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Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-0313-MR

WESLEY B. GADDIE — APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE LARRY ASHLOCK, JUDGE
ACTION NO. 24-CR-00135

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CETRULO, ECKERLE, AND MOYNAHAN, JUDGES.

ECKERLE, JUDGE: Appellant, Wesley B. Gaddie ("Gaddie"), seeks reversal of the Hardin Circuit Court's February 25, 2025, Judgment and Sentence after a jury convicted him of trafficking in methamphetamine and other controlled substances, related drug offenses, and for being a first-degree, persistent felony offender ("PFO I"). Gaddie argues that the Hardin Circuit Court erred by failing to suppress

evidence found at his residence pursuant to the execution of an allegedly unlawful search warrant, admitting evidence of prior bad acts, and failing to instruct the jury on entrapment. Additionally, Gaddie appeals the Trial Court's March 26, 2025, Findings of Fact, Conclusions of Law, and Order ("Forfeiture Order") forfeiting $2,115 from his bank account. For the reasons stated below, we affirm.

I. Factual and Procedural Background

In December of 2023, a confidential informant ("CI") reported to Detective Chris Smith ("Smith") of the Greater Hardin County Narcotics Task Force ("Task Force") that Gaddie, the CI's co-worker, had conveyed a lunchbox full of methamphetamine to their workplace, Elizabethtown Truss ("E'Town Truss"). Smith used the CI to conduct two controlled buys of methamphetamine from Gaddie on December 21, 2023, and January 3, 2024. For both transactions, the CI telephoned Gaddie to arrange the purchase of between 15 and 30 grams of methamphetamine and, at Gaddie's direction, met him at the RaceTrac convenience store located on East Dixie Highway in Elizabethtown, Kentucky, to complete the buys. The CI recorded the calls to Gaddie and the subsequent drug transactions.

Following these controlled buys, Smith directed the CI to text Gaddie and arrange a third buy for the morning of January 4, 2024, and confirmed that the controlled buy had been scheduled. On that morning, Smith obtained a search

warrant for Gaddie's person; his vehicle, described as a 2006 Chevrolet Colorado; and his residence, where he lived with his mother. Smith's affidavit and the search warrant incorrectly listed the address for the residence three separate times as "3820 South Dixie Highway" in Elizabethtown but described the residence as follows:

> Single family dwelling multi level residence, top exterior brown in color with base exterior-brown/tan brick. Front door is also brown/tan in color with front security door. Just above front door is black in color exterior light. Residence has all brown in color detached garage at end of asphalt driveway.

Record ("R.") at 91. The affidavit also provided the observations on which Smith based his belief that probable cause existed, stating in pertinent part:

> Detectives with the [Task Force] were conducting an investigation on a Wesley Gaddie who resides at 3820 South Dixie Highway in Elizabethtown and operates a 2006 red Chevrolet truck bearing KY-655NSV. Complaint received advised that Wesley was trafficking methamphetamine. During the course of [the] investigation I have observed Wesley at his residence at 3820 South Dixie Highway in Elizabethtown multiple times. I have also observed Wesley operating his 2006 Chevy truck bearing KY-655NSV registration also comes back to Wesley Gaddie.
>
> Within the last 72 hours [the Task Force] has employed the use of a confidential informant. Confidential Informant brokered a deal with Wesley Gaddie to purchase Methamphetamine. Confidential informant met with Wesley Gaddie and completed a deal in which Wesley Gaddie trafficked in methamphetamine.

> Controlled buy was both audio and video recorded. Methamphetamine purchased from Wesley Gaddie during controlled buy was tested with TruNarc and showed a positive result for methamphetamine.

R. at 91.

After Smith obtained the search warrant, he and the other detectives with Task Force followed Gaddie from his residence to RaceTrac, where they intercepted and detained him. They searched his person and vehicle, finding a bag containing 15.5 grams of methamphetamine and several hundred dollars in cash. The Task Force arrested and secured Gaddie and his vehicle, then proceeded to his residence at 3920 South Dixie Highway. Upon arriving, detectives used Gaddie's keys to enter the residence and executed the search warrant. The Task Force recovered a great deal of incriminating evidence, including over 40 grams of methamphetamine; measuring cups and measuring spoons with white residue; a scale with more significant residue; a "hide" containing 20 diazepam pills and 20 buprenorphine strips; used baggies; a box of unused sandwich bags; a bundle of larger bags; multiple bongs; a methamphetamine pipe; miscellaneous pills (that were not controlled substances); and two lunch boxes containing cash and marijuana. In addition to the confiscated drugs and drug paraphernalia, the Task Force also seized Gaddie's vehicle and $1,700 in cash recovered from Gaddie's residence.

