

11:00 AM DI

MARSHALL

Run Date: 7/7/2023 3:08:42PM

DocketList.Rpt

Court **B** DISTRICT COURTROOM
Judge **HON. JACK TELLE**

Prep Info 228802

06/15/2023 12:35 PM 3960353

07/10/2023 Court Docket
Page 18 of 92
5456277

13 DI 22-M-00375 COMMONWEALTH VS. MCDONALD, RUSSELL BRIAN

MCDONALD, RUSSELL BRIAN

1975 M W

**495491



BUNDRICK, DAVID THOMAS

ATTORNEY FOR DEFENDANT

@90025448586

HILBRECHT, MATT

COMPLAINING WITNESS

MCSO52MH

MCDONALD, RUSSELL BRIAN

DEFENDANT / RESPONDENT

@90025393110

Bail Credit Denied Danger to self or others Flight Risk

PRETRIAL CONFERENCE

- still under Review

OTBE

cont to 7/31/23 @ 2pm

ENTERED 7/10/23
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: mg D.C.

() Costs Waived due to indigence () Installment / Deferred Payment

13

1 10/22/2022 2N3420574-1

0016720

17545(2)

REGISTER SEX OFFENDER PUBLIC PLAYGROUND
RESTRICTIONS (M) (A)

01:00 PM DI

MARSHALL

Run Date: 6/20/2023 3:40:52PM

DocketList.Rpt

Court B DISTRICT COURTROOM
Judge HON. JACK TELLE

Prep Info 220656

05/11/2023 09:26 AM 3985354

06/21/2023 Court Docket
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5343857

69

DI 22-M-00375 COMMONWEALTH VS. MCDONALD, RUSSELL BRIAN

MCDONALD, RUSSELL BRIAN

1975 M W

**495491



BUNDRICK, DAVID THOMAS

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MCSO52MH

MCDONALD, RUSSELL BRIAN

DEFENDANT / RESPONDENT

@90025393110

Bail Credit Denied Danger to self or others Flight Risk

PRETRIAL CONFERENCE

ENTERED 6/21/23
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: mg D.C.

Cont to 7/10/23 @ 11am

() Costs Waived due to indigence

() Installment / Deferred Payment

69

I 10/22/2022 2N3420574-1

0016720

17545(2)

REGISTER SEX OFFENDER PUBLIC PLAYGROUND
RESTRICTIONS (M) (A)

Court B DISTRICT COURTRC 1
Judge HON. JACK TELLE

Prep Info 20

03/16/2023 10:56 AM 3951020

05/24/2023 Court Docket

Page 4 of 7

5194324

38 DI 22-M-00375 COMMONWEALTH VS. MCDONALD, RUSSELL BRIAN

MCDONALD, RUSSELL BRIAN

1975 M W

**495491



- BUNDRICK, DAVID THOMAS
- HILBRECHT, MATT
- MCDONALD, RUSSELL BRIAN

ATTORNEY FOR DEFENDANT
COMPLAINING WITNESS
DEFENDANT / RESPONDENT

ENTERED 5/24/23
TIFFANY FRALIX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: *[Signature]* D.C.

- Bail Credit Denied
- Danger to self or others
- Flight Risk

Darnall

*Brittany Hargrove sworn & testified
Briefs to be filed
Cont to 6/21/23 @ 1pm*

PRETRIAL CONFERENCE

() Costs Waived due to indigence () Installment / Deferred Payment

38

1 10/22/2022 2N3420574-1

0016720

17545(2)

REGISTER SEX OFFENDER PUBLIC PLAYGROUND
RESTRICTIONS (M) (A)

11:00 AM DI

MARSHALL

Run Date: 4/18/2023 4:11:43PM

ocketList.Rpt

Court B DISTRICT COURTROOM
Judge HON. JACK TELLE

Prep Info 207120 03/16/2023 10:50 AM 3933919

04/19/2023 Court Docket
Page 54 of 71
4896997

38 DI 22-M-00375 COMMONWEALTH VS. MCDONALD, RUSSELL BRIAN

MCDONALD, RUSSELL BRIAN

1975 M W

**495491



BUNDRICK, DAVID THOMAS

ATTORNEY FOR DEFENDANT

@90025448586

HILBRECHT, MATT

COMPLAINING WITNESS

MCSO52MH

MCDONALD, RUSSELL BRIAN

DEFENDANT / RESPONDENT

@90025393110

Bail Credit Denied Danger to self or others Flight Risk

✓ Jason Parnall - county atty

MOTION HOUR

MOTION TO DECLARE KRS 17.545 VOID FOR VAGUENESS

Rachel Todd sworn & testified
Defense exhibits 1-4 admitted

Cont to 5/24/23 @ 11am

() Costs Waived due to indigence () Installment / Deferred Payment

ENTERED 4/19/23
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: mg D.C.

38

1 10/22/2022 2N3420574-1

0016720

17545(2)

REGISTER SEX OFFENDER PUBLIC PLAYGROUND
RESTRICTIONS (M) (A)

Judges notes
in chambers

10:00 AM DI

MARSHALL

Run Date: 2/14/2023 4:45:26PM

DocketList.Rpt

Court B DISTRICT COURTROOM
Judge HON. JACK TELLE

Prep Info 193766

01/24/2023 12:42 PM 3885853

02/15/2023 Court Docket
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4611621

DI 22-M-00375

COMMONWEALTH VS. MCDONALD, RUSSELL BRIAN

MCDONALD, RUSSELL BRIAN

1975 M W

**495491



BUNDRICK, DAVID THOMAS

ATTORNEY FOR DEFENDANT

@90025448586

HILBRECHT, MATT

COMPLAINING WITNESS

MCSO52MH

MCDONALD, RUSSELL BRIAN

DEFENDANT / RESPONDENT

@90025393110

Bail Credit Denied Danger to self or others Flight Risk

✓ Will Kautz

ENTERED 2/15/23
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: mg D.C.

PRETRIAL CONFERENCE

Motion to declare KRS 17.545 void for vagueness
OTBE regarding court date filed

() Costs Waived due to indigence () Installment / Deferred Payment

50

1 10/22/2022 2N3420574-1

0016720

17545(2)

REGISTER SEX OFFENDER PUBLIC PLAYGROUND
RESTRICTIONS (M) (A)

10:00 AM DI

MARSHALL

Run Date: 1/3/2023 2:11:48PM

DocketList.Rpt

Court B DISTRICT COURTROOM
Judge HON. JACK TELLE

Prep Info 182532

12/02/2022 04:01 PM 3868536

01/04/2023 Court Docket
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4360461

30

DI 22-M-00375

COMMONWEALTH VS. MCDONALD, RUSSELL BRIAN

MCDONALD, RUSSELL BRIAN

1975 M W

**495491



BUNDRICK, DAVID THOMAS

ATTORNEY FOR DEFENDANT

@90025448586

HILBRECHT, MATT

COMPLAINING WITNESS

MCS052MH

MCDONALD, RUSSELL BRIAN

DEFENDANT / RESPONDENT

@90025393110

Bail Credit Denied Danger to self or others Flight Risk

ENTERED 1/4/23
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: mg D.C.

PRETRIAL CONFERENCE

Cont to 2/15/23 @ 10am

() Costs Waived due to indigence () Installment / Deferred Payment

30

1 10/22/2022 2N3420574-1

0016720

17545(2)

REGISTER SEX OFFENDER PUBLIC PLAYGROUND
RESTRICTIONS (M) (A)

09:00 AM DI

MARSHALL

Run Date: 11/29/2022 4:19:50PM DocketList.Rpt

Court B DISTRICT COURTROOM
Judge HON. JACK TELLE

Prep Info 181289 11/29/2022 09:23 AM 3613228

11/30/2022 Court Docket
Page 22 of 67
4334090

8 DI 22-M-00375 COMMONWEALTH VS. MCDONALD, RUSSELL BRIAN

MCDONALD, RUSSELL BRIAN

1975 M W

**495491



BUNDRICK, DAVID THOMAS

ATTORNEY FOR DEFENDANT

@90025448586

HILBRECHT, MATT

COMPLAINING WITNESS

MCSO52MH

MCDONALD, RUSSELL BRIAN

DEFENDANT / RESPONDENT

@90025393110

Bail Credit Denied Danger to self or others Flight Risk

ARRAIGNMENT

ENTERED 11/30/22
TIFFANY FRALICKX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: mg D.C.

Waive formal arr.

() Costs Waived due to indigence () Installment / Deferred Payment

18

1 10/22/2022 2N3420574-1

0016720

17545(2)

REGISTER SEX OFFENDER PUBLIC PLAYGROUND
RESTRICTIONS (M) (A)

ping PC 1/4/23 e 10am



COMMONWEALTH VS. MCDONALD, RUSSELL BRIAN

MARSHALL COUNTY COURT SYSTEM

Judge No: 758003

Filed: 10/27/2022

Defendant Information			
MCDONALD, RUSSELL BRIAN		ID Type:OLKY	M954495491
55 FOOKS RD	W/M	DOB: 02/06/1975	
		Height: 5' 11"	Eyes: Race: W Crim Hist:
CALVERT CITY, KY 42029		Weight: 175.00	Hair: BN Sex: M



AKA/ALI Information	

Witnesses		
CW HILBRECHT, MATT	MARSHALL COUNTY SHERIFF'S OFFICE BENTON KY 42025	@90025393112

Charges			
10/22/2022	Cit# 2N3420574-1	Chg: 1	UOR 0016720 REGISTER SEX OFFENDER PUBLIC PLAYGROUND RESTRICTION (A)
	Ba. Lvl 0		17545(2)

Scheduled Events			
ARR	11/30/2022	9:00 AM	B

Monetary Events Information	

COMMONWEALTH OF KENTUCKY
MARSHALL DISTRICT COURT
CASE NO. 22-M-00375

ENTERED 7/25/23
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: mf D.C.

