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Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-0899-MR

COMMONWEALTH OF KENTUCKY — APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE KATHLEEN LAPE, JUDGE
ACTION NO. 19-CR-01762

KEVIN R. MASTER — APPELLEE

OPINION
REVERSING

** ** ** ** **

BEFORE: CALDWELL, ECKERLE, AND TAYLOR, JUDGES.

ECKERLE, JUDGE: Appellant, the Commonwealth of Kentucky ("the Commonwealth"), seeks review of the Kenton Circuit Court's Order suppressing evidence seized pursuant to a search warrant issued for the residence of Appellee, Kevin R. Master ("Master"). We review this issue for a second time, the Kentucky Supreme Court having affirmed our prior decision vacating the Circuit Court's initial ruling to admit the evidence and remanding the matter for an evidentiary hearing on the good-faith exception to the exclusionary rule. Finding no barrier to application of the good-faith exception after consideration of the record and hearing oral arguments by the parties, we reverse the Circuit Court's Order.

Factual and Procedural Background

This case began when United States Customs and Border Patrol ("Customs") intercepted a package addressed to Master that originated from China, containing a sex doll with the physical proportions and anatomical features of a child. After identifying the suspicious package, federal authorities referred the case for investigation by the Kentucky State Police. Given the previous appeal of this case, we note that the procedural history is discussed in significant detail in the Kentucky Supreme Court's opinion, which we will restate in part as follows:

> On October 8, 2019, Det. Gatson swore out his application and affidavit to the district court in Kenton County. It states,
>
> > Affiant [*i.e.*, Gatson] has been employed with the Kentucky State Police for 25 years. Affiant is assigned to the ICAC [Internet Crimes Against Children] Task Force and is specially trained in offenses involving the abuse and exploitation of children, including but not limited to child pornography and child sexual abuse. Based upon Affiant's training and experience, Affiant believes any person who orders a child sex doll from China has gone to great lengths to achieve sexual gratification for a sexual attraction to children. Affiant believes anyone who orders a child sex doll is also likely to be

> downloading, viewing, sharing, and/or manufacturing child pornography. Affiant knows child pornography to be readily available via the internet from the same types of illicit websites that sell child sex dolls. Affiant also knows computers, smart phones, and other electronic devises [sic] often contain the illicit images even after being "deleted" by the user. Affiant also knows people who look at child pornography often store collections of the matter for future use.
>
> Based upon all of the above, Affiant requests that the search warrant be issued to search [Kevin Master's residence] in order to further Affiant's continuing investigation.

The search warrant was approved, and a search of Master's seized electronic devices revealed child pornography predicating the charges described above. On July 27, 2020, after an indictment had been obtained and the case brought within the Circuit Court, Master filed a motion to suppress.

In an Order dated October 22, 2020, the trial court detailed that Master argued insufficient probable cause for the warrant based on the lack of a nexus to criminal activity. In other words, the affidavit listed electronic devices to search for criminal activity related to child pornography, based solely on the alleged purchase by Master of a child-like sex doll—the possession of which was not criminalized by any Kentucky or federal statute at the time. The trial court denied the motion, employing the test that the Fourth Amendment and Section 10 of Kentucky's constitution are satisfied when, under the totality of circumstances, the four-corners of the affidavit demonstrate a substantial basis to believe that probable cause exists the criminal activity alleged is being committed.

The trial court concluded,

> the affiant states that he is an experienced police officer who has trained in and worked on internet crimes involving child pornography. Based on his experience, Chinese web sites that sell the type of child sex doll purchased and received by Defendant also contain child pornography. He also attests that, in his experience, a person who goes through the lengths that Defendant went through to obtain such a prepubescent sex doll from China does so for sexual gratification for a sexual attraction to children and has likely downloaded, viewed, shared, and/or manufactured child pornography.
>
> This court finds that the affidavit established a substantial basis for a reasonable belief by the warrant-issuing judge that because Defendant, Kevin Master, ordered and received a prepubescent sex doll designed for sexual gratification from China, likely through a web site containing child pornography, there is a fair probability that he downloaded, viewed, shared and/or manufactured child pornography and evidence of same would likely be found in his home and/or on his electronic devices.

Commonwealth v. Master, 706 S.W.3d 140, 144-45 (Ky. 2024).

After the Circuit Court denied Master's motion to suppress, it allowed him to enter a conditional guilty plea on 20 counts of possession of matter portraying a sexual performance by a minor, with the benefit of being allowed to appeal the suppression issue. Master received a sentence of ten years in prison as a result of his guilty plea. On appeal, another panel of this Court vacated the Circuit Court's denial of suppression, finding that Gatson's investigation failed to establish a sufficient nexus between the ordering of a child sex doll, which was not criminally prohibited at the time, and the probability that "child pornography" would be found at Master's residence. *Id.* at 146-47. However, this Court also found that the Circuit Court had not previously allowed arguments on the "good-faith exception," described in *United States v. Leon*, 468 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984), and remanded for further proceedings to address whether applicability of the exception would bar suppression of evidence. *See Master v. Commonwealth*, No. 2021-CA-0925-MR, WL 446897, *6-8 (Ky. App. Jan. 27, 2023).

The Commonwealth then sought discretionary review from the Kentucky Supreme Court. In a split decision, that Court affirmed our holding and remanded the case, as did we, for the Circuit Court to conduct a hearing on whether the good-faith exception should apply to bar suppression of the evidence. Although the three dissenting Justices disagreed with the majority's determination that the warrant lacked probable cause, all concurred with that Court's affirmation of this Court's holding remanding the case for a ruling on whether the good-faith exception would apply to bar suppression. *Master*, 706 S.W.3d at 144-45.

On remand, the Supreme Court instructed that the Trial Court must consider Gatson's actions in the context of another case involving a child sex doll that Gatson had worked at the time that he had sought the search warrant for Master's residence. *Id.* at 153-54. This related case was before the Kenton Circuit Court in Case No. 18-CR-01315 and the Kenton District Court in Case No. 18-F-01698, *Commonwealth of Kentucky v. Scott Lee Phillips*. As the Supreme Court's opinion noted, any determination regarding the application of the good-faith exception in this case must include a fact-based inquiry into the state of the *Phillips* prosecution at the time that Gatson conducted the investigation into the package seized in the case *sub judice*. Accordingly, much of the evidence provided to the Circuit Court on remand consists of material related to the proceedings in the *Phillips* matter between 2018 and 2020.

