FOURTH DIVISION
December 10, 2015

No. 1-13-1336

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 8843
	)	
CHUKWUEMEKA EBELECHUKWU,	)	Honorable
	)	Neera Lall Walsh,
	)	Marcus R. Salone,
Defendant-Appellant.	)	Judges Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice McBride and Justice Cobbs concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Circuit court erred in denying defendant's motion to suppress evidence, where court improperly found evidence was seized in plain view and, alternatively, that evidence would have been inevitably discovered. State failed to present sufficient factual foundation for application of good-faith exception to exclusionary rule.

¶ 2 After a bench trial, the circuit court found defendant Chukwuemeka Ebelechukwu guilty of possessing shoes containing a counterfeit Nike trademark and sentenced him to 30 months' probation. On appeal, defendant contends that his conviction should be reversed, because the court erred in denying his motion to suppress filed before trial. For the reasons that follow, we agree and reverse defendant's conviction.

¶ 3 Prior to trial, defendant filed a motion to suppress evidence of the shoes seized from a building located at 9038 South Commercial Avenue in Chicago. Defendant argued that when the police searched the building at that address, they did so without a warrant and without exigent circumstances that would allow a warrantless search. Defendant also argued that the plain-view doctrine was inapplicable.

¶ 4 At the hearing on the motion to suppress, defendant testified that he leased a warehouse building located at 9038 South Commercial Avenue. The window facing the street of 9038 South Commercial Avenue was made of reflecting glass so that when someone looked at the window, he would only see his reflection. The address of the adjacent building was 9040 South Commercial Avenue. Although defendant denied having an "official[ ]" lease for that building, he acknowledged that the building's landlord "permitted [him] to keep some of [his] stuff in there." 9038 and 9040 South Commercial Avenue had separate doors, and both addresses were clearly marked on the doors. The properties were not connected through a door or hallway. Both properties had front and back entrances, which were also separate.

¶ 5 Defendant admitted that 9038 and 9040 South Commercial Avenue were connected through a "hole in the wall" in the basement that was created when the landlord fixed the heating

system and needed to connect a pipe between the two properties. The hole created was "big enough" for an adult male to fit through.

¶ 6 Defendant testified that, on April 7, 2007, he was standing on the sidewalk in front of 9038 South Commercial Avenue when he observed police officers knocking on the door at 9040 South Commercial Avenue. He approached the officers, curious to learn why they were knocking on the door. Suddenly, the officers "jumped out," handcuffed defendant, and told him to get down on the sidewalk. He asked the officers what the problem was, but they ignored him.

¶ 7 According to defendant, the officers pushed in the door in at 9038 South Commercial Avenue and walked inside. They never asked defendant for permission to enter the building, nor did defendant give them permission. The officers were inside the building for at least 45 minutes, and there were approximately 15 to 20 officers on the scene.

¶ 8 On cross-examination, defendant admitted that some of the shoes warehoused in the building were "apparently" counterfeit, but he denied the shoes were on display to be sold. When asked why there were individuals present at the warehouse when the officers searched it, defendant noted one person was an employee and the rest were friends visiting him.

¶ 9 Officer Stanek of the Chicago police department testified that, around 3 or 4 p.m. on April 6, 2007, he conducted surveillance for about 20 minutes at 9040 South Commercial Avenue based on information he had received from an informant. Stanek observed about six people walk into both 9038 and 9040 South Commercial Avenue, stay inside for a few minutes and then leave both addresses with boxes and containers. Some of the boxes had "Nike" written on them while some of the containers, which were larger, had "China" written on them. Stanek

remarked in court that he had previously made arrests for counterfeit merchandise and counterfeit Nike shoes in similar containers. Based on his observations, Stanek believed that the people "were purchasing items from those [addresses]."

¶ 10 Stanek could not say how many of the six people walked into or out of 9038 South Commercial Avenue. He testified, "I just remember both doors [for 9038 and 9040 South Commerical Avenue] being opened and people walking in and out of both doors."

