



Received: 2024-SC-0044 04/01/2025  
 Filed: 2024-SC-0044 04/01/2025  
 M. Katherine Bing, Clerk  
 Supreme Court of Kentucky

**Commonwealth of Kentucky**  
**Supreme Court**  
 No. 2024-SC-0044-DG  
*Electronically filed*

**TYRONE ANTOINNE HARTSFIELD**

**APPELLANT**

v. Appeal from Fayette Circuit Court  
 Hon. Julie M. Goodman, Judge  
 Indictment No. 20-CR-00945

**COMMONWEALTH OF KENTUCKY**

**APPELLEE**

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**Brief for the Commonwealth of Kentucky**

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CERTIFICATE OF SERVICE

I certify that on April 1, 2025, a copy of the Brief for the Commonwealth of Kentucky has been served as follows: via U.S. Mail to Hon. Julie M Goodman, Judge, Robert F. Stephens Circuit Courthouse, 120 North Limestone, Suite C-103, Lexington, Kentucky 40507; via email to Hon. Kimberly Henderson Baird, Commonwealth’s Attorney, 116 North Upper Street, Suite. 300, Lexington, Kentucky 40507; and via state messenger mail to Hon. Emily Holt Rhorer, counsel for Appellant, Department of Public Advocacy, 5 Mill Creek Park, Section 101, Frankfort, Kentucky 40601. The appellate record was not checked out.

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## INTRODUCTION

This is a criminal case in which the Commonwealth appealed, under KRS 22A.020(4), the order of the Fayette Circuit Court denying its motions in limine. The Court of Appeals reversed with instructions to exclude body-worn camera footage. This Court granted Tyrone Hartsfield’s motion for discretionary review of that decision.

## STATEMENT CONCERNING ORAL ARGUMENT

On June 5, 2024, this Court granted discretionary review and designated this appeal for oral argument under RAP 38. The Commonwealth agrees that oral argument is necessary to discuss the evidentiary implications of the trial court’s decision.

## STATEMENT CONCERNING CITATIONS TO THE RECORD

The Commonwealth’s video record citation will conform to RAP 31(E)(4).

The transcript of court filings will be cited as “TR [Volume number], [page number].” The Supplemental record will be cited as “TR Supp., [page number].”

Appellant’s brief will be cited as “Appellant’s Br., [page number].”

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## COUNTERSTATEMENT OF THE CASE

The Commonwealth does not accept Tyrone Hartsfield's Statement of the Case and sets forth the facts that it considers essential to a fair and adequate statement of the case.

On September 6, 2020, B.B.<sup>1</sup> traveled to Lexington, Kentucky and met Tyrone Hartsfield, who she had talked with on a dating website two weeks earlier. (TR Vol. I, 15-16.) B.B. rented a room at the Ramada Inn, where she and Hartsfield watched television. (*Id.*) But Hartsfield became jealous when B.B. was using her cell phone, accused her of talking to other men, and slapped her. (*Id.*) B.B. unsuccessfully tried to call the front desk for help. (*Id.*) After B.B. yelled for help, Hartsfield strangled her and told her that he would kill her if she did not calm down. (*Id.*) Hartsfield then forced B.B. to perform oral sex on him and forcibly raped her. (*Id.*) Afterwards, B.B. told Hartsfield that she was going outside to smoke. (*Id.*) Instead, B.B. fled in her car to a nearby gas station where she called the Lexington Police Department. (*Id.*) After the police arrived, B.B. went to the hospital for a sexual-assault examination. (*Id.*)

Two months later, Tyrone A. Hartsfield, was indicted by a Fayette County grand jury for first-degree rape, first-degree sodomy, first-degree strangulation, fourth-degree assault, terroristic threatening, and being a first-degree persistent felony offender (PFO). (*Id.* at 3-5.)

Before trial, the Commonwealth moved in limine to, among other things, "prevent witness's opinion about the truth of the testimony of another witness," including "opinions of Lexington Police Officers heard in the Body Worn Camera worn by the officers." (TR

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<sup>1</sup> Because B.B. is a victim of sexual assault, initials are used in place of her name, under RAP 5(B)(2).

Supp., 227.) The Commonwealth argued that “[n]either expert nor lay witnesses *may testify* that another witness or a defendant is lying or faking.” (*Id.* (emphasis added).) Hartsfield opposed restricting the officer’s opinion testimony. (TR Vol. II, 174-76.) He stated his intent to present such evidence as “lay witness testimony of opinion.” (*Id.* at 175.)