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS.

AGREED ORDER CONTINUING

RUSSELL McDONALD

DEFENDANT

On motion of the Defendant, all parties having agreed, and the Court being sufficiently advised;

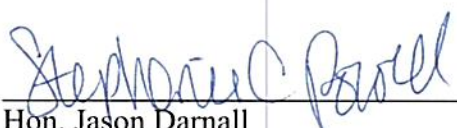
IT IS ORDERED that the Pretrial Conference currently scheduled for July 31, 2023 is continued to August 14, 2023 at 2:00 p.m.

SO ORDERED this 25 day of July, 2023.



Hon. Jack Telle, Judge
Marshall District Court

Have seen and agree:



Hon. Jason Darnall
County Attorney

/s/ David Bundrick

Hon. David Bundrick
Attorney for Defendant

Clerk's Certificate

I hereby certify that a true and exact copy of the foregoing was mailed to: Hon. David Bundrick, Edwards & Kautz, PLLC, P. O. Box 1837, Paducah, KY 42002-1837; Hon. Jason Darnall, 80 Judicial Drive, Unit 130, Benton, KY 42025; on this the 25 day of July, 2023.



Clerk, Marshall District Court

COMMONWEALTH OF KENTUCKY
MARSHALL DISTRICT COURT
CASE NO. 22-M-375

ENTERED 7/10/23
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY my D.C.

COMMONWEALTH OF KENTUCKY
VS.

TO
APPEAR AND TO CONTINUE

Russell McDonald

This matter was before the Court on July 10, 2023 for

Arraignment Pretrial Conference Preliminary Hearing Hearing for Suppression Restitution

Probation Violation Other: _____ . The following

individual(s) were present County Attorney Assistant County Attorney Defense Counsel Defendant

Alleged victim or representative Officer Other: _____ .

The parties and/or their counsel have agreed to continue this matter until Monday Wednesday

Other _____, July 31, 2023, at 2:00 a.m./p.m.

because _____

Specifically, if additional information or individuals are necessary, it is the responsibility of _____
_____ to make the necessary arrangements.

By signing below, each individual acknowledges the new court date and times and understands that they are ORDERED to appear unless otherwise noted below. They further acknowledge that they have received either a copy of this document or other written notice of the date and time to reappear in the Marshall District Court. If appearing pursuant to a subpoena, this acknowledges your obligation to reappear without need of future subpoenas.

TO THE DEFENDANT: Failure to appear may result in the issuance of a Bench Warrant for your immediate arrest without any further notice.

SO ORDERED on July 10, 2023

[Signature]
Jack M. Telle, Marshall District Court Judge

HAVE READ AND AGREED:

Marshall Co. Attorney or Assistant

[Signature]
Defendant

Officer

[Signature]
Defendant Attorney

Alleged Victim/Victim

Alleged Victim/Victim

Other

Other

Appearance not required if checked by name. Do not leave without written notice.

COMMONWEALTH OF KENTUCKY
MARSHALL DISTRICT COURT
CASE NO. 22-M-375

ENTERED 6/21/23
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
AGREED ORDER
BY: mg TO mg D.C.
APPEAR AND TO CONTINUE

COMMONWEALTH OF KENTUCKY
VS.

RUSSELL McDONALD

This matter was before the Court on JUNE 21, 20 23 for
 Arraignment Pretrial Conference Preliminary Hearing Hearing for Suppression Restitution
 Probation Violation Other: _____ . The following
individual(s) were present County Attorney Assistant County Attorney Defense Counsel Defendant
 Alleged victim or representative Officer Other: _____ .

The parties and/or their counsel have agreed to continue this matter until Monday Wednesday
 Other Monday, July 10, 20 23, at 11 a.m./p.m.
because _____

Specifically, if additional information or individuals are necessary, it is the responsibility of _____
_____ to make the necessary arrangements.

By signing below, each individual acknowledges the new court date and times and understands that they are ORDERED to appear unless otherwise noted below. They further acknowledge that they have received either a copy of this document or other written notice of the date and time to reappear in the Marshall District Court. If appearing pursuant to a subpoena, this acknowledges your obligation to reappear without need of future subpoenas.

TO THE DEFENDANT: Failure to appear may result in the issuance of a Bench Warrant for your immediate arrest without any further notice.

SO ORDERED on JUN 21 2023.

[Signature]
Jack M. Telle, Marshall District Court Judge

HAVE READ AND AGREED:

[Signature]

Marshall Co. Attorney or Assistant

[Signature]

Defendant

Officer

Defendant Attorney

Alleged Victim/Victim

Alleged Victim/Victim

Other

Other

Appearance not required if checked by name. Do not leave without written notice.

COMMONWEALTH OF KENTUCKY
MARSHALL DISTRICT COURT
CASE NO. 22-M-00375

FILED 10/12/23
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: [Signature] D.C.

COMMONWEALTH OF KENTUCKY

PLAINTIFF

v.

RUSSELL BRIAN MCDONALD

DEFENDANT

**COMMONWEALTH'S RESPONSE TO DEFENDANT'S
VOID FOR VAGUENESS MOTION**

Comes the Commonwealth, by and through the undersigned counsel, and files its Response to Defendant's Motion to Declare KRS 17.545 Void for Vagueness as Applied. In this case, the pertinent portion of the statute in question prohibits a registered sex offender from being on the "clearly defined grounds of a ... publicly owned or leased playground." No argument is made that this Defendant is not a registered sex offender or that he had permission to be on the grounds of Mike Miller Park on the date and time in question.¹ Thus, the sole issue is, as applied to this Defendant, whether the statute is void for vagueness as it relates to the key word in this case, i.e., "playground." Stated another way, was it reasonable to expect the Defendant to have known he was on a "playground" under KRS 17.545, and thus, in violation of that statute?

The facts as established in the evidentiary hearing are not in dispute. On or about October 22, 2022, this Defendant and his wife set up a mobile cotton candy vending station at Mike Miller Park. As testified to by Marshall County Parks Director Britney Hargrove, the event in question on this date was a "Boo Bash" shortly before Halloween. Hargrove testified

¹ Marshall County Parks Director Britney Hargrove testified that she did not know this Defendant was going to be at the park on the date in question or that he was a registered sex offender, and that she would not have given permission for him to be there had she known.

that it was heavily marketed toward attracting children and that approximately 50% of the estimated crowd of 2,500 persons at the event were thought to have been children.

The station was set up on one of the soccer fields at the lower area of Mike Miller Park by accessing the main road leading from the entrance of the park to the lower soccer fields toward the rear of the park. As depicted in Defendant's Exhibits 1-4, two specific areas in the park (one upper area, one lower area) which contain swing sets, slides, climbing bars, etc. are noted as being either near where the Defendant's cotton candy station was set up or close to where the Defendant would have driven on his way to the lower soccer fields.² There is no evidence that this Defendant went behind the white fence on the upper area where this equipment is located or that he walked onto the lower area which is marked by a short, black retaining wall and rubberized surface. Thus, to summarize, the Defendant's argument is that since he did not physically go onto either of these two areas of the park which contain the equipment depicted in Defendant's Exhibits 3 and 4, KRS 17.545 as applied to him is void for vagueness as he could not have reasonably known that his conduct on the day in question was prohibited by that statute. However, the Commonwealth's position is that the Defendant's interpretation of KRS 17.545 as it relates to "playground" is overly myopic and defeats the clear intent of the legislature.

"A statute is vague if 'men of common intelligence must necessarily guess at its meaning.' To satisfy the void for vagueness doctrine a statute must: 1) provide fair notice to those targeted by the statute, 'by containing sufficient definiteness so that ordinary people can understand what conduct is prohibited' and 2) it must have been drafted in such a way to discourage arbitrary and discriminatory enforcement. A statute is unconstitutionally vague if

² Commonwealth's Exhibit 2 indicates that the distance between the Defendant's vendor station and the nearest area containing actual playground equipment was approximately 314 feet.

those individuals who are affected by it cannot reasonably understand what the statute requires.” Tobar v. Commonwealth, 284 S.W.3d 133, 135 (2009) (citations omitted).

The word “playground” is not statutorily defined for purposes of KRS 17.545.³ Accordingly, absent a specific legislative definition, a court must interpret a statute to give words their “normal, ordinary, everyday meaning.” Adams v. Commonwealth, Ky., 599 S.W.3d 752, 754 (2019). In addition, “[w]hen faced with statutory interpretation, it is ‘the seminal duty of a court ... to effectuate the intent of the legislature.’” Id. With that directive in mind, the word “playground” in KRS 17.545 must be given its ordinary meaning in order to carry out the intent of that statute.

