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Commonwealth of Kentucky

Court of Appeals

NO. 2003-CA-000420-DG

COMMONWEALTH OF KENTUCKY — APPELLANT

ON DISCRETIONARY REVIEW FROM FAYETTE CIRCUIT COURT
v. HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 01-XX-00074

STEVEN LEON SHUCK — APPELLEE

OPINION
AFFIRMING

** ** ** ** ** ** ** **

BEFORE: BARBER, SCHRODER, AND VANMETER, JUDGES.

SCHRODER, JUDGE: The Commonwealth of Kentucky appeals from an opinion and order of the Fayette Circuit Court suppressing evidence discovered following a police stop of Steven Shuck's (Shuck) pickup truck. The police stop was initiated solely on the basis that the vehicle had a cracked windshield. The circuit court's opinion and order reversed a ruling of the Fayette District Court denying Shuck's motion to suppress the evidence discovered as a result of the stop. We subsequently accepted discretionary review. While, unlike the circuit court,

we conclude that a cracked windshield may result in a violation of Kentucky Revised Statutes (KRS) 189.020, we further conclude that the crack in Shuck's windshield was not of sufficient gravity so as to create a reasonable suspicion that the vehicle was in violation of the statute. We accordingly affirm the opinion and order of the circuit court.

On June 17, 2001, Sergeant Roy Wilson of the Lexington-Fayette Urban County Police Department observed Shuck driving his pickup truck in Jacobson Park, in Fayette County, Kentucky. According to Officer Wilson, Shuck was driving his pickup truck toward his vehicle and he observed that the front windshield of Shuck's vehicle was cracked. The crack originated on the passenger side of the vehicle and fissured across the windshield to the driver's side. Wilson testified at the suppression hearing that he believed the crack could have impaired the driver's view through that part of the windshield and he elected to stop the vehicle based upon this belief.

Shuck's license was suspended because of a prior driving under the influence conviction, and Sergeant Wilson charged and arrested him for driving on a suspended license. In addition, Officer Wilson charged Shuck with operating an uninsured motor vehicle; with two counts of failure to use seat belt; and with possession of alcoholic beverages in a public park. As a result of the cracked windshield, Officer Wilson

charged Shuck with violating KRS 189.110, which contains various provisions relating to obstructed windshields.

On August 20, 2001, Shuck filed a motion in Fayette District Court to suppress the fruits of the June 17, 2001, stop on the basis that Sergeant Wilson did not have a reasonable and articulable suspicion that Shuck had committed any offense prior to pulling him over, and that, as a result, the subsequent stop, arrest, and search were illegal.

In its response to the motion, the Commonwealth defended the stop primarily upon the basis that the cracked windshield was a violation of KRS 189.020, a statute captioned "Equipment of vehicle not to be nuisance or menace," rather than KRS 189.110, the statute identified by Officer Wilson on the original citation.

On October 1, 2001, a hearing was held on Shuck's motion to suppress pursuant to Kentucky Rules of Criminal Procedure (RCr) 9.78. On October 15, 2001, the district court entered an order denying the suppression motion on the basis that Officer Wilson had a reasonable and articulable suspicion supporting his decision to stop Shuck's vehicle, namely, that the cracked windshield could impair the vision of the driver and, further, could increase the likelihood that the windshield glass could shatter into the passenger compartment in the event

the windshield were struck by a foreign object, thereby presenting a danger to the vehicle's occupants.

Shuck subsequently entered a conditional guilty plea to driving on a suspended license and to driving an uninsured vehicle. The plea reserved for appeal the legality of the stop by Officer Wilson and the issue of whether KRS 189.110 and 189.020 are void for vagueness.[1]

On January 30, 2003, the Fayette Circuit Court entered an opinion and order reversing the district court and holding that a cracked windshield is not prohibited under Kentucky law, that a cracked windshield does not constitute an offense, and that, therefore, the police stop by Officer Wilson was illegal. The circuit court ordered the fruits of the stop suppressed. We subsequently accepted discretionary review.

