

Commonwealth Of Kentucky

Court of Appeals

NO. 2000-CA-001735-MR

JAMIE SMITH

APPELLANT

ON REMAND FROM KENTUCKY SUPREME COURT
NO. 2001-SC-0895-D

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, JUDGE
ACTION NO. 98-CR-002566

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
REVERSING AND REMANDING
** **

BEFORE: BARBER, COMBS, AND TACKETT, JUDGES.

TACKETT, JUDGE: This matter is before us on remand from the Kentucky Supreme Court, which vacated our prior opinion for reconsideration in light of Rogers v. Commonwealth, Ky., 86 S.W.3d 29 (2002), decided after our opinion in this matter was rendered. Upon consideration of this new authority, we reverse and remand the matter for new trial.

Jamie Smith was convicted of reckless homicide and sentenced to five years' imprisonment in connection with the death of an infant she was babysitting. The Louisville Police

Department obtained a confession from Smith after the detective, Sergeant Eddie Payton, led her to believe that she had failed a polygraph examination when she had in fact passed it. Smith sought, at trial, to introduce this fact, and was prevented from doing so by the trial court under its interpretation of the then-applicable law of Commonwealth v. Hall, Ky. App., 14 S.W.3d 30 (1999). This Court affirmed the decision of the trial court, but the Kentucky Supreme Court vacated and remanded our opinion for consideration in light of Rogers, *supra*.

The Rogers case, which involves a confession obtained by the same detective using the same tactics, held that the defendant should have been permitted to introduce evidence of the circumstances surrounding the confession, including the deceptive tactics used by the police in leading the defendant to believe that he had failed a polygraph examination when in fact he had not. The Commonwealth argued in that case, as it argued in this one, that the long-standing exclusion of evidence of polygraph examinations should prevent the defense from introducing evidence of the results of the polygraph examination. The Supreme Court, however, clearly states in that opinion that "the defendant's right to present a defense trumps our desire to inoculate trial proceedings against evidence of dubious scientific value."

In light of this new authority, we conclude that the trial court committed reversible error by preventing Smith from introducing evidence of the circumstances surrounding the confession. We reverse and remand the matter for a new trial in accordance with this opinion.

ALL CONCUR.

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