Reading KRS 17.545 as a whole, as a reviewing court must do⁴, the legislative intent is patently obvious. By enacting this statute, our General Assembly issued a clear policy directive which prohibits registered sex offenders from being physically present where children commonly congregate, whether it be a school, daycare, or “playground.” This prohibition is intended to prevent (or at least limit) any interaction between registered sex offenders and children. Under the Defendant’s purported interpretation of KRS 17.545, this Defendant could have on the date in question lawfully loitered or stood on the grass just millimeters behind the black retaining wall (depicted in Defendant’s Exhibit 3), while at the same time being in a position where he could have literally reached out and physically touched a child on the rubberized surface. Likewise,

³ This statute has been amended since the Defendant in this case was charged. See attached.

⁴ See Cosby v. Commonwealth, Ky., 147 S.W.3d 56, 58-59 (2004): “General principles of statutory construction hold that a court must not be guided by a single sentence of a statute but must look to the provisions of the whole statute and its object and policy.” “No single word or sentence is determinative, but the statute as a whole must be considered.” In addition, “[w]e have a duty to accord to words of a statute their literal meaning unless to do so would lead to an absurd or wholly unreasonable conclusion.” Moreover, “[i]n construing statutory provisions, it is presumed that the legislature did not intend an absurd result. The legislature’s intention “shall be effectuated, even at the expense of the letter of the law” (citations omitted).

under the Defendant's interpretation, he could have lawfully stood directly behind the white fence (depicted in Defendant's Exhibit 4) and been in a position to have easily reached over and touched a child on the other side of that fence.

As stated previously, this myopic interpretation leads to an improper, absurd result that entirely defeats the legislative intent.⁵ Rather, the plain, ordinary meaning of the word "playground" is simply not limited to an area where actual playground equipment (swings, slides) is located. Merriam-Webster defines "playground" as "a piece of land used for and usually equipped with facilities for recreation especially by children." See attached. Dictionary.com defines "playground" as "an area used for outdoor play or recreation, especially by children, and often containing recreational equipment such as slides and swings." See attached. In addition, the compound word "playground" can easily be broken down into its two distinct words to render its ordinary meaning, *i.e.*, "grounds" where children "play." Thus, while it is common for recreational equipment to be found on a playground, the lack of such equipment on a particular parcel of land does not necessarily eliminate that property from being deemed a "playground" in the ordinary sense of the word.

In this case, again returning to the testimony of Parks Director Hargrove, the Defendant set up his cotton candy vending station on a youth soccer field that is designed almost exclusively for use by children. See Commonwealth's Exhibit 2 (collective). The shortened size of the fields and goals gives notice of such to any reasonable person observing the same. In fact, the entire lower area of the park where the Defendant set up his vending station is essentially devoted to use by children. In addition to the area depicted in Defendant's Exhibit 3 containing recreational equipment, all of the soccer fields are designed for use primarily by children and

⁵ See *George v. Alcoholic Beverage Control Bd.*, Ky.App., 421 S.W.2d 569, 571 (1967) (holding that "a statute must not be interpreted so as to bring about an absurd or unreasonable result").

Hargrove testified that they are in fact used almost exclusively by children. In fact, per the testimony of Hargrove, the only areas used by adults in this section of the park are the walking trails. Without question, the whole area where this Defendant was set up on the date and time at issue meets the definition of a “playground” under the plain meaning of the word, as the entire lower area of the park is designed primarily for outdoor activities by children. It should also not be lost on a reviewing court that this Defendant set up his cotton candy vending station at a Halloween “Boo Bash,” which was an event specifically dedicated to providing entertainment for children and did in fact attract an estimated 1,250 children.

Returning to the law as set forth in Tobar above, it cannot be said that KRS 17.545 as applied to this Defendant is void for vagueness. Simply stated, a registered sex offender who (1) enters onto the premises of what is obviously a public park (containing playground equipment, youth soccer fields, etc) and (2) sets up a cotton candy vending station on a youth soccer field to sell cotton candy to children at a Halloween Boo Bash, cannot reasonably be heard to complain that he had no indication or inkling that his conduct might be called into question. In other words, it should come as no surprise or shock to this Defendant that he stands before this Court charged with the offense in question. Accordingly, KRS 17.545 as applied to this Defendant is not, by law, void for vagueness.

WHEREFORE, the Commonwealth respectfully requests that the Defendant’s motion be DENIED.

Respectfully submitted,



JASON F. DARNALL,
Marshall County Attorney
80 Judicial Drive, Unit #130
Benton, KY 42025
(270) 527-4730

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent via e-mail to defense counsel on this the 2 day of June, 2023.



JASON F. DARNALL

Section 1. KRS 17.545 is amended to read as follows:

<< KY ST 17.545 >>

- (1) No registrant, as defined in KRS 17.500, shall reside within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned or leased playground, or licensed day care facility. The measurement shall be taken in a straight line from the nearest property line to the nearest property line of the registrant's place of residence.
- (2) (a) No registrant, as defined in KRS 17.500, nor any person residing outside of Kentucky who would be required to register under KRS 17.510 if the person resided in Kentucky, shall be on, ***loiter within one thousand (1,000) feet of, or work in or operate any mobile business within one thousand (1,000) feet of*** the clearly defined grounds of a high school, middle school, elementary school, preschool, publicly owned or leased playground, ~~or~~ licensed day care facility, ***publicly owned or leased swimming pool, or splash pad as defined in KRS 211.205***, except with the advance written permission of the school principal, the school board, the local legislative body with jurisdiction over the publicly owned or leased playground, ***publicly owned or leased swimming pool, or splash pad***, or the day care director that has been given after full disclosure of the person's status as a registrant or sex offender from another state and all registrant information as required in KRS 17.500.

(b) As used in this subsection.;

1. "Local legislative body" means the chief governing body of a city, county, urban-county government, consolidated local government, charter county government, or unified local government that has legislative powers;

2. "***Loiter***" includes remaining in or about the clearly defined grounds of a location described in paragraph (a) of this subsection, while not having any reason or relationship involving custody of or responsibility for a minor or any other specific legitimate reason for being there; and

3. "***Mobile business***" means any business that operates from a motor vehicle or wheeled cart that can be operated, pushed, or pulled on a sidewalk, street, or highway where food, goods, or services are prepared, processed, or sold or dispensed to the public.

(c) ***The measurement in paragraph (a) of this subsection shall be taken in a straight line from the nearest property line.***

(3) For purposes of this section:

(a) The registrant shall have the duty to ascertain whether any property listed in subsection (1) of this section is within one thousand (1,000) feet of the registrant's residence; and

(b) If a new facility opens, the registrant shall be presumed to know and, within ninety (90) days, shall comply with this section.

(4) (a) Except as provided in paragraph (b) of this subsection, no registrant who is eighteen (18) years of age or older and has committed a criminal offense against a victim who is a minor shall have the same residence as a minor.

(b) A registrant who is eighteen (18) years of age or older and has committed a criminal offense against a victim who is a minor may have the same residence as a minor if the registrant is the spouse, parent, grandparent, stepparent, sibling, stepsibling, or court-appointed guardian of the minor, unless the spouse, child, grandchild, stepchild, sibling, stepsibling, or ward was a victim of the registrant.

- (c) This subsection shall not operate retroactively and shall apply only to a registrant that committed a criminal offense against a victim who is a minor after July 14, 2018.
- (5) Any person who violates subsection (1) or (4) of this section shall be guilty of:
- (a) A Class A misdemeanor for a first offense; and
- (b) A Class D felony for the second and each subsequent offense.
- (6) Any registrant residing within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility on July 12, 2006, shall move and comply with this section within ninety (90) days of July 12, 2006, and thereafter, shall be subject to the penalties set forth under subsection (5) of this section.
- (7) The prohibition against a registrant:
- (a) Residing within one thousand (1,000) feet of a publicly leased playground as outlined in subsection (1) of this section; or
- (b) Being on the grounds of a publicly leased playground as outlined in subsection (2) of this section;
- shall not operate retroactively.
- (8) ***The prohibition against a registrant loitering or working in or operating any mobile business within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned or leased playground, licensed day care facility, publicly owned or leased swimming pool, or splash pad as defined in KRS 211.205 shall not operate retroactively.***
- (9) This section shall not apply to a youthful offender probated or paroled during his or her minority or while enrolled in an elementary or secondary education program.

< playground

×

Dictionary

Thesaurus



playground noun

play·ground ('plā-,graund «»)

Synonyms of *playground* >

- 1 : a piece of land used for and usually equipped with facilities for recreation especially by children
- 2 : an area known or suited for activity of a specified sort
a vacation *playground*

Ad removed. [Details](#)



playground



MEANINGS GAMES LEARN WRITING WORD OF THE DAY

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FEEDBACK

Top Definitions Quiz Related Content Examples British

Middle School Level

playground

[play-ground] SHOW IPA

See synonyms for *playground* on Thesaurus.com

noun

- 1 an area used for outdoor play or recreation, especially by children, and often containing recreational equipment such as slides and swings.
- 2 *Informal.* any place, environment, or facility used for recreation or amusement, as a resort:
The tropical island is an international playground for the rich.
- 3 an arena of operation or activity.

QUIZ

COMMONWEALTH OF KENTUCKY
MARSHALL DISTRICT COURT
CASE NO. 22-M-00375

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS.