The Commonwealth contends that the circuit court erred in its determination that the stop of Shuck's vehicle by Officer Wilson was illegal. The Commonwealth argues that Officer Wilson properly stopped Shuck for a vehicle safety violation. Because the underpinning of the circuit court's decision is that driving

[1] On December 6, 2001, Shuck filed a motion in Fayette District Court to declare KRS 189.110 and KRS 189.020 void for vagueness. The office of the Attorney General filed a notice that it would not intervene to defend the constitutionality of the statutes. The record on appeal reflects that the district court did not rule on the motion. Because of the circuit court's disposition of the case, it likewise did not rule on this issue.

a vehicle with a cracked windshield is not a violation of Kentucky law, we first address this issue.

Sergeant Wilson originally charged Shuck with violating KRS 189.110, which contains various provisions relating to obstruction of windshield visibility. However, since the filing of the suppression motion, the Commonwealth has primarily defended the stop on the basis that the cracked windshield was a violation of KRS 189.020 rather than KRS 189.110. The Commonwealth now concedes, and we agree, that KRS 189.110 does not apply to situations involving a cracked windshield. KRS 189.110 is plainly concerned with other types of windshield visibility obstructions.[2] We will accordingly limit our review to the statute relied upon by the Commonwealth in defense of the stop, KRS 189.020.

KRS 189.020 is captioned "Equipment of vehicle not to be nuisance or menace." The statute provides as follows:

> Every vehicle when on a highway shall be so equipped as to make a minimum of noise, smoke or other nuisance, to protect the rights of other traffic, and to promote the public safety.

The cardinal rule of statutory construction is that the intention of the legislature should be ascertained and given effect. Commonwealth, Cabinet for Human Resources, Interim

[2] Most of the statute is concerned with sun screening and window tinting. The statute also prescribes safety glazing and windshield wiper requirements, and also provides an obstruction exception concerning the displaying of an American flag.

Office of Health Planning and Certification v. Jewish Hosp. Healthcare Services, Inc., Ky. App., 932 S.W.2d 388, 390 (1996). When analyzing a statute, we must interpret statutory language with regard to its common and approved usage. KRS 446.080(4). Statutory language must be accorded its literal meaning unless to do so would lead to an absurd or wholly unreasonable result. Coy v. Metropolitan Property and Cas. Ins. Co., Ky. App., 920 S.W.2d 73, 74 (1995). Where there are no exceptions provided by the legislature, it is presumed that none were intended. Tilley v. Tilley, Ky. App., 947 S.W.2d 63, 66 (1997).

In its opinion and order holding that a cracked windshield is not prohibited under KRS 189.020, the circuit court focused exclusively on the "nuisance" clause of the statute. The circuit court referenced the Black's Law Dictionary definition of "nuisance" and concluded:

> KRS § 189.020 indicates that violations thereof may result from "noise, smoke, or other nuisance" giving some indication that the statute uses a meaning of the term nuisance similar to that set out in Black's Law Dictionary, *supra*. The term is not otherwise defined in KRS [C]hapter 189. From its understanding of the term nuisance and the traditional usage indicated in Black's Law Dictionary, this Court cannot find that a cracked windshield is a nuisance for purposes of KRS § 189.020. Furthermore, given the generality of this statute and the specificity in KRS § 189.110, this Court finds that the legislature could have easily made provisions for cracked windshields in the statute entitled "Unobstructed

> windshields" and will not enlarge the provisions of KRS § 189.020 to encompass cracked windshields.

The requirement that every vehicle be equipped so as to make "a minimum of noise, smoke or other nuisance," is addressed in only the first of the three clauses contained in KRS 189.020. We agree with the circuit court that the cracked windshield in this case does not violate the "nuisance" clause of the statute. However, the statute also requires every vehicle be equipped so as "to protect the rights of other traffic" and to be equipped so as "to promote the public safety." A statute should be construed, if possible, so that no part of it is meaningless and ineffectual. Hardin County Fiscal Court v. Hardin County Bd. of Health, Ky. App., 899 S.W.2d 859, 861-862 (1995). We conclude that the circuit court erred by failing to give meaning and effect to the latter two clauses of the statute.