Incident to his arrest and the search of his vehicle and residence, the

Hardin County Grand Jury indicted Gaddie for first-degree trafficking in methamphetamine; trafficking in marijuana; third-degree trafficking in a controlled substance (diazepam); second-degree trafficking in a controlled substance (buprenorphine naloxone); possession of substances not in original container; possession of drug paraphernalia; use and investment of drug-related income; and PFO I. R. at 1–4. Gaddie was indicted separately for charges resulting from the completed controlled buys on December 21, 2023, and January 3, 2024. Following his indictment, the Task Force obtained another search warrant and seized over $16,000 from his checking account with Magnolia Bank.

On December 7, 2025, Gaddie moved to suppress the evidence seized at his residence, arguing that the January 4, 2024, search warrant lacked sufficient probable cause, on the grounds that it listed the wrong address and was allegedly not premised on credible information. Gaddie also objected to the search and seizure of his property and bank account, arguing that such seizure exceeded the scope of the original search warrant and was overly broad.

The Trial Court conducted a hearing on January 2, 2025, during which Smith testified that he knew that Gaddie's address was 3920 Dixie Highway but misread his notes when typing his affidavit for the search warrant, unintentionally typing "3820" as the street address. Smith also testified that he had observed Gaddie at 3920 Dixie Highway during his investigation and followed him from his

work to RaceTrac on January 3, 2024. While he was obtaining the search warrant in advance of the controlled buy scheduled for January 4, 2024, other Task Force detectives surveilled Gaddie at his residence and then followed him from his residence to RaceTrac. After hearing arguments from the parties, the Trial Court denied Gaddie's motion to suppress, issuing its written Order to that effect on January 9, 2025.

Gaddie's jury trial occurred on January 13, 15, and 16 of 2025. The Commonwealth called the CI, Smith, and Julie Ferguson ("Ferguson"), a laboratory director with the Kentucky State Police's Jefferson County Forensic Laboratory, to testify. Over Gaddie's objection, the Commonwealth introduced the video recordings of the controlled drug buys that occurred on December 21, 2023, and January 3, 2024, which the CI authenticated. The CI testified that the recordings and the related still snapshots from those recordings depicted the two drug transactions and showed his and Gaddie's "hands exchanging money and drugs" under the door of a bathroom stall. Video Record ("V.R."), 1/13/2025 at 4:40. He also testified that it was Gaddie who set the location for the transactions, preferring to meet at RaceTrac. Consistent with his affidavit and previous testimony, Smith provided the details of his investigation, the drug buys, and the results of the search of Gaddie's person, vehicle, and residence. Ferguson verified that the lab tested a sample of the drugs recovered from Gaddie's apartment, which

returned as positive for methamphetamine.

For the defense, Sharon Shelleck, Gaddie's mother, testified that Gaddie had a history of drug addiction but that she did not know of or observe him trafficking drugs from the home that they shared. Michael Cardin ("Cardin"), the owner of E'Town Truss and past employer of both Gaddie and the CI, testified regarding an incident during which Gaddie had collapsed, requiring resuscitation at work. Cardin, who had not initially witnessed the collapse, stated that it was the CI who had been with Gaddie immediately prior to the emergency. Gaddie declined to exercise his right to testify during the guilt phase of the trial. But during opening and closing arguments, he argued that the police exploited his relationship with the CI to induce him to sell drugs. At the close of all the evidence, the Trial Court denied Gaddie's motion to instruct the jury on entrapment.

The jury found Gaddie guilty on all charges[1] and recommended a sentence of ten years' incarceration. On February 25, 2025, the Trial Court issued its final judgment and sentenced Gaddie in accordance with the jury's recommendation. We shall discuss additional facts as necessary.

[1] Prior to trial, Gaddie's charge of the use and investment of drug-related income was dismissed, but the record does not reflect the reason for that dismissal. At the close of the Commonwealth's proof, the Trial Court granted, in part, Gaddie's motion for a directed verdict only on the charge of possession of prescription not in its original container, for which the Trial Court found insufficient evidence. Thus, these charges were not submitted to the jury.

II. Denial of Motion to Suppress Evidence

For his first claim on appeal, Gaddie argues that the Trial Court committed reversible error by failing to suppress the evidence seized at his residence. Gaddie avers that the affidavit for the search warrant did not establish probable cause because it listed an incorrect street address and did not establish a nexus between his home and his alleged drug activity.

