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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001880-MR

MICHAEL STIGALL — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JAMES D. ISHMAEL, JR., JUDGE
ACTION NO. 07-CR-00195

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE AND CAPERTON, JUDGES; ROSENBLUM,[1] SPECIAL JUDGE.

ACREE, JUDGE: Michael Stigall appeals a judgment of the Fayette Circuit Court convicting him of driving on a DUI suspended license, third offense, and being a persistent felony offender in the second degree. Stigall entered a conditional guilty

[1] Retired Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

plea after the trial court refused to grant his motion to suppress evidence for lack of probable cause supporting the traffic stop. Finding no error, we affirm.

On the night Stigall was stopped, Officer Ricky Lynn was patrolling Coolivan Apartment complex due to residents' complaints of drug trafficking activity. Lynn observed a yellow truck in the parking lot with a group of people clustered around it and nearby. As the patrol car approached the group, the truck pulled out of the parking lot and the group in front of the building dispersed. Lynn, who had noticed that neither person in the truck was wearing a seatbelt, called for back-up and followed the vehicle for a few blocks. Once he reached an area with back-up in the vicinity, Lynn activated his blue lights and pulled the truck over. When he approached the vehicle, Lynn found that Stigall and his passenger were still not wearing seatbelts. He informed Stigall that failure to wear a seatbelt was a primary offense in Kentucky and asked for his driver's license and proof of insurance. Stigall replied that his license was suspended.

Lynn ran a check and discovered that Stigall's license was suspended for driving under the influence. He arrested Stigall for driving on a suspended license and issued him a warning ticket for failure to wear a seatbelt. During the search incident to arrest, Lynn found cocaine and a crack pipe. Stigall was then charged with possession of a controlled substance and possession of drug paraphernalia, but those charges were dismissed in district court. The charge of

driving on a DUI suspended license was sent to a grand jury which returned an indictment charging Stigall with that offense, as well as with being a persistent felony offender in the second degree. Stigall filed a motion to suppress evidence, claiming that Lynn lacked probable cause to stop his vehicle. The trial court overruled the motion after a hearing. Stigall entered a conditional plea and was sentenced to one year for driving on a DUI suspended license, enhanced to five years by the PFO, probated for a period of five years. This appeal followed.

Stigall first argues that the trial court actually concluded that Lynn lacked a reasonable suspicion of criminal activity when he stopped Stigall's vehicle. During the suppression hearing, the officer admitted he did not see Stigall or his passenger exit the truck or approach the people standing outside the apartments. Nor did he see any items exchanged between the occupants of the vehicle and the people standing nearby. He admitted suspecting Stigall might have been involved in drug-related activity because, when Stigall saw the patrol car, he drove away and the crowd dispersed. Stigall notes that his presence in an area known for illegal drug activity does not furnish reasonable suspicion that he was committing a crime. *Illinois v. Wardlow*, 528 U.S. 119, 124, 124 S.Ct. 673, 676, 145 L.Ed.2d 570 (2000). He contrasts the facts surrounding his stop with those in *Fletcher v. Commonwealth*, 182 S.W.2d 556 (Ky.App. 2005), noting that the arresting officer in *Fletcher* observed the suspect for ten minutes before detaining him. Stigall misses the real distinction, however. *Fletcher* involved a suspect on foot. Stigall was stopped for violating the law requiring use of seatbelts.

Stigall next contends that this Court should reconsider the issue of whether pretextual stops violate our state constitution. In support of this argument, he cites our decision in *Garcia v. Commonwealth*, 185 S.W.3d 658 (Ky.App. 2006). In *Garcia*, we evaluated the legality of a stop where a driver changed lanes upon being approached by a marked police car. The driver looked nervous, avoiding eye contact with the officer, and gripped the steering wheel tightly. The officer additionally observed that Garcia's windshield was cracked and, deciding that the crack impaired Garcia's forward vision, pulled him over. The trial court refused to suppress drugs found in the vehicle, which this Court found to be erroneous. *Id.* at 665.