On October 27, 2022, a hearing was held on the Commonwealth’s motion in limine. The Commonwealth argued that the officer’s statements about B.B.’s truthfulness that were captured by the officer’s body-worn camera footage were inadmissible opinion testimony. (VR 10/27/22, 9:44:04.) Hartsfield argued that the statements were not testimonial. (*Id.* at 9:46:52.) The trial court analyzed the issue by comparing the body-worn camera footage capture of officer’s opinion statements to that of the cell-phone video recordings that captured the death of George Floyd.<sup>2</sup> (*Id.* at 9:51:37.) The Commonwealth argued that the George Floyd case was easily distinguishable because that recording captured the crime as it happened, while here, the officer’s body-worn camera footage had not. (*Id.* at 9:53:12.) The trial court “did not see a difference” under KRE 702 and viewed the body-worn camera footage as “the best evidence” of the officer’s observations and what occurred. (*Id.* at

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<sup>2</sup> George Floyd was murdered by Minneapolis police Officer Derek Chauvin after he kneeled on Floyd’s neck for almost nine minutes. *See Wells v. Rice*, 692 F. Supp. 3d 735, 747 (E.D. Ky. 2023) (nonbinding). The murder was “[c]aught on video and spread over the internet . . . and sparked worldwide outrage and a nationwide wave of criticism over police tactics and training.” *Id.* The Kentucky Court of Appeals has also recognized the “highly publicized” nature of Floyd’s murder and the resulting protests. *See Middleton v. Lexington-Fayette Urb. Cnty. Gov’t*, No. 2023-CA-0771-MR, 2024 WL 3381374, at \*1 n.3 (Ky. App. July 12, 2024) (nonbinding).

9:53:30.) Thus, the trial court denied the Commonwealth’s motion in limine and deemed it appropriate to admit the entirety of the body-worn camera footage of the officer’s opinion statements. (*Id.* at 9:54:02.)

That afternoon, the parties reconvened on the record, and the Commonwealth requested that the trial court issue a written order memorializing its ruling so that the Commonwealth could pursue an interlocutory appeal. (*Id.* at 1:49:15, 1:50:17.) With no objection from Hartsfield, the issue then became whether the trial court judge was obligated to issue a written order. (*Id.* at 1:53:08.) The next morning, the court advised Hartsfield and the Commonwealth that it would issue a written order “to accommodate the Commonwealth” for its interlocutory appeal. (VR 10/28/22, 8:35:21.)

In that order, the trial court applied *Lanham v. Commonwealth*, 171 S.W.3d 14 (Ky. 2005), and KRE 701 to find that the entirety of the body-worn camera footage was “relevant and the best evidence.” (TR Vol. II, 202.). More specifically, the court found that the body-worn camera footage provided context to conversations with the victim, without the body-worn camera footage “having to be played in a disruptive, piecemeal fashion to the jury.” (*Id.* at 202-03.) The court acknowledged that *Lanham* involved a police-interrogation tactic of a defendant and found it applied to body-worn camera footage as any statements made were an attempt to establish probable cause. (*Id.* at 203.) On November 4, that order was entered, and the Commonwealth appealed as a matter of right. (TR Vol. II, 189-205, 216.)

In a unanimous, to-be-published opinion, the Court of Appeals held “that any comments made by an officer on the body camera video relating to the victim’s credibility are inadmissible.” *Commonwealth v. Hartsfield*, No. 2022-CA-1388-MR, slip op. at 11 (Ky. App. Jan. 5, 2024). The Court of Appeals “conclude[d] that the trial court erred in holding ‘that the bodycam footage may be played to the jury in its entirety.’” *Id.* It declined to address the

Commonwealth's remaining arguments. *Id.* Accordingly, it reversed the Fayette Circuit Court's order, and the case was remanded with instructions that the court grant the Commonwealth's motion in limine and prohibit "the introduction of any footage containing an officer's statements regarding the victim's credibility." *Id.* at 11-12.

On February 6, 2024, Hartsfield sought discretionary review from this Court of that decision. Hartsfield asked: "Are statements made by officers on body cam at the scene that go to their observations of the veracity of the alleged victim admissible?" (Motion for discretionary review, p. 8.) His special reason for review was "to consider the contours of *Lanham* and the issue of admissibility of officer commentary on a body cam as to the alleged victim's credibility." (*Id.*) On June 5, 2024, this Court granted discretionary review. Additional facts will be developed below.

## ARGUMENT

For almost 100 years, Kentucky courts have expressly prohibited one witness from commenting on the veracity of another witness's testimony. *See Howard v. Commonwealth*, 12 S.W.2d 324, 329 (Ky. 1928). Here, the trial court believed it was okay as long it is a police officer opining on his body-worn camera that the victim was lying for context and to establish probable cause. It isn't.