¶ 11 The next day, at approximately 12:47 p.m., Stanek was again near 9040 South Commercial Avenue, preparing to execute a search warrant for 9040 South Commercial Avenue. The warrant authorized the seizure of "counterfeit merchandise," including "Nike shoes." The warrant also named defendant. Prior to executing the warrant, Stanek received a radio transmission from two officers at the scene who told him that they observed defendant walk from 9040 to 9038 South Commercial Avenue with several individuals. Stanek also spoke with a representative of Nike, who informed him that defendant was not licensed to sell Nike shoes.

¶ 12 A uniformed police officer approached 9040 South Commercial Avenue and knocked on the door. Defendant opened the door at 9038 South Commercial Avenue and began to speak with the officer. While defendant spoke with the officer, Stanek approached defendant and told him that the police were there to execute a search warrant. With the door at 9038 South Commercial Avenue "wide open," Stanek "observed numerous cartons, single boxes of Nike shoes" and "displays with *** single shoes on top of the boxes and cartons right inside the doorway." There were also at least five or six individuals inside the building, who appeared to be "looking at shoes." Stanek noticed that some shoes had a "Scarface character on the front of the shoe," and

others were "totally clear plastic shoes with Nike symbols." Based on prior arrests Stanek had made for counterfeit Nike shoes and information he received from representatives of Nike, he "believe[d]" the shoes were counterfeit because Nike did not make the "types of style or color combination of [the] shoes" he observed.

¶ 13 Stanek then entered 9038 South Commercial Avenue. Inside, Stanek saw an office with a desk, cash register and calculator. Stanek also observed numerous boxes and cartons of shoes, and individual shoes on display.

¶ 14 Stanek examined the shoes he found inside and noticed that the insoles "slip[ped] out," whereas real Nike shoes' insoles are glued into the shoe. Inside the shoe boxes, there were moisture packets, which real Nike shoe boxes did not contain. These observations supported Stanek's initial belief that the shoes were counterfeit.

¶ 15 Before executing the search warrant on 9040 South Commercial Avenue, Stanek asked defendant how he accessed that building. Defendant gave Stanek keys, which Stanek used to enter 9040 South Commercial Avenue and execute the warrant. Inside, Stanek observed "numerous boxes of clothing" and "a few boxes" of Louis Vuitton purses. He believed the purses were counterfeit based on his prior experience. Stanek continued his search in the basement of the building and saw more boxes of clothing.

¶ 16 The basement had "several walls and passageways," including an opening in the wall that Stanek estimated to be approximately 5 ½-feet high by 4-feet wide. When Stanek looked through the hole in the wall at 9040 South Commercial Avenue, he saw boxes with clothing on the other side but could not determine if the clothing was counterfeit, because he had no experience in that

field. Stanek walked through the hole and the passageways on the other side, walked up stairs, and ended up at 9038 South Commercial Avenue. He did not realize the hole connected 9038 and 9040 South Commercial Avenue until after he "came up on" 9038 South Commercial Avenue.

¶ 17 During the search, the police recovered approximately 13,725 pairs of counterfeit Nike shoes from 9038 South Commercial Avenue, as well as a "large amount" of receipts for sales of shoes. At 9040 South Commercial Avenue, the police recovered approximately 164 counterfeit Louis Vuitton purses but did not recover any Nike shoes.

¶ 18 During the search, the owner of both properties arrived at the scene. He told Stanek that he leased both 9038 and 9040 South Commercial Avenue to defendant. On cross-examination, Stanek admitted that the search warrant never once mentioned 9038 South Commercial Avenue, and that at least 10 officers helped execute the search warrant. He also acknowledged that there was only one entrance and exit for 9040 South Commercial Avenue, in addition to one entrance and exit for 9038 South Commercial Avenue.

¶ 19 After argument, the court noted that there was nothing "unique" about properties being connected to one another, and it was "not prepared to expand police powers to the search of other adjoining properties because they happened to be so situated." Nevertheless, the court noted there was evidence that implicated both the "plain view" and "inevitable discovery" doctrines.