Regarding the incorrect address, Gaddie argues that the Trial Court mistakenly relied on this Court's decision in *Fentress v. Commonwealth*, which held that a search warrant listing the wrong address for a rural residence based on incorrect information supplied by a neighbor did not fail for lack of particularity. 279 S.W.3d 168, 171 (Ky. App. 2008). He notes that, in *Fentress*, the residences in question were not numbered and, recognizing this fact, this Court stated that: "[i]f the individual residences had been numbered and such numbering thereon not been consistent with the description given, then confusion may have arisen as to which residence was to be searched; this was not the case." *Id.* at 172. He seeks to distinguish the facts of his case from *Fentress* on two grounds. First, he argues that Smith's information did not come from another source; in other words, Smith knew Gaddie's exact address, having observed him there, rather than relying on mistaken information from a third party. Second, he asserts that his residence was not in a rural area; the residences on his street were numbered; and the address

listed on the warrant did not exist. Based on these facts, Gaddie claims that the outcome of his case should be different. However, in doing so, he does not allege that these factual distinctions resulted in any confusion in identifying his residence as the search warrant intended.

Next, Gaddie argues that the search warrant failed to establish a sufficient nexus between the drug transactions and his residence. Gaddie takes exception with the Trial Court's factual finding that "Smith testified surveillance was conducted on Gaddie and he was seen coming from his residence either directly to the gas station where the buy was conducted or going directly to his residence after the controlled buy was conducted." R. at 98. Gaddie argues that because Smith did not actually follow him directly from his residence to the controlled buys until *after* he applied for the search warrant, the Trial Court's finding was erroneous.

Gaddie also asserts that this factual error led the Trial Court to incorrectly interpret two decisions of the United States Court of Appeals for the Sixth Circuit. *United States v. Brown*, 828 F.3d 375 (6th Cir. 2016) and *United States v. Sanders*, 106 F.4th 455 (6th Cir. 2024), *cert. denied*, 145 S. Ct. 603, 220 L. Ed. 2d 237 (2024). Gaddie argues that *Brown* is dispositive of the facts of his case and that, contrary to *Brown*, the Trial Judge issuing the warrant impermissibly used Gaddie's reputation as "a known drug dealer" to infer that drugs would be

found at his home. *Brown*, 828 F.3d at 383. He argues that, in its review of the warrant after the search, the Trial Court erroneously relied on *Sanders*, based in part on its factual finding that Smith followed Gaddie directly from his residence to his vehicle to one of the controlled buys and back. Gaddie asserts that this connective evidence is absent from the facts of this case and, therefore, the affidavit failed to support probable cause under the Sixth Circuit's standard.

A. Standard of Review

The Fourth Amendment to the United States Constitution and Section 10 of the Kentucky Constitution guarantee the right of individuals to be secure in their homes and protected against unreasonable searches and seizures. *Commonwealth v. Reed*, 647 S.W.3d 237, 243 (Ky. 2022).[2] In the recent case of *Commonwealth v. Master*, our Supreme Court summarized the standard for reviewing a search warrant as follows:

> The Fourth Amendment requires only that a search warrant have substantial proof supporting a probable cause belief that a search would uncover criminal activity. *Illinois v. Gates*, 462 U.S. 213, 237, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). Kentucky has embraced this standard under Ky. Const. § 10. *Beemer v. Commonwealth*, 665 S.W.2d 912, 915 (Ky. 1984). There is no *de novo* review of a probable cause determination in

[2] We recognize that the Kentucky Courts "look[] to the United States Supreme Court's interpretation and application of the Fourth Amendment for guidance in construing Section 10." *Id.* (citing *Youman v. Commonwealth*, 189 Ky. 152, 224 S.W. 860, 862 (Ky. 1920)). However, we are not bound by lower Federal Court decisions interpreting those decisions. Rather, we rely on precedent from the Courts of this Commonwealth.

> a warrant context; instead, we pay "great deference" to the issuing-magistrate's determination. *Commonwealth v. Pride*, 302 S.W.3d 43, 48 (Ky. 2010) (citing *Gates*, *supra*, at 236, 103 S. Ct. 2317). Thus, the test for a trial court is summarized: "whether under the 'totality of the circumstances' presented within the four corners of the affidavit, a warrant-issuing judge had a substantial basis for concluding that probable cause existed." *Id.* at 49.
>
> The appellate courts' review is two-pronged. First, a determination that "the facts found by the trial judge are supported by substantial evidence[;]" and second, "whether the trial judge correctly determined that the issuing judge did or did not have a 'substantial basis for . . . concluding' that probable cause existed." *Id.* (citing *Gates*, *supra*, at 236, 103 S. Ct. 2317). "We also review the four corners of the affidavit and not extrinsic evidence in analyzing the warrant-issuing judge's conclusion." *Id.*

706 S.W.3d 140, 147 (Ky. 2024). Importantly, we do not second guess the tribunal's conclusion by conducting our own factual analysis. *Reed*, 647 S.W.3d at 242–43 ("[W]e accept the trial court's findings of fact as conclusive if they are supported by substantial evidence.").