First, Hartsfield asks this Court to reverse on his allegation that the issue is not preserved because the body-worn camera footage was not played during the hearing and made part of the record. (Appellant's Br., 12.) Next, he claims that the Court of Appeals misapplied *Lanham* and flatly claims that it was "wrong." (*Id.* at 14-22.) Hartsfield attempts to minimize the trial court's misapplication of the bedrock principle prohibiting one witness from commenting on another witness's credibility by claiming that the body-worn camera footage is not courtroom testimony and "is different from an officer testifying at trial." (*Id.*

at 17.) He misses the point. The Commonwealth has always maintained, first through its motion in limine, and then in its brief before the Court of Appeals, that the introduction of the entirety of the body-worn camera footage about B.B.'s credibility was not only erroneous, but also a precursor to elicit similar testimony.

The Commonwealth sought a pretrial evidentiary ruling based on settled precedent to prevent this improper questioning and testimony. The characterization of statements made on the body-worn camera footage have never been disputed. With or without that body-worn camera footage as part of the record, the trial court erred in its application of sound legal principles against allowing one witness to provide an opinion about the credibility of another.

Allowing all of the body-worn camera footage was an erroneous evidentiary ruling. There is a very real possibility that the trial court will permit Hartsfield to elicit an officer's testimony that he did not believe B.B. if it is not reversed and instructed to exclude any officer-opinion statements about B.B.'s veracity from the body-worn camera footage presented at trial and to limit related testimony. Hartsfield did not respond to the Commonwealth's motion by stating that he had no intent to elicit improper opinion testimony. To the contrary, his response indicated that he sought to do so. (TR Vol. II, 175.) And the trial court was willing to oblige him, as it found that the body-worn camera footage was "relevant and the best evidence," and that the entirety of footage would provide "context" to the victim's responses to an officer's questions. (*Id.* at 202-03.) It is crucial that the trial court be restrained from allowing introduction of the challenged portions of the body-worn camera footage, and any resulting improper questioning and testimony about another witness's credibility. As the trial court correctly observed, but erroneously applied,

credibility determinations are within the “exclusive province of the jury.” (*Id.* at 202.) (citing *Moss v. Commonwealth*, 949 S.W.2d 579, 583 (Ky. 1997) and KRE 608(a)).

## **I. Standard of review**

A trial court’s evidentiary ruling is reviewed for an abuse of discretion. *Carson v. Commonwealth*, 621 S.W.3d 443, 446 (Ky. 2021). Here, the trial court abused its discretion by misapplying *Lanham* and *Moss*. Its evidentiary ruling was “arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

## **II. The Commonwealth’s motion in limine, and the trial court’s written order, preserved this issue under KRE 103.**

Hartsfield claims that the Commonwealth failed to “properly” preserve this issue because it did not “identify the specific statements” on the body-worn camera footage. (Appellant’s Br., 7-12.) He claims that the Court of Appeals failed to acknowledge his preservation claim. (*Id.* at 7.) Implicitly, it did and rejected it. The Court of Appeals applied the abuse-of-discretion standard and reversed on the merits. *Hartsfield*, slip op. at 6. In so doing, it noted that the Commonwealth filed a motion in limine to “prevent witness’s opinion about the truth of the testimony of another witness, specifically opinions of Lexington Police Officers heard in the Body Worn Camera worn by the Officers.” *Id.* at 3. And Hartsfield filed a response in opposition, which was followed by a hearing and a written order denying the Commonwealth’s motion. *Id.*

The Commonwealth met the requirements of KRE 103 to preserve its claim of error. Under that rule, if a party objects to the admission of evidence, they must state the specific grounds, if not apparent from the context. KRE 103(a)(1). A motion in limine supports preservation:

A party may move the court for a ruling in advance of trial on the admission or exclusion of evidence. The court may rule on such a motion in advance of trial or may defer a decision on admissibility until the evidence is offered at trial. A motion in limine resolved by order of record is sufficient to preserve error for appellate review. Nothing in this rule precludes the court from reconsidering at trial any ruling made on a motion in limine.

KRE 103(d).

Hartsfield is correct that KRE 103(a) requires an objection be made with specificity. (Appellant’s Br., 10-11.) What he fails to mention is that under that rule “[a] motion in limine resolved by order of record is sufficient to preserve error for appellate review.” KRE 103(d). Hartsfield’s contention that an issue is not preserved if the evidence is not part of the record cuts against the purpose of the rule. KRE 103(d) anticipates a pretrial evidentiary motion before evidence is presented. “Motions in limine are used to obtain advanced rulings on admissibility of evidence (usually before it is to be formally offered into evidence).” Robert G. Lawson, *The Kentucky Evidence Law Handbook*, § 1.10[5], at 100 (2024 edition). “[M]otions in limine can serve to avoid disclosures to the jury of inadmissible evidence through the questioning of witnesses, during voir dire examinations, and in making opening statements.” (*Id.*)

Hartsfield asserts that the Commonwealth did not “clearly convey” what evidence it sought to exclude as required by *Lanham* and suggests that the body-worn camera footage should have been played. True, a trial court may abuse its discretion by not viewing evidence before admission. See e.g., *Carpenter v. Commonwealth*, 681 S.W.3d 36, 46 (Ky. 2023) (“[W]e conclude that the trial court abused its discretion by not viewing the videos before ruling that the videos were not unduly prejudicial and allowing them in evidence.”). Here, the trial court did not view the body-worn camera footage before it rendered its ruling.