The *Phillips* case began in 2018 in the same manner as the case at bar, with Customs intercepting a suspicious package from China, addressed to Scott Phillips in Kenton County. Customs suspected, and confirmed, Phillips's package to contain a child-sized sex doll. Record ("R.") at 427. Because the package was ultimately addressed for delivery in Kentucky, federal authorities alerted Gatson at ICAC. At the evidentiary hearing conducted after the Supreme Court's remand in *Master*, Gatson testified that he and the local Commonwealth Attorney's Office believed the *Phillips* doll to be illegal under the Kentucky law criminalizing the possession of matter portraying a minor in a sexual performance. Proceeding under that theory, Gatson sought a warrant to conduct a controlled delivery of the package to Phillips's residence. R. at 391-92. Gatson postulated that a successful delivery would allow a search of the residence once Phillips took possession of the doll. Accordingly, he requested the following:

> Upon occupant of said residence taking receipt of the package containing the child sex doll, and after a reasonable period of time, the Affiant and other members of law enforcement anticipate executing a search warrant at the above listed residence to recover the said package containing the child sex doll and to search for any electronic devices capable of searching for and purchasing child sex dolls online, and any paper or other documentation regarding the search for and purchase of this and/or any other child sex doll. The Affiant requests this search warrant be issued to the address with the execution dependent only upon the stated circumstances. <u>The search warrant will not be executed unless the controlled delivery takes place.</u>
>
> Based on the above stated facts, the Affiant believes that Scott Phillips . . . is involved in the online purchase and subsequent possession of matter portraying a sexual performance by a minor. Evidence recovered from the above-described residence will enable officers to further investigate Scott Phillips and the online purchase of the child sex doll, as information regarding the purchase could help confirm the identities of the individuals involved in the transaction. The Affiant therefore believes the items listed in this Affidavit are currently at the location for which the warrant is sought.

Id. (emphasis in original). The District Court Judge reviewed Gatson's affidavit and issued a search warrant for a variety of electronic devices and electronic storage devices containing information "related to the online search for and purchase of items," any documentation related to online purchases or deliveries to the residence, and any financial documents containing information regarding the purchase of items from online sellers. R. at 394. Gatson executed the warrant on September 19, 2018, and conducted the search as planned. R. at 395. During the search, officers located additional sex dolls, marijuana, and drug paraphernalia. *Id*. Gatson arrested Phillips on one count of possessing a matter portraying sexual performance by a minor. R. at 396.

On September 19, 2018, the Kenton District Court held a preliminary hearing, at which Gatson testified as the only witness. At the completion of his testimony, Phillips moved for a dismissal of the charges due to lack of probable cause. On September 27, 2018, the District Court issued an order dismissing the felony charges against Phillips. R. at 397. In that order, the District Court provided a clear, detailed analysis of Kentucky Revised Statute ("KRS") 531.335, discussing whether it could be considered to apply to a doll that was not alleged "to be based on any actual person." R. at 398. After analyzing caselaw from the Kentucky and United States Supreme Courts, the District Court concluded that the statute in question had been found constitutional specifically because it required that the criminalized material depict sexually explicit images of a real person under the age of 18. R. at 399-400. Ultimately, the District Court concluded as follows:

> As of the date of the alleged offense in this case the court finds no Federal or Kentucky State law that has been enacted and signed into law preventing the importation, sale, purchase or possession of said dolls.
>
> As repulsive as the court finds this doll and the defendant's actions and shares the Commonwealth's concerns regarding the exploitation of children, it is the role of the Court to apply the law as written and follow precedent of the Kentucky and Federal Appellate Courts and not to make law or be a judicial activist by basing a ruling upon their [sic] personal belief and/or moral judgement [sic].

R. at 400. Accordingly, the District Court dismissed the felony charge of possessing or viewing matter portraying a sexual performance by a minor against Phillips due to lack of probable cause. However, the District Court kept on its docket the other misdemeanor drug charges, which were brought based on the marijuana and paraphernalia seized from Phillips's home. R. at 401.

After dismissal of Phillips's felony charge, Gatson requested additional search warrants for certain electronics that had been seized from Phillips's home during the original search. In support of the warrant applications, Gatson described the original investigation of the doll, and he included statements made by Phillips at the time of the original search that suggested that Phillips had used the internet to act on a sexual attraction toward children. R. at 402-17. The District Court signed, and Gatson executed, these warrants in early October of 2018, and they resulted in the discovery of evidence that led to new charges against

Phillips on possession of matter portraying a minor in a sexual performance, including seven new counts charged in a superseding indictment in June of 2019. On January 27, 2020, Phillips filed a motion to suppress all evidence, observations, and statements obtained as a result of the two sets of warrants due to an alleged lack of probable cause. R. at 419. On March 3, 2020, the Kenton Circuit Court conducted an evidentiary hearing, and nearly six months later, on August 4, 2020, it granted the motion and suppressed the incriminating evidence. R. at 426.

In its order, the Circuit Court opined that the fatal flaw in the case lay in the affidavit supporting the original warrant, which allowed seizure of "devices capable of storing information related to online purchases and searches for items to purchase" what Gatson believed to be an illegal sex doll. R. at 427. The Circuit Court in *Phillips* then conducted an analysis similar to the eventual appellate reviews of the warrant in this case. It concluded that Gatson had not provided sufficient evidence to establish a nexus between the doll, which was then legal to purchase and possess, and Gatson's belief that Phillips's devices would contain evidence of matter portraying a sexual performance by a minor. R. at 427-29. The Circuit Court also noted that the affidavit supporting the warrants from October of 2018 relied, at least in part, on evidence and statements determined to have been obtained improperly pursuant to the first invalid warrant, which had offered no basis for the search other than Phillips's taking possession of the delivered doll. R.

at 429. Finally, the Circuit Court concluded that the validity of the warrants could not be upheld by the "good-faith doctrine" for the following reason:

> Detective Gatson, an officer with the Kentucky State Police for more than 25 years who claims to have investigated crimes involving sexual abuse and exploitation, should have known that purchase and/or possession of a sex doll has not been deemed illegal before presenting his application for the warrant to the Judges.