Moreover, "it is clear that 'only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause.'" *Master*, 706 S.W.3d at 148 (quoting *Gates*, 462 U.S. at 235, 103 S. Ct. 2317) (internal citations omitted). Put another way, "the task of the . . . issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, . . . there is a fair probability that contraband or

evidence of a crime will be found in a particular place." *Pride*, 302 S.W.3d at 48. This particularity requirement is satisfied if the warrant's description "enables the officer executing the warrant to identify the place to be searched with reasonable effort." *Fentress*, 279 S.W.3d at 171. Additionally, the affidavit supporting the warrant "must minimally show a sufficient nexus between the illegal activity and the place to be searched[.]" *Master*, 706 S.W.3d at 152–53 (citing *United States v. White*, 874 F.3d 490, 496–97 (6th Cir. 2017) (citation omitted)).

B. Particularity Requirement

The Trial Court undisputedly found that Smith, relying on his notes, unintentionally included the wrong street number for Gaddie's residence on his affidavit for the search warrant. However, an incorrect address will not defeat the constitutionality of a search warrant provided that the warrant otherwise describes with particularity the place to be searched. *McCloud v. Commonwealth*, 279 S.W.3d 162, 165 (Ky. App. 2007); *Fentress*, 279 S.W.3d at 171. Gaddie's attempt to distinguish the facts in *Fentress* from this matter runs headlong into Smith's very particularized affidavit, describing Gaddie's house in very specific detail, including the style of the residence, exterior layout, and color. Moreover, "there [was] no evidence in the record, nor was it argued, that the incorrect address led to confusion in serving the search warrant." *Fentress*, 279 S.W.3d at 171. Accordingly, Gaddie fails in his attempt at distinguishing our holding in *Fentress*,

which is directly applicable here. The Task Force executing the search warrant readily identified Gaddie's residence from the specific description provided, without confusion, making the incorrect street number immaterial. *Id.* Therefore, we affirm the Trial Court's finding that the incorrect address alone did not defeat the constitutional requirement of particularity.

C. Nexus Requirement

Next, we address Gaddie's claim that the warrant did not provide a sufficient nexus between his drug trafficking and his residence. Pertinent to this issue, the affidavit for the search warrant stated that Smith observed Gaddie at his residence and in his truck and that his investigation resulted in the controlled buys during which Gaddie trafficked methamphetamine. The four corners of the affidavit did not state, and Smith did not testify,[3] that he observed Gaddie driving *directly* from his residence to the location of the controlled drug buys. Thus, it appears that the Trial Court was mistaken in its factual finding that Smith followed Gaddie directly from his residence to the drug buy before he applied for the warrant.

Despite this error, the Trial Court did not rely on this single fact but rather, and properly, considered whether, given all the circumstances set forth in

[3] When cross-examined during the suppression hearing, Smith confirmed that he had not observed "any illegal activity" while watching Gaddie at the residence. V.R., 1/2/2025 at 9:55.

the affidavit, there was the probability that a search of Gaddie's residence would uncover evidence of drug trafficking. *Moore v. Commonwealth*, 159 S.W.3d 325, 329 (Ky. 2005) (probable cause requires only "fair probability" and not "certainty that a crime has been committed or that evidence will be present in the place to be searched"); *see also Master*, 706 S.W.3d at 148. Moreover, "in issuing a search warrant, a magistrate is entitled to draw reasonable inferences about where the evidence is likely to be kept, based on the nature of the evidence and the type of offense, and that in the case of drug dealers evidence is likely to be found where the dealers live." *Elders v. Commonwealth*, 395 S.W.3d 495, 501 (Ky. App. 2012) (internal quotation marks and citations omitted).

The circumstances reflected in Smith's affidavit satisfactorily clear this threshold of evidence. The affidavit identifies the use of the CI to conduct and complete the controlled drug transactions, which were themselves evidence of a crime. Next, the affidavit identifies evidence consisting of video and audio recordings of Gaddie trafficking in methamphetamine during these buys. Finally, the affidavit explains that, contemporaneously with this drug activity, Smith observed Gaddie driving in a vehicle registered to him and residing at a specific place. Based on the totality of the circumstances presented in the affidavit, it was reasonable for the Trial Judge, when issuing the warrant, to infer that contraband or other evidence of drug trafficking would be found at Gaddie's residence. Thus, we

find that the warrant established a nexus between the evidence sought and the place to be searched, which was sufficient to support probable cause.