¶ 20 The court observed that Stanek performed surveillance the day before the execution of the warrant and witnessed activity at both 9038 and 9040 South Commercial Avenue that piqued his "curiosity." The next day, the court recalled, Stanek stood in front of 9038 South Commercial

Avenue where the door was open and saw what he believed to be counterfeit shoes inside. Stanek also saw what he believed to be counterfeit purses during the execution of the warrant at 9040 South Commercial Avenue. At some point before or after he saw the purses, Stanek came across the passageway in the basement, through which he walked, without knowing that it led to 9038 South Commercial Avenue. According to the court, these observations made "the seizure of the gym shoes *** inevitable" because it was irrelevant "[w]hether he left the premises to return with the search warrant for [9038 South Commercial Avenue] or not." The court denied defendant's motion to suppress.

¶ 21 Defendant filed a motion to reconsider, arguing that an officer's plain view of contraband, amounting to probable cause in and of itself "is never enough to justify a search lacking exigent circumstances or some other exception to the search warrant requirement." The State argued that the officer satisfied the requirements of the plain-view doctrine. Alternatively, the State argued that even if the plain-view doctrine did not apply, the discovery of the contraband was inevitable. The court found that the officer "entered [9038 South Commercial Avenue] with probable cause," and that the "principle of inevitable discovery was appropriate," and thus denied defendant's motion to reconsider.

¶ 22 At trial, Officer Heidewald of the Chicago police department testified that, at approximately 12:41 p.m. on April 7, 2007, he conducted surveillance in the area of 9040 South Commercial Avenue prior to the execution of the search warrant. Heidewald observed defendant and a group of people leave 9040 South Commercial Avenue and enter 9038 South Commercial Avenue.

¶ 23 Detective Stanek, who had been promoted from officer since testifying at the motion to suppress,[1] testified consistently with his testimony at the suppression hearing. Stanek added that he had received "informal training" from a Nike representative on how to detect counterfeit Nike shoes. Additionally, during the search of 9038 South Commercial Avenue, approximately $30,000 was found in a safe and desk, and approximately $8,000 was found on defendant. After defendant was arrested, Stanek interviewed him at the police station. Stanek read defendant his *Miranda* rights, and defendant told Stanek that "he had a lot of *** fake Nikes at *** 9038 South Commercial [Avenue]." On cross-examination, Stanek admitted that he did not recover any counterfeit Nike shoes at 9040 South Commercial Avenue, and he never saw defendant sell a pair of shoes.

¶ 24 Kevin Read, the vice president of a private detective company that worked for Nike, was qualified as an expert in counterfeit Nike merchandise. On April 7, 2007, Read met with Stanek at 9038 South Commercial Avenue and examined "several hundred pairs of Nike shoes." Based on his examination, he determined the shoes were counterfeit.

¶ 25 Lori Colbert, the brand protection manager for Nike in North America, testified that Nike owns trademarks registered with the United States Patent and Trademark Office for the "swoosh design" on footwear, the basketball player "jumpman logo" and the word "Nike." Colbert stated that defendant was not an authorized retailer of Nike, and Nike did not give him permission to possess or sell any items with Nike trademarks.

¶ 26 Defendant elected not to testify or present any evidence on his behalf.

[1] Stanek will be referred to as "Detective" in any subsequent references.

¶ 27 The court found defendant guilty of possessing shoes containing a counterfeit Nike trademark and sentenced him to 30 months' probation. Defendant did not file a posttrial motion. This appeal followed.

¶ 28 On appeal, defendant's sole contention is that his conviction should be reversed because the circuit court erred in denying his motion to suppress. As a threshold matter, the State concedes that defendant's failure to challenge the circuit court's suppression ruling in a posttrial motion, which ordinarily is a basis for forfeiture of the claim on appeal, does not result in forfeiture because defendant alleges a violation of his constitutional right to be free from unreasonable searches and seizures that could be raised in a postconviction petition. See *People v. Cregan*, 2014 IL 113600, ¶ 20 (constitutional-issue exception to posttrial-motion requirement applied to fourth amendment claim).