**BRIEF IN SUPPORT OF
MOTION TO DECLARE KRS 17.545
VOID FOR VAGUENESS AS APPLIED**
Electronically filed

RUSSELL McDONALD

DEFENDANT

The Defendant, by counsel, files this Brief in support of his previously filed motion asking the Court to declare KRS 17.545 void for vagueness as applied in this case.

Facts

Mr. McDonald is charged in this case with being a registered sex offender on the grounds of a playground without permission (KRS 17.545(2)). Mr. McDonald is alleged to have committed the offense by being on the property of Mike Miller Park. The citation notes that he was at a soccer field “approximately 293 feet from a playground on the same public property ... without any fences or barriers separating the fields and the playground.” Testimony at the hearing indicated that he was actually at a vendor area near the soccer field.

The evidence presented at the hearings on this motion was essentially uncontested. Mr. McDonald was present at Mike Miller Park in a vendor parking area near a soccer field. At the time, there was an event geared towards children and families. There are multiple playgrounds at the park. The one closest to Mr. McDonald’s location is not fenced in but has a low barrier surrounding it; a defense exhibit depicts this barrier. At least one other playground at Mike Miller park is surrounded by a picket fence, which was also depicted in a defense exhibit.

Argument

KRS 17.545 reads (in relevant part) as follows:

No registrant ... shall be on the clearly defined grounds of a ... publicly owned or leased playground ... except with the advance written permission of ... the local legislative body with jurisdiction over the publicly owned or leased playground ... that has been given after full disclosure of the person's status as a registrant [...].

The phrase “clearly defined grounds of a ... publicly owned or leased playground” is not defined. Merriam-Webster defines “playground” as “a piece of land used for and usually equipped with facilities for recreation especially by children” or “an area known or suited for activity of a specified sort (a vacation *playground*).”¹

The statute is unconstitutionally vague as applied and dismissal prior to trial is appropriate. “When a state enacts a criminal law ‘so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement,’ the state violates due process.” Commonwealth v. Curry, 607 S.W.3d 618, 622 (Ky. 2020), quoting Johnson v. United States, 576 U.S. 591, 595, 135 S.Ct. 2551, 192 L.Ed.2d 569 (2015). This is inherently a case-specific inquiry - “[i]n determining the sufficiency of the notice a statute must of necessity be examined in the light of the conduct with which a defendant is charged.” Id., internal citation omitted.

Statutes must also give guidance to law enforcement:

Although the doctrine focuses both on actual notice to citizens and arbitrary enforcement, we have recognized recently that the more important aspect of vagueness doctrine is not actual notice, but the other principal element of the doctrine—the requirement that a legislature establish minimal guidelines to govern law enforcement. Where the legislature fails to provide such minimal guidelines, a criminal statute may permit a standardless sweep that allows policemen, prosecutors, and juries to pursue their personal predilections. Kolender v. Lawson, 461 U.S. 352, 357–58, 103 S. Ct. 1855, 1858, 75 L. Ed. 2d 903 (1983), internal quotation and citation omitted.

¹ <https://www.merriam-webster.com/dictionary/playground>, last accessed May 31, 2023

The conduct alleged in this case – being on public property 293 feet from a playground – strains the phrase “clearly defined grounds” past the breaking point. It allows decision making by precisely the type of “personal predilection” that cannot validly govern law enforcement.

To the extent that the playground in question has clearly defined grounds, they are depicted in the defense exhibit which shows the low barrier surrounding the playground. There is no allegation that Mr. McDonald went within this barrier. The only alternative theory in this case is that the entirety of Mike Miller Park is “clearly defined grounds” of a playground. But the testimony at the hearing was that Mike Miller Park is accessible to the general public and contains a significant area comprising open fields. This area is clearly visible in the defense exhibits. To belabor the obvious, open fields are not “playgrounds.”

While there are indeed playgrounds at Mike Miller park, there is no evidence that Mr. McDonald was on the clearly defined grounds of one. To find that the entirety of Mike Miller Park is a playground would in essence equate the words “playground” and “park.”

Unless and until the legislature amends this law to cover “parks” as opposed to “playgrounds,” the statute is unconstitutional as applied to this case. Mr. McDonald, and all citizens of Kentucky are entitled to fair warning of what conduct is prohibited by law.

Conclusion

Because the statute does not notify citizens that it would apply to the conduct alleged in this case, it is unconstitutionally vague as applied to this case. Mr. McDonald moves the Court to declare the statute void for vagueness as applied to this case.

Respectfully Submitted,

/s/ David Bundrick
David Bundrick
Edwards & Kautz, PLLC
P. O. Box 1837
Paducah, KY 42002
270-442-9000
270-443-4304 FAX

CERTIFICATE OF SERVICE

I hereby certify the foregoing Motion was served on the Plaintiff on May 31, 2023 by mailing a copy of same to Hon. **Jason Darnall**, 80 Judicial Drive, Unit 130, Benton, KY 42025.

/s/ David Bundrick
David Bundrick



Commonwealth's
EXHIBIT

#2

FILED 5/24/23
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: [Signature] D.C.

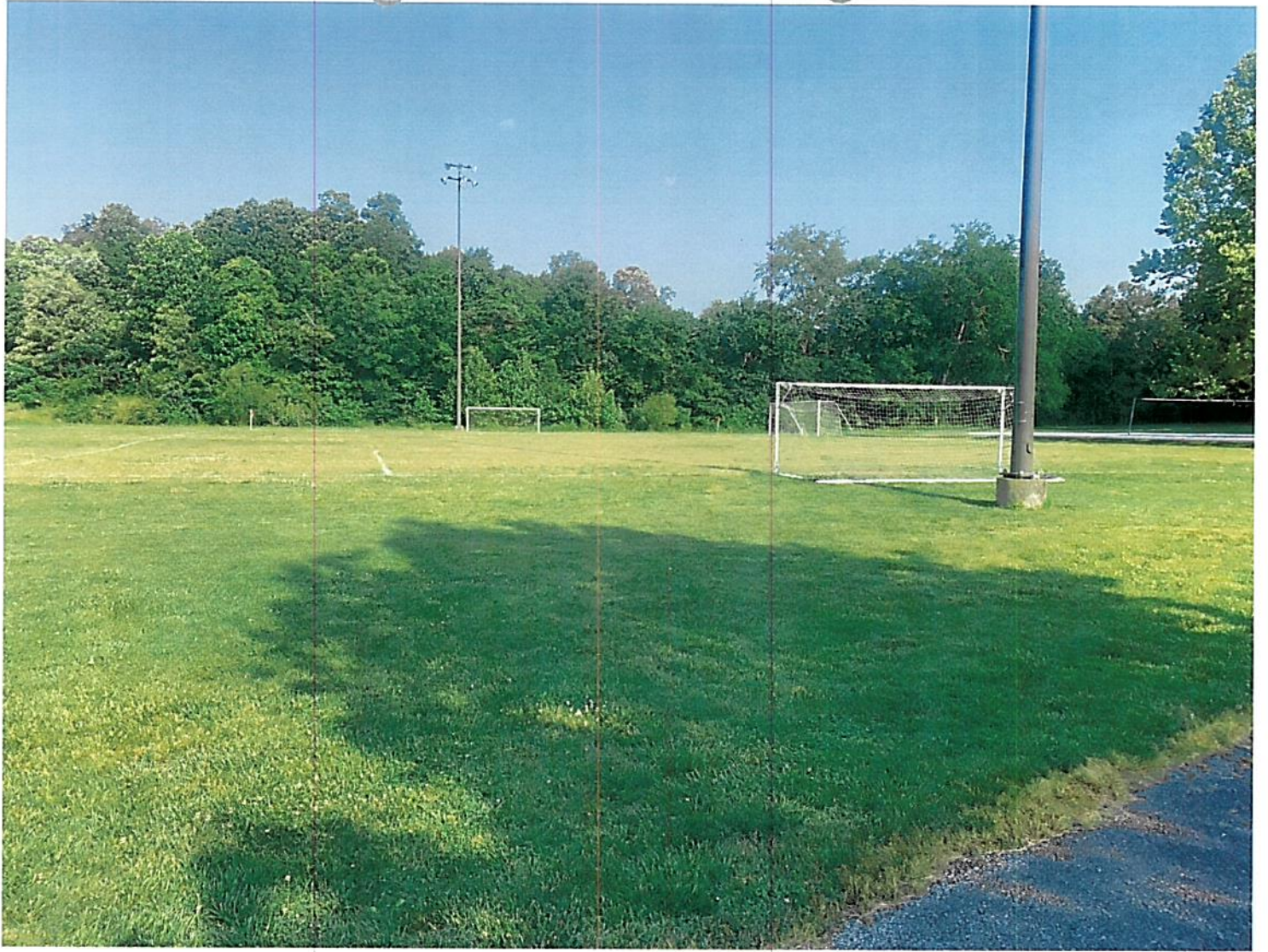


314 ft



FILED 5/24/23
TIFFANY FRALIX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: JD D.C.