Having made this determination, we decline to engage in an extensive analysis of the Sixth Circuit cases that Gaddie cites and that the Trial Court diligently reviewed. Both *Brown* and *Sanders* echo our own jurisprudence; to wit, "probable cause, at its core, 'depends on the totality of the circumstances.'" *Sanders*, 106 F.4th at 461 (quoting *Maryland v. Pringle*, 540 U.S. 366, 371, 124 S. Ct. 795, 157 L. Ed. 2d 769 (2003)). Moreover, the Sixth Circuit itself has refused to draw a bright-line test that would require anything more than "a search warrant affidavit that adequately establishes both where a defendant resides as well as the defendant's active engagement in certain criminal activity." *Id.* at 462. Therefore, we hold that the Trial Court had a substantial basis for its determination that probable cause existed, and that it properly denied Gaddie's motion to suppress.

III. Admission of Evidence of Other Crimes

For his second appellate issue, Gaddie claims that the Trial Court committed reversible error when it admitted video evidence of the prior drug transactions between the CI and him for which he was charged under a separate indictment. Gaddie alleges that the video evidence was prohibited under Kentucky Rule of Evidence ("KRE") 404(b). Citing *Graves v. Commonwealth*, 384 S.W.3d 144 (Ky. 2012), he argues that because the prior drug transactions were arranged

by the CI, not Gaddie, they were not probative of his *modus operandi*. He also claims that the videos "linking" him to the prior drug buys were "no better than the proof linking him to the crime he was charged with" and thus unduly prejudicial. Appellant's Opening Brief at 23. Because KRE 404(b) is designed to prevent the introduction of confirming evidence of bad character, he argues that "[t]his was the kind of criminal propensity evidence that KRE 404(b) means to exclude." *Id.* at 18, 23.

The Commonwealth argues that the video evidence was highly probative of "Gaddie's intent, preparation, planning, absence of mistake, or knowledge of how to traffic methamphetamine." Appellee's Brief at 21. Further, it asserts that this probative value outweighed the risk of undue prejudice to Gaddie. Indeed, it claims that any such risk was minimized by the Trial Court's admonishment to the jury that the videos were "not evidence of the defendant's guilt in this case" and could only be considered for their tendency to show Gaddie's "intent, knowledge, identity, or absence of mistake or accident." VR, 1/13/25, at 4:37–4:38.

Evidence of other crimes is generally inadmissible to show a person's predisposition to commit crime but rather may be admissible if offered to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. *Gasaway v. Commonwealth*, 671 S.W.3d 298, 334 (Ky. 2023)

(citing KRE 404(b)). "The admissibility of evidence under KRE 404(b) is evaluated under a three-part test: (1) relevance; (2) probativeness; and (3) prejudicial effect." *Gasaway*, 671 S.W.3d at 334 (citing *Conley v. Commonwealth*, 599 S.W.3d 756, 772 (Ky. 2019)). We review the Trial Court's admission of evidence pursuant to KRE 404(b) for abuse of discretion. *Stephens v. Commonwealth*, 680 S.W.3d 887, 898 (Ky. 2023). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Id.* (quoting *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999)).

The Kentucky Supreme Court has repeatedly held that prior drug crimes are admissible to establish a criminal defendant's motive, intent, knowledge, plan, and absence of mistake in subsequent charges of drug trafficking. *See, e.g.*, *Hayes v. Commonwealth*, 175 S.W.3d 574, 588–89 (Ky. 2005) (prior drug trafficking conviction admissible to demonstrate motive, intent, and plan to manufacture methamphetamine); *Fulcher v. Commonwealth*, 149 S.W.3d 363, 379 (Ky. 2004) (evidence that defendant participated in manufacturing methamphetamine only two days before charged offense admissible to refute claim that he was "framed"; and evidence that he ingested methamphetamine admissible to prove motive to manufacture same); *Walker v. Commonwealth*, 52 S.W.3d 533, 536–37 (Ky. 2001) (evidence of earlier controlled cocaine sale was admissible to

prove element of defendant's intent to traffic in controlled substance).[4]

If the extrinsic evidence of other bad acts is relevant and probative of the purposes permissible under KRE 404(b), a Trial Court must then weigh its probative value against the "tendency of the evidence so strongly to lead the jury into improper character inferences[.]" *Feinauer v. Commonwealth*, 640 S.W.3d 47, 50 (Ky. App. 2021) (quoting *Jenkins v. Commonwealth*, 496 S.W.3d 435, 457 (Ky. 2016)). "[A]ll relevant evidence offered against a defendant will have some prejudicial tendency; otherwise, it would not be offered. The question is whether it creates a danger of undue prejudice." *Feinauer*, 640 S.W.3d at 50 (quoting *St. Clair v. Commonwealth*, 455 S.W.3d 869, 893 (Ky. 2015) (emphasis omitted)).