¶ 29 On review of a motion to suppress, we are presented with a mixed question of law and fact. *People v. Booker*, 2015 IL App (1st) 131872, ¶ 39. The circuit court's factual findings are given great deference and will only be reversed if they are against the manifest weight of the evidence. *People v. Won Kyu Lee*, 2014 IL App (1st) 130507, ¶ 19. However, we review the ultimate question of whether the motion to suppress was properly dismissed *de novo*. *Id.* Here, because the parties do not contest any of the factual findings, we apply *de novo* review.

¶ 30 Both the fourth amendment to the United States Constitution and the Illinois Constitution state that people have a right to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Our supreme court has interpreted the search and seizure clause of the Illinois Constitution in "limited lockstep" with the United States Constitution.

People v. Caballes, 221 Ill. 2d 282, 310 (2006). Warrantless searches are *per se* unreasonable under the fourth amendment with only limited exceptions to the rule. *People v. LeFlore*, 2015 IL 116799, ¶ 17. Under the exclusionary rule, when a government's search violates the fourth amendment, courts will preclude the illegally obtained evidence from being admitted against the defendant at trial. *People v. Lampitok*, 207 Ill. 2d 231, 241 (2003).

¶ 31 But the mere existence of a Fourth Amendment violation does not automatically lead to the exclusion of the evidence improperly obtained. *LeFlore*, 2015 IL 116799, ¶ 22. The reason is that the exclusionary rule does not emanate from the United States Constitution. *Id.* ¶ 17. In fact, the constitution does not confer a right to have the fruits of an illegal search or seizure suppressed at a defendant's trial. *Id.* Rather, the exclusionary rule is a judicially-created remedy intended to deter subsequent violations of the fourth amendment. *Id.* ¶¶ 17, 22. Exclusion of evidence is always a court's "last resort, not [its] first impulse." *Herring v. United States*, 555 U.S. 135, 140 (2009). Courts will only apply the exclusionary rule when the rule's singular purpose, deterrence of future violations of the fourth amendment, can be achieved. *LeFlore*, 2015 IL 116799, ¶ 22.

¶ 32 Defendant first argues, and the State concedes, that the circuit court improperly applied the plain-view doctrine to justify Stanek's warrantless search of 9038 South Commercial Avenue. We agree. Under the plain-view doctrine, the police may seize an object without a warrant if: "(1) the officers are lawfully in a position from which they view the object; (2) the incriminating character of the object is immediately apparent; and (3) the officers have a lawful right of access to the object." *People v. Jones*, 215 Ill. 2d 261, 271-72 (2005). As defendant notes, in order for

the plain-view doctrine to apply, Detective Stanek needed to have a lawful right of access to the shoes he observed through the open door at 9038 South Commercial Avenue, or a lawful right of access to the merchandise he observed through the makeshift entryway in the basement between the 9038 and 9040 buildings. Stanek could not enter the private property of defendant without a warrant or some other justification authorizing a warrantless entry. See *People v. Edwards*, 144 Ill. 2d 108, 134 (1991) ("The plain view doctrine entitles a police officer with *prior justification* for an intrusion to seize evidence that is in plain view." (Emphasis added.)). Here, there was no warrant authorizing the search of 9038 South Commercial Avenue, nor any evidence presented to justify a warrantless entry into the building. See *People v. Hassan*, 253 Ill. App. 3d 558, 562, 569-570 (1993) (rejecting State's plain-view argument where officer observed packages of cocaine from just outside front door to defendant's apartment, and officer entered apartment and seized cocaine). Accordingly, we agree with both defendant and the State that the plain-view doctrine does not provide a justification for the officer's entries into 9038 South Commercial, either at the front door or through the basement passageway.