Our analysis in *Garcia* focused on whether a cracked windshield was a traffic violation which would support the stop. We noted that Kentucky Revised Statute (KRS) 189.110, which contains the requirements for sunscreening, tinting, and windshield wipers, and mandates safety glazing, does not contain any language regarding cracks in a windshield. Another statute, KRS 189.020, requires a vehicle to be equipped so as "to protect the rights of other traffic, and to promote the public safety." We concluded that a cracked windshield which unreasonably reduced a driver's vision would violate this statute. However, the photograph of Garcia's windshield did not show cracks severe enough to impede his forward vision. With regard to the rest of the driver's behaviors noted by the officer before the stop, this Court stated, "[w]e believe these facts describe a substantial number of drivers on our highways and constitute an innocuous mirage created in an

attempt to retrospectively justify the stop." *Garcia*, 185 S.W.3d at 665. Consequently, we found the stop to be improper.

Stigall claims that our holding in *Garcia* should apply to the case at hand, noting that one of the actions observed by the officer who stopped Garcia was a quick lane change – arguably a violation of KRS 189.380(1)(a). Thus, Stigall contends, if Lynn was justified in stopping his truck under *Whren v. U.S.,* 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996) and *Wilson v. Commonwealth*, 37 S.W.3d 745 (Ky. 2001), then the officer who stopped Garcia would have been justified as well. This argument fails. While an erratic lane change was identified as a factor in suspecting criminal activity, Garcia was not cited for violating KRS 189.380(1)(a). Stigall *was* cited for violating KRS 189.125(6).

At one time, the statute prohibited an officer from stopping a driver for failure to wear a seatbelt "if the officer has no other cause to stop or seize the person other than a violation of subsection (6) of this section." KRS 189.125(7). However, when the General Assembly amended the statute in 2006, that prohibition was stricken. This clearly signals the Legislature's intent to authorize police officers to stop drivers whose only unlawful conduct was a violation of KRS 189.125(6).[2]

[2] The amendment's effective date was July 12, 2006. Stigall was stopped in December 2006. KRS 189.125(14), enacted at the same time as the amendment allowing traffic stops for failure to wear a seatbelt, provided that law enforcement agencies would issue a courtesy warning between the law's effective date and January 1, 2007. Section (14) did not affect the validity of the stop itself, however. Lynn testified that he issued such a warning ticket to Stigall.

Finally, we decline Stigall's invitation to reconsider whether Section 10 of Kentucky's constitution forbids stopping a driver for a traffic violation, regardless of the officer's subjective intent to find evidence of a greater crime. The Kentucky Supreme Court has recognized that "Section 10 of the Kentucky Constitution provides no greater protection than does the federal Fourth Amendment." *LaFollette v. Commonwealth*, 915 S.W.2d 747, 748 (Ky. 1996). The United States Supreme Court determined that an officer with probable cause to believe a suspect has violated the traffic code is permitted, under the Fourth Amendment, to make a stop. *Whren*, 517 U.S. at 819. The Court further held that "the constitutional reasonableness of traffic stops [does not depend] on the actual motivations of the individual officers involved." *Whren*, 517 U.S. at 813. Kentucky has specifically adopted the reasoning of *Whren* in upholding traffic stops for violations as permissible under Section 10 of our state constitution. *Wilson*, 37 S.W.3d at 749 ("It should be noted with regard to the traffic stop, that an officer who has probable cause to believe a civil traffic violation has occurred may stop a vehicle regardless of his or her subjective motivation in doing so."); *see also*, *Commonwealth v. Fox*, 48 S.W.3d 24, 27 (Ky. 2001)("[T]emporary detention of a motorist upon probable cause to believe that he has violated the traffic laws does not violate the Fourth Amendment's prohibition against unreasonable seizures, even if a reasonable officer would not have stopped the motorist absent some additional law enforcement objective."), *citing Whren*.

"The Court of Appeals is bound by and shall follow applicable precedents established in the opinions of the Supreme Court and its predecessor court." Rules of the Supreme Court 1.030(8); *see also*, *Peak v. Commonwealth*, 34 S.W.3d 80, 83 (Ky.App. 2000). Since the issue has been unambiguously addressed by the Kentucky Supreme Court, it would be improper for this Court to hold Lynn's stop of Stigall unconstitutional. Consequently, the trial court's denial of Stigall's suppression motion must be upheld.

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

ALL CONCUR.

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