**Commonwealth's
EXHIBIT**
#1





CRIMINAL
 SUBPOENA
 SUBPOENA DUCES TECUM

Case No. 22-m-375
Court District
County Marshall
Date 5-12-23

Commonwealth of KY

VS

Russell McDonald

FILED 5/12/23 PLAINTIFF
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: my D.C. DEFENDANT

The Commonwealth of Kentucky to:

Name Britney Hargrove - Parks Department
Address _____

You are commanded to appear before: (select one of three choices)

Marshall District Court The Grand Jury of _____ County
 Other Evidentiary Hearing

You are to appear at: Marshall Co. Judicial Building

on the 24 day of May, 2023 at 11:00 a.m. OR p.m. Eastern Central Time

To testify in behalf of Commonwealth of KY
 To produce _____

To give depositions

Tiffany Griffith Clerk
Issuing Officer
By: Bob Buchanan D.C.

[Signature]
Name of Requesting Attorney
Phone # 270-527-4735

PROOF OF SERVICE

This subpoena was served by delivery of a true copy to: Britney Hargrove via email
This 12 day of May, 2023 By: April Deinger
Marshall Co. City Office Title

Commonwealth of Kentucky
Court of Justice www.kycourts.gov

RCr 7.02



CRIMINAL
 SUBPOENA
 SUBPOENA DUCES TECUM

Case No. 22-m-375
Court District
County Marshall
Date _____

Commonwealth of KY

VS

Russell McDonald

ENTERED 4/26/23 PLAINTIFF
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: mg D. DEFENDANT

The Commonwealth of Kentucky to:

Name Sheriff Matt Hilbrecht
Address MCSO

You are commanded to appear before: (select one of three choices)

Marshall District Court The Grand Jury of _____ County
 Other Evidentiary Hearing

You are to appear at: Marshall Co. Judicial Building

on the 24 day of May, 2023 at 11:00 a.m. OR p.m. Eastern Central Time

To testify in behalf of Commonwealth of KY
 To produce _____

To give depositions

Tiffany Griffith Clerk
Issuing Officer
By: Bu Buchanan D.C.

[Signature]
Name of Requesting Attorney
Phone # 270-527-4735

PROOF OF SERVICE

This subpoena was served by delivery of a true copy to: M. Hilbrecht

This 24 day of April, 2023 By: [Signature] Title

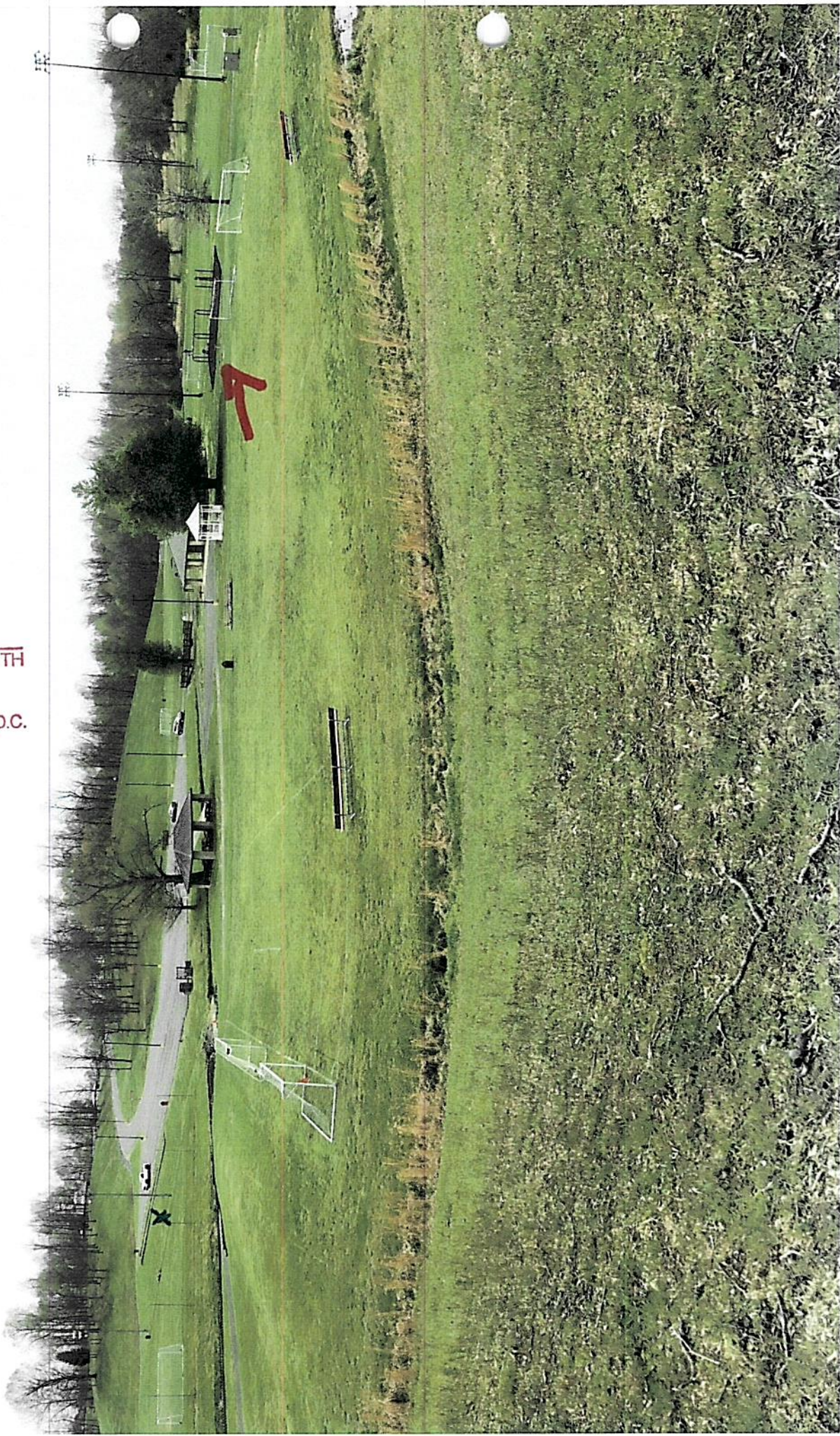
**DEFENDANT'S
EXHIBIT**
1

FILED 4/19/23
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY mg D.C.



DEFENDANT'S
EXHIBIT
2

FILED 4/19/23
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: MA D.C.



DEFENDANT'S
EXHIBIT
3

FILED 4/19/23
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: *mg* D.C.



MIKE MILLER PARK
PLAYGROUND
ENHANCEMENT MADE
POSSIBLE BY A
GRANT FROM THE
KENTUCKY DIVISION OF
WASTE MANAGEMENT

DEFENDANT'S
EXHIBIT

4



FILED 4/19/23
TIFFANY FRALICK-GREETH
CIRCUIT CLERK
MARSHALL COUNTY
BY: mg DC



ORDER TO APPEAR

Case No. 22-M-375
Court [] Circuit [] District
[] Family
County Marshall

COMMONWEALTH OF KENTUCKY

VS.

Russell B. McDonald

ENTERED 4/19/23 PLAINTIFF
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: [Signature] D.C.
Wed
DEFENDANT

1. On May 24, 2023, at 11:00 a.m. [] p.m., Defendant is ORDERED to appear in
[] Circuit Court [] District Court [] Family Court. This case is set for:

- 2. [] Arraignment [] Show Proof Hearing [] Show Cause Hearing
- [] Pre-trial Conference [] Bench Trial (unrelated to Court Costs)
- [] Preliminary Hearing [] Motion to Dismiss [] Status Hearing
- [] Sentencing Hearing [] Revocation Hearing [] Suppression Hearing
- [] Contempt Hearing [] Pretrial Diversion Review

[] Jury Trial on _____, 2023 at _____ [] a.m. [] p.m.
[] Other Court. of Hearing on Challenge to KR3

- 3. [] Parties shall have completed all discovery required by RCR 7.24 at or prior to above Pretrial date.
- 4. [] All motions regarding trial issues, anticipated evidentiary objections and motions in limine must be made in writing or orally at or prior to the above Pretrial date.
- 5. [] Continuances of a pending trial after the above Pretrial has occurred will not be granted for either party unless extraordinary circumstances are shown.
- 6. [] If a defendant wishes to enter a plea of guilty, at trial date the court will impose sentence without recommendation of the [] Commonwealth [] County Attorney.

COMMENTS: 17, 545,

Date: Apr 19th, 2023 [Signature] Judge

I certify a true and correct copy of the foregoing ORDER was [] hand-delivered OR [] mailed to the DEFENDANT and, if any, to his/her ATTORNEY.

Date: 4-19, 2023 _____ Clerk

By: [Signature] #65 D.C.

COMMONWEALTH OF KENTUCKY
MARSHALL DISTRICT COURT
CASE NO. 22-M-00375

ENTERED 2/21/23
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: mg D.C.

COMMONWEALTH OF KENTUCKY

PLAINTIFF

V.

RUSSELL BRIAN MCDONALD

DEFENDANT

NOTICE OF HEARING ON MOTION TO DECLARE
KRS 17.545 VOID FOR VAGUENESS

The Defendant has filed a motion challenging the constitutionality of KRS 17.545. The motion has been served upon the Marshall County Attorney and the Kentucky Attorney General by mail as of February 14, 2023, according to the Plaintiffs Certificate of Service.