¶ 33 Defendant next argues that the circuit court erred in applying the inevitable-discovery doctrine. Under the inevitable-discovery exception to the exclusionary rule, evidence obtained pursuant to an unlawful search will not be suppressed where "the State can show that such evidence 'would inevitably have been discovered without reference to the police error or misconduct.' " *People v. Sutherland*, 223 Ill. 2d 187, 227-28 (2006) (quoting *Nix v. Williams*, 467 U.S. 431, 448 (1984)). In other words, if the State can establish, by a preponderance of the evidence, " 'that the information ultimately or inevitably *would have been* discovered by lawful

means,' " the evidence will not be suppressed. (Emphasis in original.) *People v. Alvarado*, 268 Ill. App. 3d 459, 470 (1994) (quoting *Nix*, 467 U.S. at 444). This court has long held that the State must establish three criteria for the inevitable-discovery exception to apply: (1) the condition of the evidence must be the same when found illegally as it would have been when found legally; (2) the evidence would have been found by an independent line of investigation untainted by the illegal conduct; and (3) the independent line of investigation must have already begun when the evidence was discovered illegally. *People v. Island*, 385 Ill. App. 3d 316, 344 (2008); *People v. Davis*, 352 Ill. App. 3d 576, 583 (2004); *People v. Harris*, 297 Ill. App. 3d 1073, 1085 (1998); *People v. Durgan*, 281 Ill. App. 3d 863, 867 (1996); *Alvarado*, 268 Ill. App. 3d at 470; *People v. Perez*, 258 Ill. App. 3d 133, 138 (1994); *People v. Shanklin*, 250 Ill. App. 3d 689, 696 (1993).

¶ 34 For example, in *Perez*, 258 Ill. App. 3d at 135-36, officers detained the defendant during a search of his home for cocaine. During the detention, the officers searched the defendant's person and found cocaine. *Id.* at 136. During the search of his house, they found cocaine hidden within a wall recess. *Id.* This court held that the initial search of defendant was improper, but that the cocaine on defendant's person would have been inevitably discovered because, after finding the cocaine hidden within the wall during the independent, ongoing search of his house, the officers would have arrested defendant and searched him incident to that arrest. *Id.* at 137-38.

¶ 35 Another example is *People v. Mitchell*, 189 Ill. 2d 312 (2000), where the defendant filed a postconviction petition alleging that his attorney was ineffective for failing to move to suppress evidence of the murder weapon, which the police found in the defendant's basement. *Id.* at 340-

41. The defendant argued that, after he was illegally arrested by the police, he told them that he was with his friend Douglas on the night of the murder. *Id.* at 340. The police then spoke to Douglas, who told them where the murder weapon was hidden. *Id.* at 340-41. The court held that the defendant's attorney was not ineffective because the police would have inevitably discovered the murder weapon, even if the defendant had not been illegally detained. *Id.* at 342-43. The court noted that the police had already spoken to two of the defendant's family members, who told them that the defendant and Douglas were together on the night of the murders. *Id.* at 343. Thus, the court reasoned, even if the police did not unlawfully detain the defendant, they would have spoken to Douglas anyway, through an independent investigation untainted by the illegal detention, and Douglas would have told them the location of the murder weapon. *Id.* at 343-44.

¶ 36 Defendant argues that the State did not establish the existence of an ongoing, independent investigation, untainted by the illegal conduct, at the time of the unlawful search in this case. The State concedes that point; it does not dispute the absence of such a pre-existing, independent investigation that inevitably would have resulted in discovery of the contraband at 9038 South Commercial. We likewise see nothing in the record to suggest that an independent investigation was underway, untainted from the illegal entries, that would have inevitably led to the discovery of the contraband at 9038. The warrant was limited to the 9040 building, and even after Stanek looked into the 9038 building and saw shoes that he believed to be counterfeit, there is nothing in the record to indicate that the officers made an attempt to secure a warrant for 9038. The State cannot (nor has it even tried to) identify an ongoing, independent investigation that inevitably would have led to the discovery of the merchandise in the 9038 building.