We also note that the circuit court interpreted KRS 189.110 as prevailing over KRS 189.020 on the basis KRS 189.110 was the more specific statute and "that the legislature could have easily made provisions for cracked windshields in the statute entitled 'unobstructed windshields' [KRS 189.110]." True enough, "[w]here two statutes concern the same or similar subject matter, the specific shall prevail over the general." Withers v. University of Kentucky, Ky., 939 S.W.2d 340, 345

(1997). However, "[i]t is an established rule of statutory construction that seemingly conflicting statutes are to be construed so as to give meaning to both." Hopkinsville-Christian County Planning Com'n v. Christian County Bd. of Educ., Ky. App., 903 S.W.2d 531, 532 (1995). KRS 189.110 does not purport to codify all laws relating to windshield safety. Further, the two statutes do not contradict one another and are not, in fact, in conflict. We accordingly conclude that the rule that the specific prevails over the general is not applicable in this case.

In addition, the circuit court appears to have misconstrued the significance of the caption to KRS 189.110. The caption "unobstructed windshields" is merely the caption to the statute as prepared by the statute reviser, Arciero v. Hager, Ky., 397 S.W.2d 50, 53 (1965), overruled on other grounds by Hicks v. Enlow, Ky., 764 S.W.2d 68 (1989), and does not constitute any part of the law. KRS 446.140.

In summary, we conclude that KRS 189.110 does not hamper the application of KRS 189.020 to a cracked windshield. Upon application of the plain language of KRS 189.020 and our interpretation of the legislative intent in its enactment, we conclude that a windshield which is cracked or damaged to the extent that it unreasonably impairs the vision of the driver violates those provisions of KRS 189.020 requiring that a

vehicle be equipped so as to protect the rights of other traffic and to promote the public safety.

If a cracked windshield is of sufficient severity so as to obstruct the vision of the driver, the resulting diminished observational capacity necessarily increases the risk that the driver will have a reduced ability to observe other traffic, which, it follows, increases the likelihood of the vehicle being involved in a collision. As such, a vehicle equipped with a cracked windshield which unreasonably diminishes the viewing ability of the driver is not a vehicle equipped to protect the rights of other traffic.[3] Moreover, because of the increased risk of collision, a vehicle equipped with a cracked windshield which unreasonably interferes with the viewing ability of the driver does not promote the public safety.

On the other hand, a cracked windshield is not, per se, a violation of KRS 189.020. A violation occurs only if the crack is of sufficient gravity to unreasonably obscure the driver's visibility so as to result in a threat to the rights of other traffic or to public safety. De minimis "hairline" cracks which do not impair visibility do not threaten the rights of other traffic or pose a threat to public safety. Given the unlimited range of possible situations which may arise, it will

[3] By way of example, in the extreme case a fully shattered windshield may be rendered, in effect, opaque.

be necessary for individual instances to be evaluated on a case-by-case basis.[4]

Having concluded that a cracked windshield may result in a violation of KRS 189.020, we now turn to the legality of Officer Wilson's June 17, 2001, stop of Shuck. A traffic stop is a limited seizure within the meaning of the Fourth and Fourteenth Amendments to the United States Constitution. See Delaware v. Prouse, 440 U.S. 648, 653, 99 S. Ct. 1391, 1396, 59 L. Ed. 2d 660 (1979). A warrantless search and/or seizure is presumed to be both unreasonable and unlawful, and the prosecution has the burden of proving the warrantless search and/or seizure was justifiable under a recognized exception to the warrant requirement. Gallman v. Commonwealth, Ky., 578 S.W.2d 47, 48 (1979); Gray v. Commonwealth, Ky. App., 28 S.W.3d 316, 318 (2000).