The Court shall take the motion up on **Wednesday, April 19, 2023, at 11:00 p.m.** The Court shall consider filing from any proper party and any arguments that may be made at the above state lien.

So ORDERED this 21st day of February, 2023.



JACK M. TELLE, JUDGE
MARSHALL DISTRICT COURT

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing was mailed

First Class to:

**The Honorable Daniel Cameron
Attorney General of the Commonwealth of Kentucky
700 Capital Avenue, Suite 118
Frankfort, KY 40601-3449**

**David Bundrick, Esq.
Edwards & Kautz, PLLC
P.O. Box 1837
Paducah, KY 42002-1837**

**Jason Darnall, Esq.
Marshall County Attorney
80 Judicial Drive
Benton, KY 42025**

on this 21 day of February, 2023.



DEPUTY CLERK
MARSHALL DISTRICT COURT

COMMONWEALTH OF KENTUCKY
MARSHALL DISTRICT COURT
CASE NO. 22-M-00375

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS.

**ORDER TO DECLARE KRS 17.545
VOID FOR VAGUENESS AS APPLIED**
Electronically Filed

RUSSELL McDONALD

DEFENDANT

On motion of Defendant, by counsel, and the Court being otherwise sufficiently advised;
IT IS HEREBY ORDERED that KRS 17.545 is declared void for vagueness as applied in
this case.

SO ORDERED this _____ day of _____, 2023

Hon. Jack Telle, Judge
Marshall District Court

Tendered By:

/s/ David Bundrick
David Bundrick

Clerk's Certificate

I hereby certify that a true and exact copy of the foregoing was mailed to: David Bundrick, Edwards & Kautz, PLLC, P.O. Box 1837, Paducah, KY 42002-1837; Hon. Jason Darnall, 80 Judicial Drive, Unit 130, Benton, KY 42025; and to the Hon. Daniel Cameron, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601-3449.
this the _____ day of _____, 2023.

Clerk, Marshall District Court

TD : 000001 of 000001

COMMONWEALTH OF KENTUCKY
MARSHALL DISTRICT COURT
CASE NO. 22-M-00375

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS.

**MOTION TO DECLARE KRS 17.545
VOID FOR VAGUENESS AS APPLIED**
Electronically filed

RUSSELL McDONALD

DEFENDANT

The Defendant, by counsel, moves the Court to declare KRS 17.545 void for vagueness as applied in this case. Pursuant to KRS 418.075(1), a copy of this memorandum will be sent to the Kentucky Attorney General.

Facts

Mr. McDonald is charged in this case with being a registered sex offender on the grounds of a playground without permission (KRS 17.545(2)). Mr. McDonald is alleged to have committed the offense by being on the property of Mike Miller Park. The citation notes that he was at a soccer field “approximately 293 feet from a playground on the same public property ... without any fences or barriers separating the fields and the playground.”

Argument

KRS 17.545 reads as follows:

No registrant, as defined in KRS 17.500, nor any person residing outside of Kentucky who would be required to register under KRS 17.510 if the person resided in Kentucky, shall be on the clearly defined grounds of a high school, middle school, elementary school, preschool, publicly owned or leased playground, or licensed day care facility, except with the advance written permission of the school principal, the school board, the local legislative body with jurisdiction over the publicly owned or leased playground, or the day care director that has been given after full disclosure of the person's status as a registrant or sex offender from another state and all registrant information as required in KRS 17.500. As used in this subsection, “local legislative body” means the chief governing body of a city,

MOT : 000001 of 000003

county, urban-county government, consolidated local government, charter county government, or unified local government that has legislative powers.

The phrase “clearly defined grounds of a ... publicly owned or leased playground” is not defined.

The statute is unconstitutionally vague as applied and dismissal prior to trial is appropriate. “When a state enacts a criminal law ‘so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement,’ the state violates due process.” Commonwealth v. Curry, 607 S.W.3d 618, 622 (Ky. 2020), quoting Johnson v. United States, 576 U.S. 591, 595, 135 S.Ct. 2551, 192 L.Ed.2d 569 (2015). This is inherently a case-specific inquiry - “[i]n determining the sufficiency of the notice a statute must of necessity be examined in the light of the conduct with which a defendant is charged.” Id., internal citation omitted.

Statutes must also give guidance to law enforcement:

Although the doctrine focuses both on actual notice to citizens and arbitrary enforcement, we have recognized recently that the more important aspect of vagueness doctrine is not actual notice, but the other principal element of the doctrine—the requirement that a legislature establish minimal guidelines to govern law enforcement. Where the legislature fails to provide such minimal guidelines, a criminal statute may permit a standardless sweep that allows policemen, prosecutors, and juries to pursue their personal predilections. Kolender v. Lawson, 461 U.S. 352, 357–58, 103 S. Ct. 1855, 1858, 75 L. Ed. 2d 903 (1983), internal quotation and citation omitted.

The conduct alleged in this case – being on public property 293 feet from a playground – strains the phrase “clearly defined grounds” past the breaking point. It allows decision making by precisely the type of “personal predilection” that cannot validly govern law enforcement.

Conclusion

Because the statute does not notify citizens that it would apply to the conduct alleged in this case, it is unconstitutionally vague as applied to this case. Mr. McDonald moves the Court to declare the statute void for vagueness as applied to this case.

Respectfully Submitted,

/s/ David Bundrick
David Bundrick
Edwards & Kautz, PLLC
P. O. Box 1837
Paducah, KY 42002
270-442-9000
270-443-4304 FAX

NOTICE

Please take notice that this motion will be brought for hearing at 10:00 a.m. on February 15, 2023.

CERTIFICATE OF SERVICE

I hereby certify the foregoing Motion was served on the Plaintiff on February 14, 2023 by mailing a copy of same to the Hon. **Jason Darnall**, 80 Judicial Drive, Unit 130, Benton, KY 42025; and to the Hon. **Daniel Cameron**, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601-3449.

/s/ David Bundrick
David Bundrick

MOT : 000003 of 000003

COMMONWEALTH OF KENTUCKY
MARSHALL DISTRICT COURT
CASE NO. 22-M-375

ENTERED 1/4/23
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY AGREED ORDER mg D.C.
TO
APPEAR AND TO CONTINUE

COMMONWEALTH OF KENTUCKY

VS.

RUSSELL McDONALD

This matter was before the Court on JAN 4, 2023 for
 Arraignment Pretrial Conference Preliminary Hearing Hearing for Suppression Restitution
 Probation Violation Other: _____ The following
individual(s) were present County Attorney Assistant County Attorney Defense Counsel Defendant
 Alleged victim or representative Officer Other: _____

The parties and/or their counsel have agreed to continue this matter until Monday Wednesday
 Other FEB. 15, 2023, at 10:00 a.m./p.m.
because THE PARTIES ARE WAITING FOR DISCOVERY
IN A COMPANION CASE IN LYON COUNTY.

Specifically, if additional information or individuals are necessary, it is the responsibility of _____
_____ to make the necessary arrangements.

By signing below, each individual acknowledges the new court date and times and understands that they are ORDERED to appear unless otherwise noted below. They further acknowledge that they have received either a copy of this document or other written notice of the date and time to reappear in the Marshall District Court. If appearing pursuant to a subpoena, this acknowledges your obligation to reappear without need of future subpoenas.

TO THE DEFENDANT: Failure to appear may result in the issuance of a Bench Warrant for your immediate arrest without any further notice.

SO ORDERED on JAN 04 2023.

[Signature]
Jack M. Telle, Marshall District Court Judge

HAVE READ AND AGREED:

[Signature]

Marshall Co. Attorney or Assistant

Officer

Alleged Victim/Victim

Other

[Signature]

Defendant

[Signature]

Defendant Attorney

Alleged Victim/Victim

Other

Appearance not required if checked by name. Do not leave without written notice.

COMMONWEALTH OF KENTUCKY
MARSHALL DISTRICT COURT

CASE NO. 22-M-375

FILED 12/14/22
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: mg D.C.

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS

RUSSELL MCDONALD

DEFENDANT

DISCOVERY COMPLIANCE

Comes now the Commonwealth of Kentucky and files herein its Discovery Compliance and Bill of Particulars:

1. The date, time and place of the alleged offenses are as follows:
October 22ND, 2022 at 17:01 PM at Mike Miller Park, Benton, Marshall County, KY.
2. There are no oral statements made by the Defendant that Commonwealth has knowledge other than what is contained in citation.
3. Commonwealth has provided uniform citation, KYIBRS Report, and case file from Marshall County Sheriff's Office
4. Commonwealth has provided in-car/body came video via email from Marshall County Sheriff's Office.
5. Commonwealth will provide CAD and audio from Marshall County 911 Dispatch via email once received.
6. No information is known at this time, to the Commonwealth that is favorable to or which tends to exculpate the Defendant.

7. All information now known to the Commonwealth at this time is hereto attached.
8. Copy of all documents related to the above styled case that Commonwealth has possession has been supplied to the Defense.

Dated this the 15 day of Dec, 2022.



JASON F. DARNALL
Marshall County Attorney
80 Judicial Dr. Unit 130
Benton, KY 42025

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Discovery Compliance was served upon Hon. David Bundrick, by way of postal service, Benton, KY 42025, this 15 day of Dec, 2022.