R. at 430.

Having been advised of these *Phillips* facts and procedure, the Circuit Court, on remand of the case *sub judice*, conducted an evidentiary hearing on March 31, 2025, at which Gatson appeared and testified regarding both the proceedings in *Phillips* and their effects on the Master investigation and affidavit. Following that hearing, the Circuit Court issued a written Order, which held as follows:

> The court has reviewed the entire record, including the briefs filed by the parties with exhibits, considered the testimony and exhibits presented at the hearing, as well as the arguments of counsel. As always, this Court looks to the decision of the Appellate Courts for direction. Both the Kentucky Court of Appeals (COA) and the Kentucky Supreme Court opinions in this case give clear guidance to this Court in this matter.
>
> While this Court believes that it is reasonable for the detective to assume, because of his extensive expertise, that ordering a child sized anatomically correct sex doll is indicative of criminal activity and that these types of purchases heighten the suspicion that someone

> purchasing these dolls are also availing themselves of child pornography, this Court also hears loud and clear the COA and Supreme Court analysis of the 4th amendment applicable to this particular situation.
>
> Thus, the detective's belief that ordering or possession (even with his extensive expertise in the field) of a child sex doll does not under the law existing at the time of the offense establish probable cause to search the defendant's home and devices. There is no factual nexus between the legal ordering of the child sized sex doll and the likelihood that child pornography would be found on the defendants' devices or home. The search warrant does not allege facts that would constitute a crime at the time. No substantial proof has been presented to establish the probable cause that child pornography would be found in defendants' home or on his devices.

R. at 467-68. At the end of this portion of the Circuit Court's Order, that Court included a single footnote with citations to five cases decided by this Court, the Kentucky Supreme Court, and the United States Court of Appeals for the Sixth Circuit ("the Sixth Circuit"). The Circuit Court provided no analysis of the good-faith exception or the cases that it merely cited, and it included no analysis of the relevant procedural or factual background of the *Phillips* case. However, it did quote the final lines of the District Court's order dismissing Phillips's first felony charge for lack of probable cause. The Circuit Court then denied the Commonwealth's motion requesting additional findings of fact and a specific ruling on good faith, issuing an Amended Order with the addition of the following sentence: "This order is amended to reflect that this order is final and appealable." R. at 490. This appeal followed.

Standard of Review

As our Supreme Court has noted,

> The proper test for appellate review of a suppression hearing ruling regarding a search pursuant to a warrant is to determine first if the facts found by the trial judge are supported by substantial evidence, . . . and then to determine whether the trial judge correctly determined that the issuing judge did or did not have a "substantial basis . . . for conclud[ing]" that probable cause existed.

Commonwealth v. Pride, 302 S.W.3d 43, 49 (Ky. 2010). Should a reviewing Court determine that probable cause did not exist, that Court must then set the appropriate remedy for improperly obtaining evidence.

Although suppression of the evidence through application of the exclusionary rule is the primary remedy for Fourth Amendment violations, the Supreme Court of the United States ("SCOTUS") has made clear that "[e]xclusion is not a personal constitutional right, nor is it designed to redress the injury occasioned by an unconstitutional search." *Davis v. United States*, 564 U.S. 229, 236, 131 S. Ct. 2419, 2426, 180 L. Ed. 2d 285 (2011) (internal quotation marks and citations omitted). Instead, "deterrence of police misconduct is the primary, if not the only, legitimate objective of evidentiary suppression." *Crayton v. Commonwealth*, 846 S.W.2d 684, 688 (Ky. 1992). In so stating, the Kentucky

Supreme Court adopted the good-faith exception to the exclusionary rule as set forth by SCOTUS in *Leon*, noting that "a technically defective search warrant obtained in good faith after proper application to a judicial officer is preferable to an unsupervised and potentially fraudulent warrantless search." *Crayton*, 846 S.W.2d at 688-89.

In restating its adoption of the good-faith exception, our Supreme Court summarized this holding as follows:

> *United States v. Leon*, 468 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984), determined that evidence seized by police should not be excluded if it is obtained pursuant to a search warrant which may later be determined to be flawed if the officers executing the warrant had an objectively reasonable good-faith belief in the probable cause determination by the magistrate and the sufficiency of the warrant. In such cases, the evidence will not be suppressed.

Moore v. Commonwealth, 159 S.W.3d 325, 327 (Ky. 2005). To determine whether the good-faith exception is available to prevent suppression, our Supreme Court further directed that reviewing Courts may "properly consider[] matters outside the affidavit." *Id.* at 328. However, we continue to review legal conclusions *de novo*, including the Trial Court's decision about whether the good-faith exception to the exclusionary rule applies. *See Valesquez v. Commonwealth*, 362 S.W.3d 346, 349 (Ky. App. 2011).

Analysis

As a preliminary matter, we note that the Commonwealth and Master disagree on whether the Trial Court's Order sufficiently followed the Kentucky Supreme Court's directive to consider whether the good-faith exception applied to this case. Noting that Kentucky law requires a Trial Court to abide strictly by an Appellate Court's mandate, the Commonwealth argues that the Trial Court's failure to analyze specifically the effects of the *Phillips* case on the applicability of the good-faith exception violated the Supreme Court's directive on remand in this case. Appellant's Brief at 7-8. Master disagrees, noting that the Trial Court quoted a portion of one of the orders issued in the *Phillips* case in its findings, styled an order as a ruling on the good-faith exception, and cited to caselaw relevant to the good-faith exception before finding suppression to be appropriate. Appellee's Brief at 18. At oral argument, Master conceded that the Circuit Court could have offered greater detail or analysis in its findings. However, he still contends that the Order substantially concluded that Gatson could not have had an objectively reasonable belief that the warrant was supported by probable cause.