We now turn to the merits of whether the Trial Court abused its discretion when it admitted the video recordings of the prior drug transactions. The video evidence of the controlled drug buys, which were corroborated by the CI, showed the manner in which Gaddie had sold drugs to the CI on the previous occasions, including the way that he had communicated with the CI, the location of their meeting, and the steps that Gaddie took to conceal the transactions (*i.e.*,

[4] As explained, *supra*, Gaddie would have us disregard this clear authority in favor of a single case in which the Kentucky Supreme Court excluded the uncorroborated testimony of an informant regarding a prior controlled drug buy allegedly involving a defendant. *Graves*, 384 S.W.3d 144. Based on facts distinguishable from this matter, the Supreme Court reasoned that the similarities between the transactions were "not so peculiar or distinctive as to create a method of operation unique to [the defendant]" but rather seemed "to follow the same pattern of facts involved in any routine controlled drug buy arranged by police." *Id.* at 149.

directing the CI to hide in a bathroom stall and exchanging the drugs for money under the door). The Trial Court held that the evidence was both relevant and probative of Gaddie's intent, knowledge, and *modus operandi*, and was not stale or remote in time, having occurred within days of Gaddie's arrest.

The prior controlled drug buys between the CI and Gaddie, which occurred at the exact same location and were proximate in time to the final scheduled transaction, related directly to Gaddie's intention to sell the CI more methamphetamine on January 4, 2024. Moreover, the highly probative nature of the video recordings outweighed any prejudicial risk that "the evidence of prior crimes merely served to paint [Gaddie] in a bad light[.]" *Walker*, 52 S.W.3d at 537. Additionally, the Trial Court chose to mitigate any undue prejudice by giving the jury a contemporaneous admonishment regarding how it should consider the evidence. Therefore, we find that the Trial Court did not abuse its discretion in admitting the video recordings of the prior controlled drug buys pursuant to KRE 404(b)(1).

IV. Denial of Proposed Jury Instructions

For his next claim of error, Gaddie argues that the Trial Court denied him the constitutional right to present a defense when it declined to instruct the jury on entrapment. Gaddie argues, as he did before the Trial Court, that "a reasonable juror could find that [the CI] encouraged or induced Gaddie." V.R.,

1/16/2025 at 10:36:50–10:37:03. Specifically, Gaddie makes the following allegations: the CI, acting as an agent of the Commonwealth, initiated and induced Gaddie to buy drugs; the Commonwealth thought up the "scheme" with the CI to develop a case against him despite him having no prior convictions for trafficking in methamphetamine; and the evidence seized from his residence "did not show a predisposition to trafficking sufficient to overcome an entrapment defense." Appellant's Opening Brief at 13, 15. The Commonwealth argues that the evidence presented at trial belies these claims. First, the CI approached the Task Force *after* observing Gaddie at work with a large quantity of methamphetamine. Second, the controlled drug buys merely provided Gaddie with the opportunity to engage in the transaction that he already showed an intention to commit.

We examine alleged errors regarding jury instructions, which are questions of law, under a *de novo* standard of review. *Perdue v. Commonwealth*, 411 S.W.3d 786 (Ky. App. 2013). The use of entrapment as a defense is governed by Kentucky Revised Statute ("KRS") 505.010:

> Entrapment is an available defense when a defendant "was induced or encouraged to engage in [the criminal] conduct by a public servant or by a person acting in cooperation with a public servant seeking to obtain evidence against him for the purpose of criminal prosecution; and [a]t the time of the inducement or encouragement, he was not otherwise disposed to engage in such conduct."

Wyatt v. Commonwealth, 219 S.W.3d 751, 756 (Ky. 2007) (quoting KRS 505.010). "The defendant need not testify in order to invoke the entrapment defense . . . but there must be sufficient other evidence of record to justify an instruction on entrapment." *Saxton v. Commonwealth*, 315 S.W.3d 293, 301–02 (Ky. 2010). Without evidence supporting the defense of entrapment, the burden to disprove it does not shift to the Commonwealth. *Id.* at 301. Moreover, a jury instruction on the theory of the case "is to be rejected if the evidence does not warrant it." *Conyers v. Commonwealth*, 530 S.W.3d 413, 431 (Ky. 2017) (citing *Payne v. Commonwealth*, 656 S.W.2d 719, 721 (Ky. 1983)). Finally, "the mere fact that [a] confidential informant[] set[s] up the drug transaction . . . does not suffice as probative evidence of entrapment to drug traffic[.]" *Saxton*, 315 S.W.3d at 302.