It was not until after the trial court learned that the Commonwealth was pursuing an interlocutory appeal that it mentioned in its written order that it had not viewed the body-

worn camera footage. (TR Vol. II, 202 n.3.) But even if the court had viewed the body-worn camera footage, it still erred as a matter of law in allowing its admission. It seemed to have already decided that any statements by officers on the body-worn camera footage about B.B.'s credibility would be admissible because they were made based on their observations. (VR 10/27/22, 9:51:38.) The court used the George Floyd case as an analogy to support its decision. (*Id.*) The Commonwealth pointed out that the George Floyd case was distinguishable as the recording in that case was admissible because it captured the crime as it occurred. (*Id.* at 9:53:08.) And the Commonwealth unsuccessfully tried to explain to the court that the officers could testify about their observations. (*Id.* at 9:53:38.) Never mind that. The trial court determined that the body-worn camera footage would be admitted in its entirety because it was “the best evidence.” (*Id.* at 9:53:43, TR Vol. II, 202.) The court rejected the Commonwealth’s suggestion that it could similarly ask the officers if they believed that Hartsfield was lying in response. (*Id.* at 9:54:09.) And the court would not permit the Commonwealth to argue that the challenged statements in the body-worn camera footage would be inadmissible hearsay. (VR 10/27/22, 9:55:03.)

*Lanham* involved a motion in limine and resolves this issue in the Commonwealth’s favor, contrary to Hartsfield’s claim otherwise. (Appellant’s Br., 11-12.) Of course, a “blanket motion in limine” is not sufficient to preserve an error for appellate review. *Lanham*, 171 S.W.3d at 21. The moving party must specify the evidence it seeks to exclude and the specific basis for exclusion. *Id.* at 21-23. In *Lanham*, the defendant had made conflicting statements during a police interview about his wife’s murder. *Id.* at 19. Before trial, he unsuccessfully made an oral motion in limine to exclude the detective’s statements from that interview that the defendant was “not telling the truth,” and “lying.” *Id.* Even though he did not object at trial, the motion in limine “specif[ied] the evidence objected to”

and was sufficiently detailed to preserve the issue. *Id.* at 22. This Court relied on the defense attorney’s oral representation of the evidence in determining that the issue was preserved. *See id.* at 22 (quoting the attorney’s description of the evidence). This Court determined the attorney’s oral motion preserved the issue because it “clearly conveyed what evidence she sought to exclude.” *Id.* at 22-23. The presentation of the police interview itself was not required to preserve the issue.

This situation is like *Lanham*. The Commonwealth’s written motion in limine sought to “prevent witness’s opinion about the truth of the testimony of another witness, specifically opinions of Lexington Police Officers heard in the Body Worn Camera worn by the officers.” (TR Supp., 227.) During the hearing, the Commonwealth sought to exclude police-opinion statements about whether they believed the victim and about her credibility as an improper witness opinion statement that would not assist the jury. (VR 10/27/22, 9:44:04.) The Commonwealth also stated that its motion included “any statements made by officers about the believability of the victim and whether or not they think she is telling the truth.” (*Id.* at 9:49:25-9:49:54.) In accordance with *Lanham*, the Commonwealth specifically established that it sought to exclude the officer’s statements about B.B.’s veracity as an improper opinion on a witness’s truthfulness.

Here, the Commonwealth went further than the scenario in *Lanham*. It satisfied KRE 103(d) with its written motion in limine. (TR Supp., 227.) Hartsfield acknowledged the challenged statements in his response: “the police officers whose testimony is at issue were both participants in the conversations with the complainant and/or observed the conversations as they occurred[.]” (TR Vol. II, 175.) Then the circuit court issued a written order denying the motion with findings of fact and conclusions of law. (TR Vol. II, 189-205.) The Commonwealth appealed that order under KRS 22A.020(4). This is a question of

law, not fact. None of the parties disputed that the nature of the statements sought to be limited involved officers' opinion about B.B.'s veracity.

The Commonwealth appealed based on the circuit court's misapplication of the law in its pretrial evidentiary ruling. The Commonwealth's written motion, and the order denying it, preserved this issue for review on the merits.