Regardless of the sufficiency of the Trial Court's Order, both parties agree that the issue is properly preserved for our review, as the Commonwealth properly (although unsuccessfully) moved for additional findings of fact – an effort that Master opposed. *Vinson v. Sorrell*, 136 S.W.3d 465, 471 (Ky. 2004). We note that the language of the Trial Court's Order focuses primarily on the existence of probable cause, largely restating the finding of the Appellate Courts that no probable cause existed rather than complying with the Supreme Court's mandate and clearly applying the law governing the good-faith exception to the facts with any specificity. Accordingly, where the Trial Court neglects to provide the basis for its ruling, even when it has been explicitly instructed to do so, we are left to decipher its reasoning by inference. Here, the Circuit Court provided no analysis of the good-faith exception and only listed a citation to a series of cases in a footnote. These actions are not compliant with the Supreme Court's mandate.

So as not to engage in guesswork, we have considered the five cases cited by the Trial Court, and we note that one, *Beemer v. Commonwealth*, 665 S.W.2d 912, 913 (Ky. 1984), merely adopts the "totality of the circumstances test" set forth by SCOTUS in *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). Because *Beemer* pre-dates *Crayton* by several years, it offers no insight into the application of the good-faith exception where the *Gates* test has been applied and where no probable cause is found to support the issue of a warrant. Of the remaining four cases cited, only one of the reviewing Courts found that the good-faith exception would not apply, as the officer had no reasonable basis to believe in the sufficiency of the warrant due to his own misconduct in preparing the warrant application. *See Hensley v. Commonwealth*, 248 S.W.3d 572

(Ky. App. 2007). No misconduct is alleged here. Although Master claims in his brief that the affidavit is misleading, counsel for Master agreed at oral argument that the record contained no evidence of willful misconduct or bad faith on Gatson's part. *Hensley* is thus distinguishable. In the final three cases cited, the Kentucky Supreme Court and the Sixth Circuit applied the good-faith exception to prevent the suppression of evidence. *See Beckam v. Commonwealth*, 284 S.W.3d 547 (Ky. 2009); *United States v. Carpenter*, 360 F.3d 591 (6th Cir. 2004); *United States v. White*, 874 F.3d 490 (6th Cir. 2017).

Without any analysis or discussion from the Trial Court to review, we cannot determine from the cited cases the grounds on which the Trial Court determined that the good-faith exception would not apply to the case *sub judice*. In this void, Master argues that we should read into the Order to find that "its conclusion was Detective Gatson's belief in probable cause was objectively too unreasonable to justify the exception." Appellee's Brief at 27. He further asserted this position at oral arguments, concluding that the Circuit Court appeared convinced that the warrant lacked any possible justification for Gatson to conclude it was supported by probable cause. The Commonwealth clearly disagrees with such a conclusion, arguing that Gatson's reliance on the search warrant was reasonable given the totality of the circumstances. Appellant's Brief at 13. At oral arguments, the Commonwealth highlighted the testimony offered by Gatson regarding the *Phillips* investigation, the explanation of his reasoning for changing his approach to the investigation in this case, and the sources on which he relied to connect this doll to the possession of illicit material. In light of this evidence, the Commonwealth asks that we reverse the Circuit Court's suppression order, which focused almost entirely on the existence of probable cause rather than the requested good-faith analysis, and find admissible the evidence seized from Master's residence.

Despite the lack of clear analysis provided in the Order on appeal, our *de novo* review must still comply with the Supreme Court's directive on Master's original appeal. Thus, we are required to assess both the application of the good-faith exception and the matter of Gatson's prior experience with evaluating the ordering of a child sex doll in *Phillips*. In making this determination, we must first consider the circumstances in which the good-faith exception is not available to bar suppression. Our Supreme Court in *Crayton* identified four instances in which the good-faith exception to the exclusionary rule would not apply. This Court has summarized those instances as follows:

> Exclusion of evidence remains an appropriate remedy only where the circumstances reveal one of the following circumstances: (1) the affidavit contains "false or misleading information"; (2) the judge who issued the search warrant has abandoned his "detached and neutral role"; (3) the affidavit is so lacking in indicia of probable cause such that the officer's reliance cannot be reasonable; or, (4) the warrant is "facially deficient by

> failing to describe the place to be searched or the thing to be seized."

Commonwealth v. Opell, 3 S.W.3d 747, 752 (Ky. App. 1999) (citing *Crayton*, 846 S.W.2d at 687-88).

On appeal, the Commonwealth contends that none of the listed circumstances apply in this case, and therefore, the Trial Court should have applied the good-faith exception to suppressing the evidence seized from Master's home. Neither party alleges any evidence that the signing magistrate, a Kenton District Court Judge, abandoned her role or that the affidavit failed to identify the place to be searched or the thing(s) to be seized. Instead, Master claims that the Trial Court clearly and appropriately agreed with his position that either Gatson had provided misleading information in his affidavit, thereby making his reliance on its probable cause determination unreasonable, or that the affidavit was so "bare bones" that it was entirely unreasonable for Gatson to rely on it. Appellee's Brief at 18. Accordingly, our review will focus on the parties' dispute over whether Gatson intentionally misled the Judge who issued the warrant or that the warrant was so lacking in any indicia of probable cause as to make his reliance on it unreasonable.

First, Master's brief argues that Gatson's affidavit misled the reviewing Court as to his training and experience regarding child sex dolls, his investigation into the location that the doll had been purchased, and his possession of any evidence that Master had ordered the doll in question. Intertwined with this argument is Master's assertion that Gatson should have known from his experience in the *Phillips* case that the act of ordering or possessing a child sex doll could not provide probable cause to issue a search warrant. As a result, Master contends that, even if Gatson did not intentionally mislead or offer false information in the warrant affidavit, it was still objectively unreasonable for him to believe that there was probable cause for a search warrant.