¶ 37 The State, instead, tries a different tack. First, it argues that the requirement of a pre-existing, independent line of investigation is not required. The State cites *Mitchell* for the proposition that "an in-progress independent investigation" is not a "*necessary* condition to finding that evidence would have been inevitably discovered." (Emphasis in original.) Specifically, the State notes that, in *Mitchell*, the court stated that an in-progress investigation is merely one " '[c]ircumstance[ ]' " that will justify the application of the inevitable-discovery doctrine. *Id.* at 342 (quoting 5 W. LaFave, Search & Seizure § 11.4(a), at 249 (3d ed. 1996)).

¶ 38 We disagree with the State's interpretation that *Mitchell* can be read to remove the requirement of an ongoing independent investigation to implicate the inevitable-discovery doctrine. Nowhere in *Mitchell* did the court suggest that the inevitable-discovery doctrine could apply even when there was no independent police investigation in progress. This is likely because, as we have already noted, in *Mitchell*, there *was* an ongoing, independent investigation that would have legally uncovered the same evidence that the police obtained as a result of their illegal interrogation of defendant. *Mitchell*, 189 Ill. 2d at 342-43. Here, in contrast, the record reveals no separate line of investigation by which the police would have discovered that there were counterfeit shoes in 9038 South Commercial Avenue. Instead, there was one line of investigation that led to the issuance of a search warrant for 9040 South Commercial Avenue alone.

¶ 39 The State then claims that we should adopt the test for inevitable discovery from the Seventh Circuit Court of Appeals in *United States v. Tejada*, 524 F. 3d 809 (7th Cir. 2008). The test in *Tejada* would have this court abandon the in-progress investigation prong of the doctrine;

in fact, it would re-write the test entirely. According to *Tejada*, if the State proves "that a warrant would certainly, and not merely probably, have been issued had it been applied for," the inevitable-discovery doctrine may be invoked. *Id.* at 813. We see no reason to depart from the approach of Illinois courts over several decades to this doctrine, especially when other federal circuits' inevitable-discovery doctrines conform to the Illinois approach. See, *e.g.*, *United States v. Allen*, 713 F. 3d 382, 387 (8th Cir. 2013) (stating under the inevitable-discovery doctrine, "the government must show *** an active pursuit of a substantial, alternative line of investigation at the time of the constitutional violation"); *United States v. Virden*, 488 F. 3d 1317, 1322 (11th Cir. 2007) (stating the inevitable-discovery doctrine "requires the prosecution to show that the lawful means which made discovery inevitable were being *actively pursued* prior to the occurrence of the illegal conduct") (Emphasis in original.) (Internal quotation marks omitted.)) Accordingly, we see no reason to depart from the well-settled rule of law in Illinois.

¶ 40 We would also highlight language in *Tejada* that suggests that the State would not prevail under that interpretation of inevitable discovery, either. *Tejada* involved the search of a container, and the Seventh Circuit held that, had officers attempted to secure a warrant, they unquestionably would have succeeded. *Tejada*, 524 F. 3d at 812-13. But the court contrasted the search of that container with a search of a residence:

> "The case is remote from one in which the police, having probable cause to search a person's house, barge in and search without benefit of a warrant and defend their conduct by invoking inevitable discovery. If that defense prevailed, the requirement of obtaining a warrant to search a person's home would be out the window." *Tejada*, 524 F.3d at 813-14.

¶ 41 We agree with that concern, and it very accurately describes the facts at hand. The officers, though perhaps armed with probable cause when Stanek saw the shoes he believed to be counterfeit through the open door, cannot simply enter the premises and then justify it afterward by claiming that they could have obtained a warrant, had they tried.