**III. Allowing the body-worn camera footage to be played, and permitting any resulting testimony about witness credibility, runs afoul of this Court's precedent and Kentucky's evidentiary rules on opinions that officers may provide to a jury.**

**A. The trial court misapplied *Lanham*, and its ruling runs afoul of *Moss*.**

As Hartsfield notes, the courts below relied on *Lanham*. (Appellant's Br., 12.) And *Lanham* acknowledged *Moss*'s bedrock principle that “[a] witness’s opinion about the truth of the testimony of another witness is not permitted,” and that such a “determination is within the exclusive province of the jury.” *Lanham*, 171 S.W.3d at 23 (quoting *Moss*, 949 S.W.2d at 583.) The trial court acknowledged this principle from both cases. (TR Vol. II, 200.) So did the Court of Appeals. *Hartsfield*, slip op. at 6, 9. But the Court of Appeals correctly applied this bedrock trial principle to ensure that inadmissible evidence is not presented to the jury.

**i. The trial court's ruling runs afoul of *Moss* because it is well-settled that a witness cannot comment on the credibility of another.**

In *Moss*, this Court concluded that it was improper for the Commonwealth to ask the defendant during cross-examination whether he thought the officer, who was one of the Commonwealth's main witnesses, was lying. 949 S.W.2d at 583; *see also Hall v. Commonwealth*, 337 S.W.3d 595, 602 (Ky. 2011) (“We support the wisdom of our precedent that disapproves of the practice of asking a witness whether another witness is lying.”). The *Moss* court stated:

A witness should not be required to characterize the testimony of another witness, particularly a well-respected police officer, as lying. Such a characterization places the witness in such an unflattering light as to potentially undermine his entire testimony. Counsel should be sufficiently articulate to show the jury where the testimony of the witnesses differ without resort to blunt force.

*Moss*, 949 S.W.2d at 583. By permitting the officer’s statements about B.B.’s veracity to be admitted into evidence, the trial court’s ruling flies in the face of *Moss* because it allows one witness to characterize the testimony of another and thus places the officer in an unflattering light. Additionally, the trial court’s ruling invades the province of the jury to weigh witness credibility: “Neither expert nor lay witnesses may testify that another witness or a defendant is lying or faking. That determination is within the exclusive province of the jury.” *Id.* (quoting *State v. James*, 557 A.2d 471, 473 (R.I. 1989)).

**ii. The trial court misapplied *Lanham* because the officer’s statements were not made as part of an interrogation technique.**

In *Lanham*, the Court concluded that the interrogation video of the defendant was admissible because the officer’s statements that the defendant was lying, were made as part of an interrogation technique, and not as an opinion. 171 S.W.3d at 27. Here, the trial court concluded that the officer’s statements were relevant to establish probable cause. (TR Vol. II, 203.) What the trial court ignored in relying on *Lanham* is that this Court explicitly limited its holding to an officer’s accusation that a defendant, not a victim, was lying as part of the officer’s interrogation technique, and not as a comment on the defendant’s veracity:

We further note that our holding in this case, and the rule that it establishes, is limited to the types of comments in this case, i.e., accusations by an officer that a defendant is not telling the truth. The rule does not address the types of comments that some of the other courts have dealt with and were not present in this case. For example, the officer in this case never told Appellant, directly or indirectly, that he was an expert in lie detection. Such comments raise additional concerns that we have not addressed in this opinion, and we decline

to fashion a rule to cover such circumstances without the necessity to do so.

171 S.W.3d at 29.

Thus, the trial court misapplied *Lanham* when it concluded that the “comments here are similar in that they involve an attempt by a responding officer to find probable cause, with the hope of eliciting responses sufficient to justify an arrest.” (TR Vol. II, 203.) And as this Court has stated, testimony about a witness’s reliability “is appropriate in an affidavit taken to establish probable cause[,]” but “admission of such evidence at a criminal trial is a different matter.” *Fairrow v. Commonwealth*, 175 S.W.3d 601, 605 (Ky. 2005). This case is clearly distinguishable from *Labnam* because the officer’s statements were made after talking with a victim, and not as an interrogation technique of a suspect. And the officer’s statement that he did not believe B.B. was not relevant for probable cause, because ultimately, the police investigation led to Hartsfield’s being arrested, charged, and indicted. (TR Vol. I, 2-5, 8.)

Since *Lanham*, the inadmissibility of opinions by law enforcement officers have become more restrictive. In *Ordway v. Commonwealth*, this Court concluded that the trial court abused its discretion because it permitted the investigating detective to opine “that [the defendant] did not act like those who had lawfully protected themselves but, had instead acted like those who were fabricating a self-protection defense.” 391 S.W.3d 762, 775 (Ky. 2013). The implication from the detective’s testimony was that the jury should reject the defendant’s self-defense claim. *Id.* at 773. The detective had testified that people who claim self-defense do not “commandeer vehicles with force with a gun in their hand” and try to leave the crime scene. *Id.* at 775. Ordway’s conviction was reversed with instructions that the detective “may not testify regarding his opinion or his experience in the realm of how guilty or innocent suspects act.” *Id.* at 777.