To apply successfully for the good-faith exception, "[an] officer must have an objectively reasonable belief in the sufficiency of the warrant and the probable cause determination. If the affidavit contains false or misleading information, the officer's reliance cannot be reasonable." *Crayton*, 846 S.W.2d at 687-88. As the Commonwealth notes, Master has offered no proof that Gatson "omitted facts deliberately or recklessly" from his affidavit. *Moore*, 159 S.W.3d at 328. Instead, Master asserts that Gatson's statements regarding his training and experience suggested a greater expertise in his knowledge of child sex dolls than his experience would support. Through counsel at oral argument, Master suggested that the existence of a single, comparable case involving a similar doll should be an insufficient basis to claim any meaningful experience in a warrant affidavit. He also argues that Gatson's framing of this experience and his reference in the affidavit to "any person ordering a child sex doll" misled the reviewing Judge to believe that Gatson had evidence that Master was the person who ordered the doll.

At the hearing, both the Commonwealth and Master questioned Gatson regarding his investigation and preparation of the warrant affidavit, which frequently became intertwined with questions regarding his previous experience in other investigations. Gatson testified that he had viewed the package label, the doll it contained, and either a packing label or invoice contained within the box. As the Circuit Court noted in its Order, Gatson confirmed that the box label and internal documentation were directed to Master at the same address. Gatson testified that he had conducted surveillance of the address listed on the shipping labels and identified a vehicle parked outside that was registered to Master. However, as the Commonwealth reiterated, Gatson did not focus on the origin of the doll itself, as he understood from the *Phillips* dismissal that the doll itself was not illegal contraband. Regardless, counsel for Master asked a series of questions about the sufficiency of the investigation and any steps taken to identify Master as the person who ordered the doll or to identify the person or business from which the doll was purchased.

Like many of the points raised by Master in arguments before this Court, these questions addressed issues fundamental to the Supreme Court's past determination that Gatson had identified an insufficient nexus tying Master's address to evidence of criminal activity – and not related directly to the current dispute about the good-faith exception. In that vein, Master argues that Gatson's testimony confirms that he had no evidence linking Master to the commission of a crime when he prepared the warrant affidavit. This assertion is generally consistent with the Circuit Court's findings in its Order. However, the Commonwealth notes that Gatson also testified that, at that stage of his investigation, he had not intended to identify Master conclusively as the person who ordered the doll. Instead, Gatson described taking a different approach in that investigation due to the still-unfolding events in the *Phillips* prosecution at the time that he became aware of the package addressed to Master. Thus, the Supreme Court's order to consider the procedural posture of *Phillips* first comes strongly into play.

At the time that Gatson began the investigation into the doll from the package addressed to Master, the District Court had dismissed some of the *Phillips* charges specifically because the possession of the doll was not in violation of KRS 531.335. Critically, the District Court's order did not directly address the validity of the search at all. In fact, and contrary to Master's theory, the misdemeanor drug charges based on the proceeds of that search were allowed to proceed. Moreover, at the time that he began the Master investigation, Gatson had already requested and executed new search warrants for Phillips's devices, which were found to contain additional material that resulted in seven new counts of matter portraying a minor in a sexual performance by superseding indictment in June of 2019. Despite the references by Master to the eventual suppression order by the *Phillips* Circuit Court, Phillips's counsel had not yet filed a motion to suppress when Gatson began his investigation into the package addressed to Master. Accordingly, while Gatson then knew that possession of a child sex doll itself was not illegal, he had observed a correlation. To wit, the only other doll that he had ever personally intercepted had been ordered online by a person who admitted a sexual attraction to children and also possessed other matter portraying a minor in a sexual performance.

Additionally, Gatson testified that the publicity of the *Phillips* case had led to other conversations with law enforcement and policy specialists regarding the issue of similar dolls and their roles in the types of crimes against children that Gatson investigated. While counsel for Master suggested in his oral arguments that the description of these conversations was too vague to be meaningful, he failed to persuade us. Although Gatson did not recall the names of any person he conversed with on the topic, the Commonwealth rightly observed that Gatson provided details on several, specific, individual conversations. Moreover, we take note that Gatson testified that he had ended his employment with ICAC prior to the hearing in order to accept a position with another law enforcement agency. As a result, he no longer had access to the official copies of his notes on either of the investigations in question, which had both taken place at least five years prior to his testimony.

Under these circumstances, Gatson did not intentionally or recklessly misrepresent his professional knowledge and experience in his affidavit for a warrant to search Master's address for any devices that could contain such material. Gatson accurately described his experience in law enforcement, the investigation he conducted into the package addressed to Master's residence, and the general information he knew about similar dolls. His failure to prove conclusively that Master ordered the doll does not alter this fact. A search warrant is not required to pin a particular person to a specific crime, but only to establish the likelihood that evidence of a crime will be found in the place to be searched. *See Zurcher v. Stanford Daily*, 436 U.S. 547, 559-60, 98 S. Ct. 1970, 1978, 56 L. Ed. 2d 525 (1978). Accordingly, Gatson's warrant application reasonably connected the search warrant to the address on the package rather than Master as the addressee.

Without reasonable question, Gatson failed to provide a sufficient nexus to establish probable cause for a search warrant in his affidavit. We so held in the last appeal of this case, as did our Supreme Court. However, we do not find that Gatson misled the signing Judge as to any point in the affidavit, including his recitation of the evidence bridging the doll with Master's address and the grounds on which he believed that matter portraying sexual performance by a minor could be located at that address. In fact, both Kentucky and Federal Courts have set a high bar to defeat the good-faith exception on these grounds, doing so primarily in cases where the officer completing the affidavit and executing the warrant has knowingly misrepresented the evidence of a crime or the place to be searched, the identity or reliability of an informant, or the dates that complaints of suspicious activity had been received. *See Guth v. Commonwealth*, 29 S.W.3d 809 (Ky. App. 2000); *United States v. Baxter*, 889 F.2d 731 (6th Cir. 1989); *Hensley*, 248 S.W.3d 572.

Although the Circuit Court cited *Hensley* in its Order, Master has not alleged or provided any evidence of the severe deficiencies noted in that case, which involved misrepresentation of complaints received regarding possible manufacture of methamphetamine, a "general statement alleging knowledge of the possibility of illegal conduct[,]" and a failure of the affidavit to connect the alleged smell of "ether" to the manufacture of methamphetamine. *Hensley*, 248 S.W.3d at 577-78. Our Court in *Hensley* also expressed deep concern that the inclusion of the smell of ether in the affidavit appeared to have been an agreed decision by the investigating officers and that no source of ether was recovered on the premises during the search. Because the Trial Court had relied heavily on that misrepresentation to save an affidavit that it had found to be thoroughly deficient, the Court of Appeals concluded: "Clearly, the questionable veracity and reliability of Officer Hodge's assertion places a cloud upon his 'good[-]faith' reliance on the search warrant." *Id.* at 578.

