial court refused to grant two strikes for cause: Juror Nos. 7618 and 7805. Appellant's Br. at 7. He is wrong. The trial court did not abuse its discretion in declining to strike either juror. This Court should affirm the trial court's jury decisions.

A. Additional Facts

1. Juror 7618

At jury selection, the Commonwealth addressed information about the case that had been leaked to the media in 2023, saying, "There was a body cam from LMPD officers that was disseminated that showed them climbing a ladder into a residence where they found a woman with a chain locked around her neck." VR 4/29/25 at 10:40:12. Multiple jurors responded to having seen this footage.³ *Id.* at 12:54:35. One of them, Juror 7618, remembered seeing the footage on social media. *Id.* at 10:40:55. She explained, "They showed the full video in the bedroom, and then they released her and had her downstairs and was talking to her on the front porch and all the neighbors just outside talking about it." *Id.* at 10:41:11. When the trial court asked if this memory would

³ In contrast, the trial court struck the other two jurors who recalled seeing footage but *did not assure the court that they could remain impartial*. When asked if she would remain impartial, Juror 7953 said, "I mean, I think I probably could set it aside, but I really don't know, to be honest." VR 4/29/25 at 10:46:35, 10:47:26. And when asked if the footage would affect impartiality, Juror 7965 responded, "I guess it depends on how much I start to remember." VR 4/29/25 at 10:51:10. The trial court struck both jurors for cause.

affect her ability to fairly think about the case, she responded clearly, “No.” *Id.* at 10:41:26. She elaborated her reasoning: “[B]ecause it was really just what the neighbors were seeing, you know, and, I mean, it was pretty tragic seeing that lady put that big old chain around her neck, but I don’t think it would persuade me one way or another.” *Id.* The trial court reasoned that “[Juror 7618] didn’t say anything disqualifying to [it], she said she saw it on social media,” and denied the defense’s motion to strike her for cause. *Id.* at 12:54:35.

2. Juror 7805

During the Commonwealth’s voir dire, Juror 7805 disclosed that she had a friend who was a local police officer. VR 4/29/25 at 10:56:41. When asked, she further explained that she went to church with this officer, was friends with his wife, and had visited their home. *Id.* at 10:57:21. They had been friends for two to three years. *Id.* at 10:58:12. His wife volunteered with an organization that combatted human trafficking and had “briefly” offered Juror 7805 volunteer opportunities, but Juror 7805 had declined, and the two had not discussed the work in any detail—“nothing specific.” *Id.* at 10:58:37, 10:59:53. Juror 7805 explained that she “[does] feel strongly about human trafficking” but did not “think it would impair [her] ability to hear this [case] really.” *Id.* at 10:58:58. She said that she “didn’t know anyone who wouldn’t not want to hear about human trafficking,” but that she could hear allegations of it and fairly consider the evidence. *Id.* at 10:59:15. She also denied that the friendship would affect her ability to listen to evidence in the case. *Id.* at 10:57:51. Juror

7805 responded that she would not feel biased toward the prosecution in any way because of the relationship. *Id.* The trial court reasoned that the juror “was making sure she was being transparent, but, by the fact that her friend’s wife was involved in this, but it was pretty clear from what she said that *she* was not involved with it at all . . . and she was, on multiple occasions said that she would be fair and it wouldn’t affect her,” so it “was pretty convinced by her statements about that.” *Id.* at 12:40:25. The court denied the defense’s motion to strike her for cause. *Id.*

B. Law and Analysis

Both the United States Constitution (via the Sixth Amendment) and the Kentucky Constitution (via Sections 7 and 11) guarantee the right to an impartial jury, as does RCr 9.36(1). Criminal Rule 9.36(1) delineates when jurors should be struck for cause: “When there is reasonable ground to believe that a prospective juror cannot render a fair and impartial verdict on the evidence, that juror shall be excused as not qualified.” RCr 9.36(1). The trial court should also base its decision to excuse a prospective juror “on the totality of the circumstances, not on a response to any one question.” *Fugett v. Commonwealth*, 250 S.W.3d 604, 613 (Ky. 2008); *see also Allen v. Commonwealth*, 276 S.W.3d 768, 773 (Ky. 2008) (“If after expressing an opinion about an aspect of the case the juror claims to be able to render a fair and impartial verdict based solely on the evidence, a trial court does not necessarily abuse its discretion by allowing that juror to remain on the case.”).