Here, because the trial court would have permitted the body-worn camera footage to be played at trial, the Commonwealth expects that the jury would hear the officer's opinion about B.B.'s veracity and that the officer would then be cross-examined on whether he believed B.B. This Court addressed such a question in *Cherry v. Commonwealth*, 458 S.W.3d 787, 798 (Ky. 2015). In that case, the trial court permitted the prosecutor on redirect examination, to ask the detective "whether he believed Cherry was being honest[.]" *Id.* Relying on *Lanham* and *Moss*, this Court held that the trial court erred by permitting the detective to provide an opinion on another witness's credibility because doing so invaded the province of the jury. *Id.* at 798-99. While the Court ultimately concluded that the error was harmless because the defendant admitted to lying to police, that did not change the impermissible nature of questioning a witness about another witness's veracity. *Id.* at 799.

But it is not solely testimony and evidence that can violate this bedrock principle. Improper questioning can also run afoul of *Moss*. Recently, this Court issued a reminder to "use more care in the wording of questions," to avoid improper questioning under *Moss*. *Stephens v. Commonwealth*, 680 S.W.3d 887, 910 (Ky. 2023) ("The wording of 'making that up' and telling 'stories' when asking new questions (rather than just clarifying Stephens's testimony) is essentially the same as characterizing Amy as lying.>").

Following the circuit court's rationale, under a different and very likely future scenario, would the Commonwealth able to introduce an officer's opinion that he or she believed a victim was raped, murdered, or assaulted by a defendant? And when Hartsfield elicits an officer's testimony that he did not believe B.B., does that open the door for the Commonwealth to elicit testimony that another officer did believe her or thought that Hartsfield was lying? The trial court's ruling has opened the door to the possibility of witness bolstering. *See Tackett v. Commonwealth*, 445 S.W.3d 20, 32 (Ky. 2014) ("A witness is not

permitted to bolster her own testimony unless and until her credibility has been attacked.”). This Court should decline to accept the trial court’s rationale and should instead confirm the rule established by *Moss* and *Lanham*. There is a very real possibility that the trial court will permit Hartsfield to not only admit improper statements captured on body-worn camera footage, but also to elicit an officer’s testimony that he did not believe B.B.

**iii. The Court of Appeals properly followed this Court’s, and its own precedent, to reverse the Fayette Circuit Court on the inadmissibility of the body-worn camera footage.**

Hartsfield claims that the Court of Appeals erred in its analysis of what constitutes as a testimonial statement. (Appellant’s Br., 18-20.) The Court of Appeals determined that the statements in this case were testimonial. *Hartsfield*, slip op. at 6. Hartsfield directs this Court to *Rankins v. Commonwealth*, 237 S.W.3d 128, 131 (Ky. 2007). (Appellant’s Br., 19.) In that case, this Court granted discretionary review “to consider the admissibility of the statements to the police officer” following *Cranford v. Washington*, 541 U.S. 36 (2004), and *Davis v. Washington*, 547 U.S. 813 (2006). *Rankins*, 237 S.W.3d at 13. As the Supreme Court of the United States explained, “Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency.” *Davis*, 547 U.S. at 822. “They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.” *Id.* This Court has recognized that the Supreme Court of the United States “did not otherwise provide a comprehensive definition of what is encompassed by the term *testimonial*.” *Hartsfield v. Commonwealth*, 277 S.W.3d 239, 243 (Ky. 2009).

In *Rankins*, the victim’s statement was inadmissible because she was on bed rest and not present for trial. *Rankins*, 237 S.W.3d at 129. Because she was not at trial, her statements to the officer about “what happened” when the defendant assaulted her were not admissible and violated the Sixth Amendment because she could not be cross-examined. *Id.* at 132. And in *Hartsfield*, a deceased rape victim’s testimonial statements to a sexual-assault nurse examiner were barred by the Confrontation Clause because he never had the opportunity to cross-examine the victim. *Hartsfield*, 277 S.W.3d at 245.

The testimonial nature of a statement turns on the declarant’s availability. As *Hartsfield* points out, a bond hearing was held in this case, during which he questioned B.B. and the detective who filed the charges against Hartsfield. (Appellant’s Br., 18; VR 6/29/21, 11:15:15, 11:34:55.) The record shows that B.B. is and has been available for cross-examination. The better avenue for Hartsfield to test B.B.’s veracity is through cross-examination at trial, and not through out-of-court opinion statements by officers who did not make the charging decision. *See Moss*, 949 S.W.2d at 583 (“Counsel should be sufficiently articulate to show the jury where the testimony of the witnesses differ without resort to blunt force.”).

Next, Hartsfield claims that the Court of Appeals was wrong. (Appellant’s Br., 17-22.) He is correct that this Court limited its holding in *Lanham*. (Appellant’s Br., 14.) Its application is “limited to the types of comments in th[e] case, i.e., accusations by an officer that a defendant is not telling the truth.” *Lanham*, 171 S.W.3d at 29. But Hartsfield ignores the longstanding trial principle that “a witness may not vouch for the truthfulness of another witness.” *Stringer v. Commonwealth*, 956 S.W.2d 883, 888 (Ky. 1997).