In contrast, Master can point to no portion of Gatson's affidavit in which he materially misrepresented his investigation, his lengthy career in law enforcement, or his recent experience with a similar doll. Instead, the few omissions that Gatson made in the affidavit, such as Master's payment information on the slip inside the package and Gatson's previous investigation of websites that sold similar dolls, would instead bolster the details of an investigation that our Supreme Court found to be too limited to establish probable cause. As the Commonwealth emphasized at oral arguments, Gatson adjusted his approach to investigating the case at bar based on the initial rulings in the *Phillips* case. Accordingly, he chose not to emphasize information about the doll itself and its purchase, focusing his affidavit instead on the knowledge he had gained about the connection between possession of similar dolls and possession of child sex abuse material. This effort appears consistent with Gatson's decision to omit any further details about Master's payment information or any of Gatson's other attempts to identify the specific origins of the doll.

When considering a good-faith analysis, our Supreme Court has reiterated the findings of Federal Courts and noted that "we must look to the totality of the circumstances, including any information known to the officer but not presented to the issuing magistrate." *Moore*, 159 S.W.3d at 328. Ultimately, the available evidence is generally consistent with the Commonwealth's assertion that Gatson did not intend to try to link Master himself to the ordered doll at that stage of the investigation or to mislead the signing Judge to that effect.

Finding no evidence for Master's first contention that Gatson misled the Judge in his affidavit for the warrant, we must next assess whether the evidence supports the Commonwealth's position that it was not otherwise unreasonable for Gatson to rely on the signed warrant's explanation of probable cause. Here again, Master argues that Gatson's experience in *Phillips* should preclude reliance on a search warrant based on interception of a then-legal sex doll. However, given the previously discussed procedural posture in *Phillips* at the time that Gatson prepared the affidavit in this case, we do not find this contention convincing.

On the contrary, Gatson testified that his experience in the dismissal of the *Phillips* charges led him to seek assistance from the Commonwealth Attorney's Office to articulate the connection between the order of the doll and his inference that the person who ordered the doll from the subject residence would also be in possession of other matter portraying sexual performance by a minor. Unlike the *Phillips* warrant that cited the doll itself as contraband, Gatson framed the affidavit for Master's residence in terms of the experience that he had gained throughout his law enforcement career and in the wake of the *Phillips* investigation.

This testimony introduces two factors that we must consider in applying the good-faith exception. First, while an officer's training and experience cannot supplant the need to create a substantial nexus for a probable-cause determination, they can be considered in a good-faith analysis to determine an officer's reasonable reliance on a warrant. *United States v. Schultz*, 14 F.3d 1093, 1098 (6th Cir. 1994) ("Moreover, although we have held that his 'training and experience' were not sufficient to establish a nexus of probable cause between that crime and the safe deposit boxes, the connection was not so remote as to trip on the 'so lacking' hurdle."). Second, SCOTUS has also noted that the involvement of a supervising officer and/or prosecuting attorney in the preparation of an affidavit weighs in favor of finding reasonable reliance on that warrant. *See Messerschmidt v. Millender*, 565 U.S. 535, 554-55, 132 S. Ct. 1235, 1249-50, 182 L. Ed. 2d 47 (2012). "Indeed, a contrary conclusion would mean not only that [the officers] were plainly incompetent, but that their supervisor, the deputy district attorney, and the Magistrate were as well." *Id.* at 554, 132 S. Ct. at 1249 (internal quotation marks and citation omitted).

While it is certainly possible for a warrant to lack a sufficient nexus to establish probable cause after such a review, as was determined in the original appellate reviews of the warrant in this case, the Courts have clearly determined that the fact of an insufficient nexus for probable cause does not preclude reasonable reliance for the purpose of the good-faith exception. Instead, we must ask, as in *Leon*, whether the affidavit was "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Leon*, 468 U.S. at 923, 104 S. Ct. at 3405 (quoting *Brown v. Illinois*, 422 U.S. 590, 610-11, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975) (Powell, J., concurring in part)).

It is this tension between Gatson's attempt to establish probable cause and the Circuit Court's determination that he failed to do so that Master highlights. In oral arguments, counsel for Master suggested that Gatson had done no more than rely on stereotypes and biases to label Master a deviant and a criminal based solely on his assumed ordering of what he characterized as a legal masturbatory aid. Based on this conclusion, Master contends that, while Gatson did not intentionally mislead the reviewing Judge, then he still offered a "bare bones" affidavit that stated only his suspicion that evidence of a crime could be found at Master's residence. As the Sixth Circuit has noted,

> a bare-bones affidavit is a conclusory affidavit, one that asserts "only the affiant's belief that probable cause existed." *United States v. Williams*, 224 F.3d 530, 533 (6th Cir. 2000) (quoting *United States v. Finch*, 998 F.2d 349, 353 (6th Cir. 1993)). It provides nothing more than a mere "guess that contraband or evidence of a crime would be found," *United States v. Schultz*, 14 F.3d 1093, 1098 (6th Cir. 1994), either "completely devoid" of facts

> to support the affiant's judgment that probable cause exists, *United States v. Carpenter*, 360 F.3d 591, 595-96 (6th Cir. 2004) (en banc), or "so vague as to be conclusory or meaningless." *United States v. Frazier*, 423 F.3d 526, 536 (6th Cir. 2005) (quoting *Carpenter*, 360 F.3d at 596).

United States v. White, 874 F.3d 490, 496 (6th Cir. 2017). The Sixth Circuit further elaborated on the difference between a bare-bones affidavit and one that, "although falling short of the probable-cause standard," contained some "minimally sufficient nexus between the illegal activity and the place to be searched." *Id*. at 496-97 (quoting *Carpenter*, 360 F.3d at 596).