Turning to the facts of this case, it is notable that, prior to the Task Force targeting Gaddie, the CI approached Smith to report that he had seen Gaddie with a large quantity of methamphetamine. To arrange the controlled buys, the CI initiated contact with Gaddie, but Gaddie selected the meeting place at RaceTrac and directed the method of the drug exchange. While Gaddie was not required to testify and chose to exercise his right not to do so, Gaddie presented no other probative evidence to contradict the CI's account of events. As in *Saxton*, "the evidence plainly shows that [Gaddie] was predisposed to traffic illegal drugs; he had access to the drugs, acquired them and came prepared to sell them at the

location" he himself had suggested. 315 S.W.3d at 302. A defendant is certainly entitled to remain silent, basing the exercise of his sacred constitutional right thereto at a jury trial where the prosecution bears the burden of proof beyond a reasonable doubt. Yet where, as here, a defendant asserts a defense of entrapment, on which he bears the burden of proof, then rests his case without producing any evidence to support this defense, he loses legal footing. This consequence does not infringe upon his constitutionally protected rights so long as he has the opportunity, if not the ability, to present other evidence of entrapment, which unavailed and unpursued opportunity the Trial Court here certainly gave to Gaddie. Therefore, we find that Gaddie failed to overcome his burden to demonstrate sufficient evidence warranting a jury instruction on entrapment.

V. Forfeiture of CashApp Transactions

Finally, Gaddie claims that the Trial Court erred in finding that $2,115 in CashApp[5] transactions in his bank account were traceable to drug transactions and, therefore, subject to forfeiture. The Commonwealth asserts that it made a *prima facie* case establishing a nexus between the CashApp deposits and drug trafficking and, therefore, the Trial Court properly forfeited the funds.

We mention here the pertinent facts related to the forfeiture action.

[5] We adopt the Trial Court's finding that "'CashApp' is a digital payment platform that allows individuals to transfer money between accounts without having to actually physically withdraw the funds and deliver it to the other person." R. at 221.

During the course of its investigation and prior to seeking permanent forfeiture of Gaddie's bank assets, the Task Force seized Gaddie's 2006 Chevrolet Colorado truck and $1,700.43 in cash from Gaddie's person and house incident to the arrest and search warrant. Subsequent to his arrest, the Task Force obtained another search warrant and seized $16,215.07 from Gaddie's checking account with Magnolia Bank. After trial but before sentencing, the Commonwealth filed a motion seeking forfeiture of all assets seized by the Task Force, including all sums reflected in the bank statements from Gaddie's checking account with Magnolia Bank.

The Trial Court conducted a hearing on the motion on March 7, 2025. Once again, Smith appeared as the only witness, and the Commonwealth introduced six months of bank statements from Magnolia Bank. Smith testified that the electronic transfers were prevalent, continuous, and included transfers of large sums in round numbers indicative of drug trafficking. Smith did not seek or otherwise obtain records from CashApp, noting that the same identifying numbers and dates of the transactions were evident from the bank statements themselves.

Gaddie neither disputed the forfeiture of his truck nor the cash found on his person and home. He also declined to produce his CashApp records to dispute the Commonwealth's allegations. Nonetheless, he objected to forfeiture of all sums in his bank account, arguing that the Commonwealth had failed to trace

satisfactorily any of the funds he deposited, including from CashApp, to any persons or dates, let alone specific drug transactions. He also argued that the controlled buys in question involved the CI exchanging cash provided by the police to purchase the drugs from Gaddie. Thus, Gaddie argued that none of the CashApp deposits appearing on Gaddie's bank records were properly traced to the controlled drug buys or any other drug transactions.

On March 31, 2025, the Trial Court issued its written Forfeiture Order, which denied, in part, the Commonwealth's motion to forfeit $14,099 from Gaddie's checking account with Magnolia Bank but granted, in part, the motion as to $2,115 in CashApp transactions noted in the bank statements. R. at 220–26. Noting "a dearth of case law" on the topic, the Trial Court cited this Court's unpublished opinion,[6] which held that gift cards and lottery tickets found near the scene of drug trafficking could be forfeited based on testimony that those items were "commonly used" to purchase drugs. R. 223–24.

Forfeiture related to drug offenses is governed by KRS 218A.410, which establishes, in pertinent part, that the Commonwealth may forfeit:

> Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter, all proceeds, including real and personal property, traceable to the exchange, and all

[6] Pursuant to RAP 41(A), we re-cite this unpublished decision, which is not binding on our analysis. *Rickard v. Commonwealth*, Nos. 2006–CA–002474–MR, 2006–CA–002477–MR, 2006–CA–002478–MR, 2008 WL 2312609, *4 (Ky. App. Jun. 6, 2008).

> moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of this chapter[.]

KRS 218A.410(1)(j). In forfeiture actions, the Commonwealth bears the initial burden of proof. *Osborne v. Commonwealth*, 839 S.W.2d 281, 284 (Ky. 1992).

> To meet its burden of proof and make a *prima facie* case, the Commonwealth must produce "slight evidence of traceability." *Id.* at 284. This means that the Commonwealth must "produce some evidence that the currency or some portion of it had been used or was intended to be used in a drug transaction." *Id.*

Smith v. Commonwealth, 339 S.W.3d 485, 487 (Ky. App. 2010) (quoting *Osborne*, 839 S.W.2d at 284). Further, in assessing the conduct of drug traffickers concerning their handling of funds incident to their illicit trade, a police officer's opinion based on his training and experience is routinely admissible. *Dixon v. Commonwealth*, 149 S.W.3d 426, 430 (Ky. 2004) (affirming admission of officer's opinion, based on specialized training in narcotics investigations, that notes in glove compartment reflected drug transactions and money amounts). If the Commonwealth meets its initial burden, "the burden is on the claimant [objecting to forfeiture] to convince the trier of fact that the currency was not being used in the drug trade." *Osborne*, 839 S.W.2d at 284.

We review the Trial Court's factual findings for clear error, but its legal conclusions *de novo*. *Commonwealth v. Coffey*, 247 S.W.3d 908, 910 (Ky. 2008). Whether the property is traceable to the drug activities is a question of fact.

Commonwealth v. Doebler, 626 S.W.3d 611, 618 (Ky. 2021).

The Commonwealth's evidence supporting forfeiture included Gaddie's bank statements relevant to the time period of the Task Force's investigation. Those records revealed CashApp transfers that were prevalent, continuous, and in rounded increments, which are atypical of personal reimbursements, such as splitting a restaurant bill or legal purchase. Smith testified that, based upon his education, training, and experience, the exchange of funds from CashApp and other digital currency platforms are indicative of the current methods used by drug traffickers, because they conceal illegal proceeds with less risk than handling large sums of cash.

For his defense, Gaddie critiques the dates of the CashApp transactions as not aligning with any of the controlled drug buys, but he provided no tracing of his own or evidence that he had legitimately acquired such funds. Further, he complains that the Commonwealth did not seek a search warrant for or otherwise subpoena records from CashApp to determine from whom the transactions originated. However, because he refrained from producing that documentation himself and was facing additional charges for the other drug transactions, he likely would have objected to such an expedition.

At the outset, we hold that transfers of currency from digital platforms, like CashApp, are a currency equivalent, with liquidity similar to gift

cards or lottery tickets. These cash exchanges are often lawful transactions. However, they are also simultaneously used by the drug underworld traffickers to conceal their illegal enterprise. Regardless, their virtually immediate liquidity and nearly boundless transferability render them equivalent to cash currency available for lawful and unlawful ends.

In reviewing *de novo* the Trial Court's application of KRS 218A.410(1)(j) to the CashApp transactions in this case, we are mindful of our ubiquitous duty to construe statutes liberally to effectuate their legislative intent. *Commonwealth v. Plowman*, 86 S.W.3d 47, 49 (Ky. 2002). The purpose of KRS 218A.410 is straightforward:

> When it comes to drug trafficking, the preventive aspect is clear. If one stands to lose valuable property, then one should think twice about using it in the commission of a drug crime. If that property has been obtained as the fruits of criminal drug related activities, then those ill-gotten gains should not be left to the benefit of the criminal.

Coffey, 247 S.W.3d at 911. Even if a new technology exists by which drug traffickers may exchange drugs for liquidable electronic cash equivalents, KRS 218A.410(1)(j) still applies to prevent them from benefitting from this new method of concealment.

The Commonwealth provided sufficient tracing here, as the Trial Court found, because it provided more than a scintilla of evidence that the

CashApp deposits were traceable to drug exchanges as required by KRS 218A.410(1)(j). Gaddie presented no evidence of his own to dispute the Commonwealth's evidence or otherwise convince the Trial Court that those CashApp deposits were payment for legitimate services or goods other than drugs. Therefore, the Trial Court did not abuse its discretion in forfeiting those sums.

VI. Conclusion

For the foregoing reasons, we affirm the Hardin Circuit Court's final Judgment and Sentence and its Order of Forfeiture.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Erin Hoffman Yang
Assistant Public Advocate
Department of Public Advocacy
Louisville, Kentucky

BRIEF FOR APPELLEE:

Russell Coleman
Attorney General of Kentucky

Joseph Crawford White
Assistant Solicitor General
Frankfort, Kentucky