¶ 42 We also note that this is a case where the deterrent effect of the exclusionary rule will be served. Courts and commentators have observed that the inevitable-discovery rule should not be applied to sanction unconstitutional police "shortcuts." See *Nix*, 467 U.S. at 445-46 (justifying inevitable-discovery exception because, when police know that evidence will be inevitably discovered, they are unlikely to take "dubious 'shortcuts' " to obtain evidence); *United States v. Kennedy*, 61 F.3d 494, 499 n.2 (6th Cir. 1995) ("[I]ntentional shortcuts to the warrant requirement cannot be tolerated[.]"); 6 W. LaFave, Search & Seizure § 11.4(a) (5th ed. 2012) ("[I]t is essential that courts not lose sight of the fact that a mechanical application of the inevitable discovery doctrine will encourage constitutional shortcuts." (Internal quotation marks omitted.)). In this case, it appears Detective Stanek elected to take a shortcut instead of properly obtaining a search warrant. After conducting surveillance of the two properties, Stanek secured a warrant for 9040 South Commercial Avenue, but, for reasons unclear from the record, he did not secure a warrant for 9038 South Commercial Avenue, even though he had seen individuals walking in and out of that address. While speaking to defendant during the execution of the search warrant, Stanek saw what he believed to be counterfeit shoes in 9038 South Commercial Avenue. As the trial court also noted, once Stanek saw what he believed to be counterfeit shoes inside 9038 South Commercial Avenue, he could have secured the building with the ten or more

officers present and sought a warrant for that address, or even requested defendant's consent to search the 9038 building. He did neither. It may be true that, had he sought a warrant, he would have received it, but that should not be an excuse for not obtaining one. The doctrine of inevitable discovery does not provide the State with an avenue of relief here.

¶ 43 Finally, we reject the State's argument that the good-faith exception to the exclusionary rule applies. Under the good-faith exception, if the circumstances demonstrate that the police acted "with an objectively reasonable good-faith belief that their conduct [was] lawful, or when their conduct involved only simple, isolated negligence, there is no illicit conduct to deter." (Internal quotation marks omitted.) *LeFlore*, 2015 IL 116799, ¶ 24 (quoting *United States v. Katzin*, 769 F. 3d 163, 171 (3d Cir. 2014)).

¶ 44 We find that the State failed to present a sufficient factual foundation before the circuit court to rely on its good-faith argument on appeal. There is nothing in the record to support the State's claim that Stanek had a good-faith basis to seize the shoes. Stanek never testified why he thought his entry into 9038 South Commercial Avenue was lawful. Rather, he merely stated that he observed contraband inside the building and decided to go inspect it.

¶ 45 The State contends that the good-faith exception applies because Stanek was merely mistaken regarding his ability to search 9038 South Commercial Avenue based on the plain-view doctrine. But Stanek never testified that he searched 9038 South Commercial Avenue because he thought the plain-view doctrine applied. And, as we noted above, the State has conceded that the plain-view doctrine was inapplicable to justify his seizure of shoes. Thus, the State has not identified any law on which Stanek could have reasonably relied to justify the application of the

good-faith exception, let alone presented any evidence that Stanek actually thought that the plain-view doctrine justified his actions. See, *e.g.*, *LeFlore*, 2015 IL 116799, ¶ 31 (good-faith exception applies where police *reasonably* rely on binding legal precedent in existence at time of fourth amendment violation); *People v. Bravo*, 2015 IL App (1st) 130145, ¶¶ 15, 19-20 (State failed to demonstrate Drug Enforcement Agency agents acted in good-faith reliance on *United States v. Garcia*, 474 F. 3d 994 (7th Cir. 2007), when placing GPS device on defendant's car, where it presented no evidence to show why agents thought their actions conformed with *Garcia*).

¶ 46 For the foregoing reasons, the circuit court erred in denying defendant's motion to suppress. Because the State could not prevail on a conviction for possession of this contraband when the evidence of that contraband has been suppressed, the appropriate remedy is outright reversal. See, *e.g.*, *People v. Trisby*, 2013 IL App (1st) 112552, ¶ 19 (State could not prevail on retrial without drugs recovered from defendant's pocket in warrantless search unsupported by probable cause); *People v. Leigh*, 341 Ill.App.3d 492, 497 (2003) (defendant's conviction for possession of firearm by felon reversed outright, where State could not prevail without suppressed firearm); *People v. Elliot*, 314 Ill.App.3d 187, 193 (2000) (reversing defendant's conviction for possession of controlled substance after finding that drugs seized from defendant should have been suppressed, and State could not prevail on remand without this evidence). We therefore reverse defendant's conviction and vacate his sentence.

¶ 47 Reversed.