Additionally, “the party alleging bias bears the burden of proving that bias and the resulting prejudice.” *Walker v. Commonwealth*, 288 S.W.3d 729, 736 (Ky. 2009) (quoting *Cook v. Commonwealth*, 129 S.W.3d 351, 357 (Ky. 2004)). And “where there is such a showing, the court must weigh the probability of bias or prejudice based on the entirety of the juror’s responses and demeanor.” *Id.* at 736–37 (cleaned up). Furthermore, “the trial court possesses considerable discretion and its view of the juror’s demeanor and apparent candor must be duly considered.” *Moss v. Commonwealth*, 949 S.W.2d 579, 581 (Ky. 1997). “A per se disqualification is not required merely because a juror does not instantly embrace every legal concept presented during voir dire examination.” *Mabe v. Commonwealth*, 884 S.W.2d 668, 671 (Ky. 1994). Nor is disqualification required when a juror may have some knowledge of a case: “[P]rospective jurors do not live in a vacuum and cannot be expected to be totally ignorant of any case they may be called upon to decide.” *Foley v. Commonwealth*, 953 S.W.2d 924, 932 (Ky. 1997). Instead, “[t]he central inquiry is whether a prospective juror can conform his or her views to the requirements of the law, and render a fair and impartial verdict based solely on the evidence presented at trial.” *Wood v. Commonwealth*, 178 S.W.3d 500, 516 (Ky. 2005).

With all this in mind, appellate courts “review the trial court’s decisions under an abuse of discretion standard, ‘whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.’”

Hollingsworth v. Commonwealth, 718 S.W.3d 738, 754 (Ky. 2025) (citing *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999)). And the party “alleging bias bears the burden of proving that bias and resulting prejudice” to the criminal defendant. *Cook v. Commonwealth*, 129 S.W.3d 351, 357 (Ky. 2004) (citing *Caldwell v. Commonwealth*, 634 S.W.2d 405, 407 (Ky. 1982)). The ensuing decision of whether to excuse a juror for bias is well within the trial court’s discretion. *Grooms v. Commonwealth*, 756 S.W.2d 131, 134 (Ky. 1988).

Finally, this Court has held that a juror’s expression of the mere possibility of bias is not disqualifying. In *Whittle v. Commonwealth*, a potential juror agreed that there was “a possibility bias might creep in” as a result of his friendship with a state trooper. 352 S.W.3d 898, 900–01 (Ky. 2011). But he also professed the ability to be impartial. *Id.* at 901. The Court held that the trial court did not abuse its discretion in declining to strike that juror, holding that “[a] mere possibility of bias does not necessitate striking a juror for cause.” *Id.* Instead, the question is “whether this possibility rose to the level of probability.” *Id.*

Here, the trial court conducted a thorough conversation with both jurors. Juror 7618 explained that she had seen leaked body-camera footage on social media, but when the trial court asked if this memory would affect her ability to consider the evidence, she responded clearly, “No.” *Id.* at 10:41:26. Juror 7618 elaborated that “[she didn’t] think [having seen the footage] would persuade [her] one way or another.” *Id.* The trial court reasoned that “[Juror

7618] didn't say anything disqualifying to [it]," and denied the defense's motion to strike her for cause. *Id.* at 12:54:35.

And Juror 7805 explained that she had a friendship with a local officer whose wife was involved in combatting human trafficking but said she "didn't know anyone who wouldn't not want to hear about human trafficking." *Id.* at 10:59:15. She also denied that the friendship would affect her ability to listen to evidence in the case and confirmed that she would not feel biased toward the prosecution in any way because of the relationship. *Id.* at 10:57:51. The trial court reasoned that she "was making sure she was being transparent, but, by the fact that her friend's wife was involved in this, but it was pretty clear from what she said that *she* was not involved in that at all . . . and she was, on multiple occasions said that she would be fair and it wouldn't affect her," so it "was pretty convinced by her statements about that" and denied the defense's motion to strike her for cause. *Id.* at 12:40:25.

In both instances, the trial court asked if the juror in question could remain fair and impartial, allowed for questioning from both sides, and gave time and thought to the reason for allowing or dismissing the jurors. The possibility of bias did not amount to a probability of bias, as *Whittle* would require. *Whittle*, 352 S.W.3d at 900–01. Instead, the trial court appropriately determined that the prospective jurors could conform their views to the requirements of the law and could render a fair and impartial verdict based only on the evidence presented at trial, as *Wood* requires. *Wood*, 178 S.W.3d at

516. In so doing, the trial court did not abuse its discretion. This Court should affirm the trial court's decision.

II. The trial court did not err in denying severance of May's two indictments.

May next alleges that he should have been tried separately for his indictments. Appellant's Br. at 17. He is wrong. The trial court appropriately denied his motion to sever. This Court should affirm the trial court's decision.