> A bare-bones affidavit should not be confused with one that lacks probable cause. An affidavit cannot be labeled "bare bones" simply because it lacks the requisite facts and inferences to sustain the magistrate's probable-cause finding; rather, it must be *so* lacking in indicia of probable cause that, despite a judicial officer having issued a warrant, *no* reasonable officer would rely on it. *United States v. Helton*, 314 F.3d 812, 824 (6th Cir. 2003). The distinction is not merely semantical. There must be daylight between the "bare-bones" and "substantial basis" standards if *Leon*'s good-faith exception is to strike the desired balance between safeguarding Fourth Amendment rights and facilitating the criminal justice system's truth-seeking function. *See Leon*, 468 U.S. at 906-07, 913-21, 104 S.Ct. 3405; *Carpenter*, 360 F.3d at 595.

White, 874 F.3d at 497.

In applying the good-faith exception, Kentucky Courts have followed a similar rationale. This Court, in *Beckam v. Commonwealth*, 284 S.W.3d 547

(Ky. App. 2009), addressed the very role of the good-faith exception in cases in which a warrant falls somewhere in between the "bare bones" judgment that no officer could find reasonable and the "substantial basis" for finding probable cause. In *Beckam*, this Court found that a search warrant for Beckam's residence contained a substantial basis for probable cause based on a line of federal, Fourth-Amendment cases noting that an officer could reasonably infer a "common sense" connection between evidence of a suspect's drug dealing and the likelihood that additional evidence could be found at the suspect's home. *Id.* at 549-50. Our *Beckam* Court also cited our Supreme Court's decision in *Moore*, in which computer-generated checks were found to create a sufficient nexus between Moore's passing of the fraudulent instruments and a search of his home, where he would be most likely to use a computer to create the instruments. *Id*. at 550 (quoting *Moore*, 159 S.W.3d at 330). However, this Court also recognized in *Beckam* that our holding there was not entirely consistent with our previous decision in *Guth*, where the lack of clear connection between a controlled drug deal at a separate location was not considered a sufficient nexus to search Guth's residence. *Beckam*, 284 S.W.3d at 551 (citing *Guth*, 29 S.W.3d at 810-11). In finding that the good-faith exception would bar suppression regardless of its ultimate probable-cause determination, the *Beckam* Court concluded:

> Were we to have relied upon *Guth* as opposed to *Moore* and the weight of the federal cases, we could not have

> held that the officer's belief in the existence of probable cause below was wholly unreasonable. *See* 29 Am.Jur.2d *Evidence* § 616 (2008) ("[w]here evidence is sufficient to create disagreement among thoughtful and competent judges as to the existence of probable cause, it cannot be said that police officers who provide a truthful affidavit to a neutral magistrate who then issues a warrant are not objectively reasonable in believing that they have probable cause").

Id.

As our Supreme Court's divided opinion in *Master* reveals, the question of a substantial nexus for probable cause in this very case was not immediately straightforward or clear. In fact, the only point on which every reviewing member of the Appellate Courts agreed was that the available facts did not preclude applicability of the good-faith exception. In large part, both the Supreme Court's and this Court's hesitation to consider the good-faith exception in *Master* turned on the minimally-developed record regarding the *Phillips* prosecution. But now, with the benefit of hindsight and a complete record, we find that Gatson made reasonable inferences in drafting his affidavit with the information and guidance then available to him. Although all of the *Phillips* warrants would eventually be invalidated and the resulting evidence suppressed, no such determination had been made at the time Gatson completed the affidavit in this case. Instead, it appears that Gatson received the District Court's ruling on the legality of ordering and possessing the type of doll in question, while also continuing an investigation that his experience suggested would result in finding the evidence of a crime.

Ultimately, we find no evidence that Gatson deliberately falsified information or misled the reviewing Judge. Gatson's affidavit permissibly relied on his training and experience to create a minimally-sufficient nexus between the address on the intercepted package and the likelihood that "child pornography" could be found at any location tied to the doll that it contained. Under the totality of the circumstances, we find Gatson's reliance on the signed warrant to be objectively reasonable. As the only legitimate purpose of suppression is to deter future misconduct by law enforcement, we cannot conclude that suppression is appropriate in a case in which the officer appears to have made concerted attempts to establish probable cause for a search warrant and then relied on the determination of the Commonwealth's Attorney and the reviewing Judge that he had succeeded. Despite Master's assertions to the contrary, we are ultimately persuaded by the Commonwealth's argument that suppression is not an appropriate remedy for any of the alleged errors.

Finally, we must note that we understand the Circuit Court's trepidation in making the ruling at issue here. When it first denied suppression and was reversed, it could seem that the Appellate Courts wanted the evidence suppressed. But what we asked for was a further evidentiary hearing and ruling on the facts and law of the good-faith exception, regardless of what the ultimate outcome would prove to be. The Trial Court has now conducted the hearing, although it was reticent to continue to deny suppression of the evidence or delve into the nuances of the law on the good-faith exception. As our review is *de novo*, and as we now have a fully developed record, we are enabled to discuss and rule upon the issues of law without further edification from the Circuit Court. However, we would have liked to have heard its opinion on the matter in further detail. But we disagree strongly with the dissent's characterization of our *de novo* review of the law, which is required, as fact-finding, which this Opinion plainly shows we have not done. We needed the Trial Court to obtain evidence through a hearing, which it ultimately did. We neither disturb that Court's findings of fact nor create our own. The Trial Court's legal analysis, however, was unfortunately lacking. And it is well within our role and ability, not to mention duty, to make conclusions as a matter of law upon the undisputed facts heard by the Trial bench.

Conclusion

For the foregoing reasons, and after full consideration of the record, briefs, and oral arguments in this case, we find that the good-faith exception applies, and we reverse the Circuit Court's Order to suppress the evidence seized from Master's residence. With the application of the good-faith exception, the evidence against Master becomes admissible once again, just as it was when

Master entered his conditional guilty plea. Because that plea has never been challenged or set aside, there is no cause to remand this case to the Circuit Court for further proceedings. That plea of guilty, and Master's resulting convictions, remain in place, as does the non-suppressed evidence that supports them.