The Court of Appeals believed this issue to be “unique,” and it did not err by looking first to an unpublished opinion from this Court. *Hartsfield*, slip op. at 8-10. In *Clark*

*v. Commonwealth*, the defendant was convicted of three counts of first-degree rape, first-degree sodomy, and first-degree sexual abuse after his daughter disclosed that abuse. No. 2006-SC-000379MR, 2008 WL 4692347, at \*2 (Ky. Oct. 23, 2008) (nonbinding). During the defendant's police interview, the officer made comments, as part of his interrogation technique, that he believed the victim was telling the truth. *Id.* at 4. Just as in *Hartsfield's* case, the trial court had overruled the defendant's objection to the admission of that evidence based on context: "because they reflected the context from which Clark answered Officer Combs's questions." *Id.* This Court determined that the trial court had erred in admitting the video evidence without redaction as the officer was "permitted to improperly vouch" for the victim's credibility. *Id.* at 5.

Nor was it error for the Court of Appeals to also review its own precedent. *Hartsfield*, slip op. at 10-11. Less than two years after this Court decided *Clark*, a unanimous panel of the Court of Appeals decided *Jackson v. Commonwealth*, No. 2009-CA-001120-MR, 2011 WL 112427 (Ky. App. Jan. 14, 2011) (nonbinding). In that case, the defendant was convicted of third-degree rape and being a second-degree persistent felony offender. *Id.* at 1. The defendant alleged error in the Commonwealth's playing of his recorded police interview during which the detective made statements about him being "deceitful," and telling him not to lie. *Id.* at 2. Further, the detective provided an opinion about the victim by stating that she "has no reason to lie because she's embarrassed about it." *Id.* at 3. The Court of Appeals concluded that palpable error had not occurred because the statements about the defendant were admissible as part of his taped interview. *Id.* at 4. There was no error with the detective's statements about the victim because he had not stated that she was telling the truth. *Id.*

After acknowledging *Lanham*, the Court of Appeals discussed *Clark* and *Jackson* before determining that the body-worn camera footage “relating to the victim’s credibility” was inadmissible. *Hartsfield*, slip op. at 8-11. Hartsfield ignores this Court’s holding in *Clark* by claiming that neither *Clark* nor *Jackson* “holds that the statements here are inadmissible.” (Appellant’s Br., 21.) This scenario is just like the one in *Clark* where this Court determined that the officer’s recorded statements improperly vouched for the victim’s credibility. True, the cases may be unpublished. But as the Court of Appeals noted in *Jackson*, under SCR 1.030(8)(a), it is bound by this Court’s precedent. *See Jackson*, No. 2009-CA-001120-MR, 2011 WL 112427, at \*4. And the Court of Appeals properly followed this Court’s guidance.

**B. The officer’s statements captured on body-worn camera footage are not admissible under Kentucky’s evidentiary rules.**

Hartsfield claims both that the body-worn camera footage statements are hearsay and are “not being offered for the truth of the matter asserted.” (Appellant’s Br., 17.) But Hartsfield has already stated his intent to elicit such statements as lay-witness-opinion testimony under KRE 701. (TR Vol. II, 175; VR 10/27/22, 9:47:20.)

“Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” KRE 801. Hearsay statements are not admissible, unless allowed by our evidentiary rules. KRE 802. The Commonwealth unsuccessfully argued that the statements made on the body-worn camera footage were inadmissible hearsay. (VR 10/27/22, 9:55:02.) The trial court refused to hear any argument because “the court’s made its ruling, [the body-worn camera footage] can be admitted. I’m not going to redact anything. The bodycam, the bodycam is what it is.” (*Id.*) Later that afternoon, when the Commonwealth sought a written order, the Commonwealth again unsuccessfully tried to address the inadmissible hearsay statements, but the trial court

refused. (*Id.* at 1:56:45.) Specifically, the trial court stated that: “the Court feels very strongly that when you introduce a bodycam that you introduce all of it.” (*Id.* at 1:57:16.)

Our evidentiary rules do not contain a body-worn camera footage exception to the hearsay rule, and they do not anticipate unrestrained presentation of evidence. Law enforcement agencies may equip their officers with body-worn cameras, but the decision to do so does not dictate evidentiary rulings and carte blanche admission of evidence.

Additionally, an officer’s statement about B.B.’s credibility is improper opinion testimony under KRE 701, 702, and 608. The Commonwealth argued that the officer did not have personal or expert knowledge to testify whether B.B. was being truthful. (VR 10/27/22, 9:49:25.) The Commonwealth argued that the jurors could hear B.B.’s testimony and reach their own conclusions. (*Id.* at 9:52:57.) Still, the trial court analogized the situation to that of George Floyd, viewed the body-worn camera footage as capturing the officer’s reactions, and “did not see the difference in that under [KRE] 702.” (*Id.* at 9:53:52.)