A. Additional Facts

Indictment 23-CR-1891 charged May with kidnapping, intimidating a participant in a legal process, two counts of fourth-degree assault, terroristic threatening, and harassment. TR 23-CR-2891 I at 1–6. Indictment 24-CR-1438 charged May with eight counts of human trafficking. TR 24-CR-1438 at 1–5. May moved to sever, and the trial court held a hearing on the motion. TR 23-CR-1891 I at 80–82, TR 24-CR-1438 at 44–46. But the trial court found that “the factual allegations supporting these two indictments [were] sufficiently intertwined and logically connected to demonstrate a relationship between the alleged criminal activity in both indictments.” *Id.* The trial court also explained that the events all occurred within the same two-week period, involved the same victim, took place at the same location, and were all “reasonably related to each other sufficient to demonstrate the required nexus for all charges to be joined for a single trial.” *Id.* The court did consider potential prejudice to May but explained that “the close timing between the alleged events” and “the logical relationship between the alleged series of events” rendered May “unable

to demonstrate the level of unreasonable or unnecessary harm which would warrant separate trials.” *Id.*

B. Law and Analysis

“Multiple offenses may be joined in a single indictment under Kentucky Rules of Criminal Procedure (RCr) 6.18 if the offenses are (1) of the same or similar character or (2) based on the same acts or transactions connected together or constituting parts of a common scheme or plan.” *Doneghy v. Commonwealth*, 410 S.W.3d 95, 104 (Ky. 2013). Still, “the court may order separate trials if the defendant would be unduly prejudiced by the joinder.” *Id.* But since some degree of prejudice is present in any indictment, “to mandate severance, or any other relief under RCr 9.16, this Court requires the presence of ‘undue prejudice, *i.e.*, prejudice that goes beyond the inherent prejudice to that which is unnecessary and unreasonable.” *Id.* at 104–05. And this Court “has traditionally given trial courts great discretion” in making a severance decision, “refusing to disturb a trial court’s joinder determination absent a showing of actual prejudice and a clear abuse of discretion.” *Id.* at 105; *see also Peacher v. Commonwealth*, 391 S.W.3d 821, 838 (Ky. 2013) (defendant was not entitled to severance where instances of abuse against two young boys would have been admissible in separate trials); *Roark v. Commonwealth*, 90 S.W.3d 24, 28 (Ky. 2002) (defendant was not entitled to severance where instances of assault and robbery, a month apart, would have been admissible in separate trials); *Whaley v. Commonwealth*, 567 S.W.3d 576, 584 (Ky. 2019) (defendant

was not entitled to severance where evidence of sexual abuse of four different victims would have been admissible in separate trials).

Here, in considering May's motion to sever, the trial court expressly considered that "the factual allegations supporting these two indictments [were] sufficiently intertwined and logically connected to demonstrate a relationship between the alleged criminal activity in both indictments." TR 23-CR-1891 I at 80–82, TR 24-CR-1438 at 44–46. The trial court was correct. The events supporting each indictment all occurred within the same two-week period, involved J.W. as a singular victim, took place at their mutual house as the same location, and were all "reasonably related to each other sufficient to demonstrate the required nexus for all charges to be joined for a single trial." *Id.* The trial court considered whether May could be unduly prejudiced by joinder but concluded that "the close timing between the alleged events" and "the logical relationship between the alleged series of events" rendered May "unable to demonstrate the level of unreasonable or unnecessary harm which would warrant separate trials." *Id.* This determination was well within the trial court's discretion to make, and May cannot show that the trial court abused its discretion in making it. This Court should affirm the trial court's decision.

CONCLUSION

The trial court did not abuse its discretion in refusing to strike either Juror 7618 or Juror 7805, nor did it abuse its discretion in denying severance of May's two indictments. This Court should affirm the trial court's judgment.

Respectfully submitted,

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WORD COUNT CERTIFICATE

This document complies with the word limit of RAP 31(G)(2)(a) because, excluding the parts of the document exempted by RAP 15(D) and RAP 31(G)(5), this document contains 3,867 words.

/s/ Graham Pilotte

Assistant Solicitor General