CALDWELL, JUDGE, CONCURS.

TAYLOR, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

TAYLOR, JUDGE, DISSENTING: Respectfully, I dissent. Rather than reversing the circuit court's order entered June 18, 2025, as amended on July 3, 2025, I would vacate and remand this action back to the circuit court to comply with the Kentucky Supreme Court's mandate in *Commonwealth v. Master*, 706 S.W.3d 140, 153-54 (Ky. 2024).

Therein, the Supreme Court, concluding that there was insufficient probable cause to issue the warrant, remanded this case back to the circuit court for an evidentiary hearing, to address whether the good-faith exception applies to this case to validate the otherwise unreasonable search. *Id.* at 153-54. The circuit court conducted the evidentiary hearing on March 31, 2025. Detective Gatson was the only witness. And, as the majority correctly notes, the court below provided no analysis regarding the good-faith exception, no discussion or analysis of the

Phillips[1] case as pertains to this case as instructed, and failed to state the specific facts relied on by the court to conclude that the good-faith exception does not apply in this case. Rather than vacate and remand, the majority has elected to step into the shoes of the circuit court and by way of *de novo* review, address the evidence presented directly on the merits. I believe this is reversible error.

In Kentucky, when an appellate court remands a case to a trial court, a "trial court must strictly follow the mandate of the appellate court." *Inman v. Inman*, 648 S.W.2d 847, 849 (Ky. 1982) (quoting 5 AM. JUR. 2D, *Appeal and Error*, § 744). In *James v. James*, 636 S.W.3d 549 (Ky. App. 2021), this Court held:

> Where an appellate court has passed on a legal question and remanded the case to the court below for further proceedings, the legal determinations may not be revisited on a subsequent appeal in the same case. [Citing *Inman*]. The trial court must strictly follow the mandate set out in the prior appellate decision. In a subsequent appeal following remand, this Court's role is limited to whether the trial court properly construed and applied the mandate.

Id. at 554 (citations omitted).

The majority has effectively assumed the role of fact-finder, which I believe does not comply with the Supreme Court's mandate or the limitations on

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[1] *Commonwealth of Kentucky v. Scott Lee Phillips*, Case No. 18-F-01698, Kenton District Court (2018).

our review as set out in *James*. In the alternative, if this Court is permitted to engage in fact-finding regarding the application of the good-faith exception, I believe the majority has also erred for several reasons.

First, the majority failed to address relevant facts consistent with the mandate from the Supreme Court. Specifically, the Supreme Court was concerned about the lack of development of underlying facts as pertains to the individual involved, Kevin Master.[2] *Master*, 706 S.W.3d at 149. At the evidentiary hearing, Detective Gatson admitted that he did not conduct a criminal background check on Master, that he personally did not conduct an open source intelligence review,[3] and that he failed to subpoena any internet or social media platforms/websites to determine Master's involvement in child pornography or other related criminal activity. In my opinion, Detective Gatson's failure to research or investigate Master's background clearly looks to whether Gatson acted in good faith in obtaining or relying upon the search warrant. In other words, the actual investigation by Gatson into underlying facts to support the warrant was minimal at best. As the Supreme Court noted, there must be "'more than conclusory

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[2] The Supreme Court expressed concern with the Commonwealth's logic that common sense dictated that one who purchased a child sex doll was also engaged in other criminal acts regarding children without other supporting facts. These underlying facts are equally relevant to determine whether Gatson acted in good faith in obtaining and relying upon the warrant.

[3] Gatson testified that an Intelligence Unit confirmed where Master lived and relayed that information to him.

allegations' in the affidavit to pass constitutional muster." *Master*, 706 S.W.3d at 148 (quoting *Hensley v. Commonwealth*, 248 S.W.3d 572, 576 (Ky. App. 2007)). A police officer relying only upon one's experience and background, without more, especially in failing to investigate the background of the person to be searched, does not constitute good faith in relying on a warrant procured by that officer. *Master*, 706 S.W.3d at 152. And, mere suspicion of criminal activity does not overcome the necessity of specific underlying facts to support the warrant. *Id.* at 149.

Second, as concerns Detective Gatson's extensive experience involving child exploitation, he admitted that his experience involving the possession of child sex dolls was limited to his involvement with the *Phillips* case and two phone conversations with employees at Homeland Security Investigations, one being in Washington D.C. and one being in Hawaii. He could not identify the individuals names or their official positions. Given that possession of a child sex doll in October of 2019, was not illegal under federal or state law, when Gatson gave his affidavit for the warrant, I harbor grave doubt that his experience in dealing with child sex dolls and child exploitation alone was sufficient to constitute good faith in obtaining or relying upon the warrant. At best, Gatson appeared to be doing an "end run" to avoid the problems he experienced upon obtaining the warrant in the *Phillips* case.

Finally, and perhaps most disturbing, I posed to counsel for the Commonwealth the following hypothetical at oral argument: Could a search warrant be issued to search my home if a friend committing a prank, or a foe seeking to frame me, ordered a child sex doll from China and had it delivered to my home, assuming of course I had no criminal history or background as a sexual predator, offender, child molester, or consumer of child pornography? Counsel's answer was "yes."[4] In my opinion, neither Section 10 of the Kentucky Constitution nor the Fourth Amendment to the United States Constitution can condone such an egregious violation of one's constitutional rights under this hypothetical. Yet in this case, with nothing more than a box containing a child sex doll addressed to Master, Gatson believes he acted in good faith to search Master's residence. Notwithstanding the repulsiveness of an adult owning a child sex doll, the constitutional protections afforded by the Fourth Amendment must be upheld to protect all citizens from unreasonable searches.

Accordingly, based on the evidence presented at the March 31, 2025, hearing, in my opinion there are not sufficient underlying facts to support the application of the good-faith exception.

[4] Ironically, at the evidentiary hearing, Gatson was posed a similar question which he effectively affirmed would justify the issuance of a warrant. March 31, 2025, Hearing Transcript at 4:11:00 – 4:12:55.

For these reasons, I would vacate and remand for the circuit court's compliance with the Supreme Court mandate, or in the alternative, affirm the circuit court's order granting the motion to suppress.

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