But the officer’s statements were not merely his reaction; they were an opinion on another witness’s credibility. An officer may testify about his investigation to aid a jury. *See Welch v. Commonwealth*, 563 S.W.3d 612, 617-18 (Ky. 2018). But that is not the situation here. KRE 701 limits opinion testimony by a lay witness:

Testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

- (a) rationally based on the perception of the witness;
- (b) Helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue; and
- (c) Not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Here, the recording of the officer's opinion about B.B.'s veracity is not admissible under KRE 701. Focusing on KRE 701(b), playing the body-worn camera footage during trial will not aid the jury to understand B.B.'s testimony. The better avenue for Hartsfield to test B.B.'s veracity is through cross-examination, and not through out-of-court opinion statements.

The body-worn camera footage's admissibility is also barred by KRE 608 because it is improper character evidence. Under that rule, "evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise." KRE 608(a)(2); see *Commonwealth v. Wright*, 467 S.W.3d 238, 247 (Ky. 2015) (stating that "character evidence may be admissible if offered to rebut an attack on a witness's credibility"). But the officer's opinion should never be offered to rebut B.B.'s veracity for truthfulness, because the officer is not qualified as an expert in that regard.

Because the officer is not qualified as an expert on truthfulness, the trial court's ruling runs afoul of KRE 702. Under that rule, a qualified expert may provide opinion testimony "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact." KRE 702. The expert must be qualified on the subject matter, the subject matter must satisfy *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and the evidence must be admissible under KRE 401. See *Stringer v. Commonwealth*, 956 S.W.2d 883, 891 (Ky. 1997). As the Commonwealth informed the trial court, an officer would not be qualified as an expert to render an opinion on B.B.'s veracity. (VR 10/27/22, 9:50:53.) An officer is not a human lie detector, and even the conclusions from those are not permissible evidence. See *Conley v. Commonwealth*, 382 S.W.2d 865, 867 (Ky. 1964), and *Carson*, 621 S.W.3d at 447 ("Just as we prohibit the introduction of mechanical polygraphic evidence, we similarly restrict the

ability of a witness to act as a human lie detector on the stand.”). Similarly, the officer’s conclusions about B.B.’s veracity should also not be admitted.

**C. An admonition is not sufficient because it is impossible to limit the scope of improper opinion testimony.**

Finally, an admonition will not cure the bar on one witness’s characterization of another witness’s testimony. The trial court stated that it would give the jury an admonition if the Commonwealth requested one. (TR Vol. II, 203.) Hartsfield believes that will suffice and suggests that “the jury could be informed that the statements were only being introduced to show context.” (Appellant’s Br., 22.) He continues that the context would be about “B.B.’s or Hartsfield’s responses and should not be considered as proof.” (*Id.*)

Our evidentiary rules permit an admonition. “When evidence which is admissible as to one (1) party or for one (1) purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and admonish the jury accordingly.” KRE 105(a); see *Lanham*, 171 S.W.3d at 28 (stating that “the admonition should be phrased so as to inform the jury that the officer’s comments or statements are ‘offered solely to provide context to the defendant’s relevant responses’” (quoting *State v. Demery*, 30 P.3d 1278, 1283 (Wash. 2001))). “KRE 105(a) supports the giving of an admonition restricting use of evidence for a proper purpose.” *Matthews v. Commonwealth*, 604 S.W.3d 271, 281 (Ky. App. 2019). While the trial court relied on *Lanham*, in stating that it would give “an appropriate” admonition, it did not elaborate on what that admonition would be. (TR Vol. II, 203.)

Even then, an admonition will not limit the scope of this improper opinion evidence. The trial court determined that the officer’s statements were relevant to establish context and probable cause. (TR Vol. II, 203.) The probable cause determination is made during the

preliminary hearing and is not an issue for the jury to decide. *See* RCr 3.14. The jury will hear that an officer opined on B.B.’s veracity for an investigation that resulted in a detective charging Hartsfield for his assaults against B.B. and a grand jury indicting him. How is a jury supposed to contextualize that conflicting information? An admonition cannot cure otherwise inadmissible opinion evidence and testimony. Our precedent is clear on witness veracity: “[t]hat determination is within the exclusive province of the jury.” *Moss*, 949 S.W.2d at 583.

## CONCLUSION

For these reasons, the Commonwealth respectfully requests that the Court of Appeals’ opinion be affirmed, and the order of the Fayette Circuit Court vacated with instructions to prohibit the introduction of the part of the body-worn camera footage containing the officer’s statements about B.B.’s veracity and any related testimony that violates *Moss*’s prohibition against a witness’s commenting on the credibility of another.

Respectfully submitted,

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