An investigative stop is a common exception to the Fourth Amendment warrant requirement. In Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), the United States Supreme Court held that a police officer may stop an individual if the officer has a reasonable suspicion, based upon specific and articulable facts, that criminal behavior has occurred or is imminent. In Delaware v. Prouse, the Supreme

[4] See Indiana v. Pease, 531 N.E.2d 1207 (Ind. 1988), for a similar case in which a general vehicle equipment safety statute was held to apply to a cracked windshield.

Court held that an officer may stop an automobile under the Terry stop exception if the officer possesses the requisite reasonable suspicion based upon specific and articulable facts. Prouse, 440 U.S. at 663, 99 S. Ct. at 1401; see also Whren v. United States, 517 U.S. 806, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996); United States v. Martinez-Fuerte, 428 U.S. 543, 96 S. Ct. 3074, 49 L. Ed. 2d 1116 (1976); and United States v. Brignoni-Ponce, 422 U.S. 873, 95 S. Ct. 2574, 45 L. Ed. 2d 607 (1975).

In its November 1, 2001, opinion and order, the district court made a finding that "the pictures provided by Shuck present evidence of a significant crack in the front windshield that may impair the vision of the driver or effect the likelihood of the shattering of the windshield in the event there is a striking of the windshield from debris or otherwise while being operated on the highway."

The Kentucky rule governing suppression of evidence is RCr 9.78. Under this rule, upon a motion to suppress evidence, the trial court must conduct an evidentiary hearing and make factual findings. The trial court's findings of fact are conclusive if supported by substantial evidence. Watkins v. Commonwealth, Ky., 105 S.W.3d 449, 451 (2003). When the findings of fact are supported by substantial evidence, the question then becomes whether the rule of law as applied to the

established facts is violated. Commonwealth v. Whitmore, Ky., 92 S.W.3d 76, 79 (2002). The test for substantiality of evidence is whether when taken alone, or in the light of all the evidence, it has sufficient probative value to induce conviction in the minds of reasonable men. Janakakis-Kostun v. Janakakis, Ky. App., 6 S.W.3d 843, 852 (1999), cert. denied, 531 U.S. 811, 121 S. Ct. 32, 148 L. Ed. 2d 13 (2000).

The record includes numerous pictures from multiple angles of the cracked windshield. The crack originates on the passenger side of the vehicle and at that point resembles two large asterisks, one situated toward the upper corner and the other at approximately a normally-seated passenger's eye-level position. From there, two primary fissures snake toward the driver's side directly across what would be a normally-seated driver's view. The fissures, while lengthy, are near-hairline. Pictures taken from inside the passenger compartment disclose minimal obstruction of the outside view.

While the cracks are clearly apparent, we conclude that, viewed objectively, it was not reasonable for Officer Wilson to have concluded that these particular cracks could have reasonably interfered with a driver's ability to see out of the windshield so as to interfere with the rights of other traffic or endanger public safety. The pictures disclose that

the cracks are not of sufficient gravity to induce this suspicion. Hence, the trial court's findings to that effect were clearly erroneous.

With regard to the district court's finding that the cracks could result in a risk of shattering the windshield into the passenger compartment, again, based upon the relatively de minimis nature of the cracks, this is not a reasonable conclusion. Further, the only evidence supporting this hypothesis was Officer Wilson's testimony, and no foundation was laid to demonstrate that Officer Wilson had the required knowledge or expertise to testify regarding this issue. This finding was, likewise, clearly erroneous.

In summary, the finding of the district court that Officer Wilson had a reasonable and articulable suspicion to stop Shuck's vehicle based upon the supposition that the cracked windshield was a violation of Kentucky law was clearly erroneous. The cracked windshield is patently not a violation of KRS 189.020. If follows that Officer Wilson could not have had a reasonable and articulable suspicion that it was.

Shuck also argues that the fruits of the police stop should be suppressed on the basis that KRS 189.020 is void for vagueness. Our disposition of the case moots this argument.

For the foregoing reasons the judgment of the Fayette Circuit Court is affirmed.

BARBER, JUDGE, CONCURS.

VANMETER, JUDGE, DISSENTS.

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