JASON F. DARNALL
Marshall County Attorney

COMMONWEALTH OF KENTUCKY
MARSHALL DISTRICT COURT
CASE NO. 22-M-375

COMMONWEALTH OF KENTUCKY

VS.

STANDARD DISCOVERY ORDER

Russell McDonald

PLAINTIFF 11/30/22
ENTERED
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: msj D.C.

DEFENDANT

This matter having come before the Court pursuant to the Motion of the Defendant for discovery; the Commonwealth having moved for reciprocal discovery pursuant to RCr 7.24 and the Court being otherwise sufficiently advised;


IT IS HEREBY ORDERED AS FOLLOWS:

1. The Commonwealth, through its attorney, shall disclose the substance, including time, date and place or any oral incriminating statement known by the attorney for the Commonwealth to have been made by the Defendant to any witness.
2. The Commonwealth shall permit the Defendant to inspect the copy or photograph any relevant (a) written or recorded statements or confessions made by the Defendant, or copies thereof, that are known by the attorney for the Commonwealth to be in the possession, custody, or control of the Commonwealth, and (b) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, that are known by the attorney for the Commonwealth to be in the possession, custody or control of the Commonwealth.
3. The Commonwealth shall permit the Defendant to inspect and copy or photographs books, papers, documents, audio/video records or tangible objects, or copies or portions thereof, that are in the possession, custody or control of the Commonwealth that may be material to the preparation of the defense.

4. If there are specific items that the Defendant desires to obtain from the Commonwealth, then the Defendant shall timely notify the Commonwealth of such items in order to permit timely compliance with this order.
5. The Defendant shall permit the Commonwealth to inspect, copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession, custody or control of the Defendant, which the Defendant intends to introduce as evidence or which were prepared by a witness whom the Defendant intends to call at trial when the results or reports relate to the witness' testimony.
6. The Defendant shall permit the Commonwealth to inspect, copy or photograph books, papers, documents or tangible objects which the Defendant intends to introduce into evidence and which are in the Defendant's possession, custody or control.
7. This order shall be complied with by the parties no later than the

December 29, 2022.

So ORDERED on November 30, 2022.



Jack M. Telle
Judge, Marshall District Court

Clerk is requested to provide copies to:
Marshall County Attorney
Defendant and/or Counsel for Defendant



ORDER TO APPEAR

Case No. 22-M-375
Court Circuit District
 Family
County Marshall

COMMONWEALTH OF KENTUCKY

VS.

Russell McDonald

ENTERED 11/30/22 PLAINTIFF
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: mg DEFENDANT
owed.

1. On JANUARY 4, 2023, at 10:00 a.m. p.m., Defendant is ORDERED to appear in
 Circuit Court District Court Family Court. This case is set for:

- 2. Arraignment Show Proof Hearing Show Cause Hearing
- Pre-trial Conference Bench Trial (unrelated to Court Costs)
- Preliminary Hearing Motion to Dismiss Status Hearing
- Sentencing Hearing Revocation Hearing Suppression Hearing
- Contempt Hearing Pretrial Diversion Review
- Jury Trial on _____, 2 _____ at _____ a.m. p.m.
- Other _____

- 3. Parties shall have completed all discovery required by RCR 7.24 at or prior to above Pretrial date.
- 4. All motions regarding trial issues, anticipated evidentiary objections and motions in limine must be made in writing or orally at or prior to the above Pretrial date.
- 5. Continuances of a pending trial after the above Pretrial has occurred will not be granted for either party unless extraordinary circumstances are shown.
- 6. If a defendant wishes to enter a plea of guilty, at trial date the court will impose sentence without recommendation of the Commonwealth County Attorney.

COMMENTS: _____

Date: Nov 30, 2022 [Signature] Judge

I certify a true and correct copy of the foregoing ORDER was hand-delivered OR mailed to the DEFENDANT and, if any, to his/her ATTORNEY.
Date: Nov 30, 2022. _____ Clerk
By: [Signature] D.C.

COMMONWEALTH OF KENTUCKY
MARSHALL DISTRICT COURT
CASE NO. 22-M-00375

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS.

ENTRY OF APPEARANCE

Electronically Filed

RUSSELL McDONALD

DEFENDANT

David Bundrick hereby enters his appearance as attorney of record for Russell McDonald in the above-styled and numbered action.

Respectfully submitted,

/s/ David Bundrick

David Bundrick, Esq.
EDWARDS & KAUTZ, PLLC
222 Walter Jetton Boulevard
P.O. Box 1837
Paducah, Kentucky 42002-1837
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed to: Marshall County Attorney, 80 Judicial Drive, Unit 130, Benton, KY 42025 on this the 16th day of November, 2022.

/s/ David Bundrick

DAVID BUNDRICK



Case Num:
County: MARSHALL
Court: DISTRICT COURT
Warrant Number: E07910004370302
Generated: 10/24/2022 10:42:46PM

**Criminal Complaint
Summons**

FILED 10/27/22
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: ms D.C.

Plaintiff. **COMMONWEALTH VS. Russell McDonald** Defendant

McDonald, Russell Brian
55 Fooks Road
CALVERT CITY, KY 42029

gender	M
race	WHITE
date of birth	February 06, 1975
height	5'11
weight	175
operator license#	M95495491

summons / to the above named defendant:

you are hereby summoned to appear before the judge of the above-named court regarding the complaint and criminal charges(s) noted above and based upon the information contained herein, it is found probable cause exists to believe a crime has been committed and that the defendant committed it. if you fail to appear at the stated time and place, you will be subject to the contempt power of the court, which may include issuance of a warrant for your arrest.

Chg#	UOR Code	KRS	Type	Description	ASCF	Counts	Disp Dt	Di
1	01672	17.545(2)	M	REGISTER SEX OFFENDER PUBLIC PLAYGROUND REST	N/A	1		

complaint

The Affiant, Matt A Hilbrecht, states that on 10/22/2022 at 17:01 in MARSHALL County, Kentucky, the above named defendant unlawfully: On 10/22/2022 affiant was working the "Boo Bash" at Mike Miller Park in Draffenville, KY. Affiant received a Facebook messenger message from a concerned citizen, Cheryl Gold. Ms. Gold sent affiant a photograph of the defendant working a cotton candy stand at Mike Miller Park. Ms. Gold stated that the affiant was a registered sex offender and even provided a copy of the defendant's registration from the Kentucky State Police website. Ms. Gold wanted to know if anything could be done about the offender handing out cotton candy to children. Due to the noise at the event, affiant did not immediately see the message. Upon discovering the message, affiant immediately contacted the Park Director Britney Hargrove. Ms. Hargrove confirmed that prior to the event, she was unaware that the defendant was a registered sex offender, nor had he received prior written permission from the Park to be on the Park property as required by KRS 17.545(2). Ms. Hargrove then advised affiant that prior to affiant contacted her, that someone else had already contacted the Police and the defendant had been removed from the property. Affiant contacted dispatch and learned that the defendant had been removed from the property by Benton City Police Officer Tyler Coursey. Officer Coursey was able to confirm that the defendant was in fact been on the property and that the defendant was in fact the registered sex offender Russell McDonald. Officer Coursey stated that the defendant voluntarily offered to leave the premises as if he was aware that he shouldn't be there. Officer Coursey stated that the defendant was escorted off of the premises.

The cotton candy stand was set up on the lower soccer field of Mike Miller Park. Mike Miller Park is a public park which contains multiple playgrounds. The soccer field is located approximately 293 feet from a playground on the same public property of the area where defendant was set up, without any fences or barriers separating the fields and the playground.

The stand in which the defendant was working was Cotton Candy Creations. This is a pink camper which has been converted into a cotton candy stand. Affiant was provided multiple pictures of the defendant working events in which children were present and the defendant was wearing a pink and white T-shirt with the company name on the front of the shirt and "Sugar Daddy" on the back of the shirt.

On 10/23/2022 affiant received additional information that the defendant had also been serving cotton candy at a Benton Elementary Fall Festival. Affiant was able to speak with Megan Barrett who was a witness in that case. Affiant learned that the Fall Festival was actually held at KY Shores on US 641, not on School property. Affiant was also advised that the defendant had

aoc-e-315 doc code: cws
rev. 07-08
commonwealth of kentucky
court of justice
rcr 2.04; rcr 2.06; rcr form2



Case Num:
County: MARSHALL
Court: DISTRICT COURT
Warrant Number: E07910004370302
Generated: 10/24/2022 10:42:46PM

**Criminal Complaint
Summons**

served cotton candy at other School events in Lyon County. Affiant advised the complainants to forward that information to the Kentucky State Police. On 10/24/2022 affiant spoke with KSP Trooper Holt, who advised that he was in fact investigating those allegations and would be seeking criminal charges.

The defendant is on a routine bases putting himself in situations to have contact with juveniles, and has persistently violated the sex offender registry requirements. Affiant is requesting that an arrest warrant be issued for the defendant

summons proof of service

Served on Defendant named herein this 26 day of October, 2022.
 not served because _____

signature of peace officer

court room: District

court date: 11/30/2022

court time: 09:00 AM

court location:

VETERAN

JUVENILE OFFENDER

COMMONWEALTH OF KENTUCKY
UNIFORM CITATION

KSP 206 (REV 2/1/06)

COURT
11003

OFFENDER / VIOLATOR	AGENCY <i>Marshall County Sheriff's Office</i>										ORI: KY <i>0790000</i>				
	NAME (L-F-M) SKIP A SPACE BETWEEN NAMES <i>McDonald, Russell Brian</i>										ATTN: <input type="checkbox"/> HOME PHONE				
	ALIAS										EMERGENCY PHONE				
	ADDRESS (RFD/STREET/APT. NO., ETC.) <i>55 Foots Rd.</i>										KENTUCKY RESIDENT STATUS F. <input checked="" type="checkbox"/> FULL TIME P. <input type="checkbox"/> PART TIME N. <input type="checkbox"/> NON RESIDENT				
VEHICLE	CITY <i>Calvert City</i>					STATE: <i>KY</i>		ZIP: <i>42029</i>			MARITAL STATUS				
	I.D. TYPE/STATE <i>04/KY</i>		I.D. NUMBER <i>1795495491</i>			S.S. NUMBER				VICTIM'S RELATIONSHIP TO OFFENDER					
	DATE OF BIRTH <i>02 06 75</i>		SEX <input checked="" type="checkbox"/> MALE <input type="checkbox"/> FEMALE		RACE <input checked="" type="checkbox"/> WHITE <input type="checkbox"/> BLACK <input type="checkbox"/> AM. INDIAN OR ALASKAN <input type="checkbox"/> ASIAN		ETHNIC ORIGIN <i>white</i>				<input type="checkbox"/> HISPANIC <input checked="" type="checkbox"/> NON HISPANIC				
	PLACE OF EMPLOYMENT / OCCUPATION <i>Tourism Commission</i>					CITY <i>Grand Rivers</i>		STATE <i>KY</i>			HEIGHT <i>5'11"</i>	WEIGHT <i>175</i>	HAIR COLOR <i>brown</i>	EYE COLOR	
DATE / TIME	VEH. MAKE		VEH. TYPE		VEH. YEAR		COLOR		TOP/BOTTOM		ALCOHOL/DRUG INVOLVEMENT (SPECIFY) <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> UNK				
	REG. STATE		REG. YEAR		REGISTRATION NO.			VEHICLE IDENTIFIERS		MPH	IN MPH ZONE	VOL. KEY			
	VIOLATION DATE <i>10 22 22</i>		VIOLATION TIME <i>1730</i>		EXACT LOCATION OF VIOLATION / ARREST <i>596 US 68 West</i>						B.A. RESULTS				
CHARGE(S)	DATE OF ARREST <i>10 26 22</i>		TIME OF ARREST <i>1320</i>		MILES <i>In</i>		DIRECTION <i>limits</i>		CITY <i>Draftonville</i>		COUNTY OF VIOLATION <i>Marshall</i>		SECTOR		
	VIOLATION CODE <i>01672</i>	ASCF	STATUTE / ORD. <i>17.545(2) Sex Reg.</i>		CHARGES	#	PLEA	FIND-ING	FINAL VIOLATION CODE	DISPN. CODE	FINE	COSTS	FEE	JAIL / PRISON	PROB. TIME
	COURT DATE <i>11 30 22</i>	COURT TIME <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	PAYABLE <input type="checkbox"/>	COURT LOCATION <i>Marshall District</i>			COURT CASE NO.		DISPN. DATE	TRIAL <input type="checkbox"/> B <input type="checkbox"/> J <input type="checkbox"/> N	CLERKS INITIALS				
	POST-ARREST COMPLAINT <i>1) Violation of Sex offender registry public playground</i> <i>Securing Criminal Summons</i>														
CDL	CDL LICENSE <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes					PLACARDED HAZARDOUS VEHICLE <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes					YEAR <i>22</i>				
	COMMERCIAL VEHICLE <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes					CDL CLASS <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C					CONTROL NUMBER <i>N342057</i>				
CASE	NAME OF WITNESS _____ ADDRESS _____ CITY/STATE _____										TYPE <i>4</i>				
	NAME OF WITNESS _____ ADDRESS _____										CONTROL NUMBER <i>4</i>				
	CASE NO. <i>2022-18722</i>		1		2		3		4		TYPE <i>4</i>				
	CARRIED FOR UCR BY CONTRIBUTOR: <input checked="" type="checkbox"/>					<input type="checkbox"/> IN-CAR VIDEO		<input type="checkbox"/> FINGER PRINTS		EVIDENCE HELD					
OTHER AGENCY: <input type="checkbox"/> SPECIFY _____					<input type="checkbox"/> PHOTOS										
OFFICER'S SIGNATURE <i>X [Signature]</i>					BADGE / I.D. NUMBER <i>52</i>		ASSIGNMENT <i>MCSO</i>								

VETERAN

JUVENILE OFFENDER

COMMONWEALTH OF KENTUCKY
UNIFORM CITATION

KSP 206 (REV 2/1/06)

NOT IN LETA

OFFENDER / VIOLATOR	AGENCY <i>Marshall County Sheriff's Office</i>										ORI: KY				
	NAME (L-F-M) SKIP A SPACE BETWEEN NAMES <i>Donald Russell Bean</i>										ATTN: <input type="checkbox"/> HOME PHONE				
	ALIAS										EMERGENCY PHONE				
	ADDRESS (RFD/STREET/APT. NO., ETC.) <i>55 Luke Rd</i>										KENTUCKY RESIDENT STATUS F. <input checked="" type="checkbox"/> FULL TIME P. <input type="checkbox"/> PART TIME N. <input type="checkbox"/> NON RESIDENT				
	CITY <i>Columbiana</i>					STATE: KY		ZIP: <i>40329</i>			MARITAL STATUS				
	I.D. TYPE/STATE <i>DL KY</i>		I.D. NUMBER <i>8795495491</i>			S.S. NUMBER					VICTIM'S RELATIONSHIP TO OFFENDER				
	DATE OF BIRTH <i>02 06 75</i>		SEX <input checked="" type="checkbox"/> MALE <input type="checkbox"/> FEMALE		RACE <input checked="" type="checkbox"/> WHITE <input type="checkbox"/> BLACK <input type="checkbox"/> AM. INDIAN OR ALASKAN <input type="checkbox"/> ASIAN						ETHNIC ORIGIN <i>white</i>				
	PLACE OF EMPLOYMENT / OCCUPATION <i>Tractor Corporation</i>					CITY <i>Columbiana</i>		STATE <i>KY</i>			HEIGHT <i>5'11"</i>	WEIGHT <i>175</i>	HAIR COLOR <i>brown</i>	EYE COLOR	
	VEH. MAKE		VEH. TYPE		VEH. YEAR		COLOR		TOP/BOTTOM		ALCOHOL/DRUG INVOLVEMENT (SPECIFY) <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> UNK				
	REG. STATE		REG. YEAR		REGISTRATION NO.			VEHICLE IDENTIFIERS		MPH	IN MPH ZONE	VOL. KEY			
DATE / TIME	VIOLATION DATE <i>10 22 22</i>		VIOLATION TIME <i>1730</i>		EXACT LOCATION OF VIOLATION / ARREST <i>596 US 69 West</i>						B.A. RESULTS				
	DATE OF ARREST <i>10 26 22</i>		TIME OF ARREST <i>1320</i>		MILES <i>In</i>	DIRECTION <i>North</i>	CITY <i>Duellville</i>			COUNTY OF VIOLATION <i>Marshall</i>		SECTOR			
CHARGE(S)	VIOLATION CODE	ASCF	STATUTE / ORD.	CHARGES	#	PLEA	FIND-ING	FINAL VIOLATION CODE	DISPN. CODE	FINE	COSTS	FEE	JAIL / PRISON	PROB. TIME	
	<i>01672</i>		<i>17.545(2)</i>	<i>sm Ag.</i>	1										
					2										
					3										
					4										
COURT	COURT DATE <i>11 30 22</i>		COURT TIME <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM		PAYABLE <input type="checkbox"/> COURT		COURT LOCATION <i>Marshall District</i>			COURT CASE NO.		DISPN. DATE	TRIAL <input type="checkbox"/> B <input type="checkbox"/> J <input type="checkbox"/> N	CLERKS INITIALS	
	POST-ARREST COMPLAINT <i>1) Violation of Sex Offender register & public playground Securing Criminal Supervisors</i>														
CDL	CDL LICENSE <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes					PLACARDED HAZARDOUS VEHICLE <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes					YEAR				
	COMMERCIAL VEHICLE <input type="checkbox"/> No <input type="checkbox"/> Yes					CDL CLASS <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C					CONTROL NUMBER				
CASE	NAME OF WITNESS					ADDRESS CITY/STATE					N342057	TYPE			
	NAME OF WITNESS					ADDRESS									
	CASE NO. 1 <i>2022-19727</i>		CASE NO. 2			CASE NO. 3		CASE NO. 4							
	CARRIED FOR UCR BY CONTRIBUTOR: <input checked="" type="checkbox"/>					OTHER AGENCY: <input type="checkbox"/> SPECIFY		<input type="checkbox"/> IN-CAR VIDEO		<input type="checkbox"/> FINGER PRINTS	EVIDENCE HELD				
OFFICER'S SIGNATURE <i>X [Signature]</i>					BADGE / I.D. NUMBER			ASSIGNMENT <i>11/30</i>							